



W.A(MD)No.1605 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.12.2022

CORAM

**THE HON'BLE MR JUSTICE DR G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

W.A.(MD)No.1605 of 2021
and
C.M.P(MD)No.6846 of 2021

- 1.The Director of Medical and Rural Health Services,
Chennai.
- 2.The Joint Director of Health Services,
Tenkasi,
Tirunelveli District.
- 3.The Medical Officer,
Government Hospital,
Melapalayam,
Tirunelveli District.

.. Appellants/Respondents

Vs.

S.Umaieswaranpillai.

.. Respondent/Respondents

Appeal filed under Clause 15 of the Letters Patent Act, praying this Court, to set aside the order dated 02.03.2021 passed in W.P(MD)No.14691 of 2019 on the file of this Court.



W.A(MD)No.1605 of 2021

For Appellants :Mr.Veerakathiravan,
Additional Advocate General
assisted by, Mr.D.Sasikumar
Additional Public Prosecutor

For Respondent :Mr.V.Panneerselvam

JUDGMENT

DR G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.

This Writ Appeal is filed by the State being aggrieved by the order of the learned Single Judge allowing the writ petition seeking Certiorarified Mandamus.

2.The sum and substance of the dispute, is as follows:

Mr.Umaieaswaranpillai, was appointed as a Hospital Worker on temporary basis under the Tamil Nadu Basic Services Rule, in the Government Hospital, Kanyakumari District. As on the date of his joining in service, the promotion for a basic service viz., the Hospital Worker was the Higher post of Nursing Assistant Grade-II, in which, the candidate should possess the diploma in health service. The writ petitioner had possessed the said diploma sought for promotion as Nursing Assistant Grade-II. Accordingly, he was promoted as Nursing Assistant Grade-II on 12.11.2010



W.A(MD)No.1605 of 2021

and posted as Male Nursing Assistant Grade-II at Government Hospital, Melapalayam. On attaining the age of 58, the impugned order was passed, indicating his superannuation. At this juncture, the dispute arose, because the health workers, who were similarly placed like the writ petitioner, prior to his promotion, were considered for the post of Nursing Assistant Grade-II, though they did not possess the required educational qualification of one year diploma. G.O.Ms.No.325, Health and Family Welfare (F) Department, dated 20.11.20212, was issued taking note of the fact that the health workers are not inclined to possess required educational qualification aspired for the promotional post viz., Nursing Assistant Grade-II, which is lead to vacancy, in the post of Nursing Assistant Grade-II. In order to fill-up the said post with trained persons, one time concession was granted for serving health workers without diploma. According to the said G.O., three months training was provided to the health workers, who were posted to officiate as Nursing Assistant Grade-II. Hence, the hospital workers were permitted to retire at the age of 60, on par with other employees under the basic service though they were asked to officiate post, which does not fall under the basic service.



W.A(MD)No.1605 of 2021

3.In the said circumstances, Mr.Umaieswaran Pillai, who attained the age of 58, on 30.06.2019 sought for parity along with other health workers, who were asked to officiate as Nursing Assistant Grade-II, pursuant to the G.O.Ms.No.325, dated 20.11.2022. The writ petitioner viz., Mr.Umaieswaranpillai, gave a representation to consider his service upto 60 years, but the same was rejected on 26.06.2019. Aggrieved by the same, a writ petition in W.P(MD)No.14691 of 2019 was filed and the same was allowed and the impugned order passed by the second respondent, dated 26.06.2019, rejecting the request of the writ petitioner to allow him to continue in service, till attaining the age of 60, was quashed. The respondents were directed to allow the writ petitioner to serve as Nursing Assistant Grade-II, till he complete the age of 60 years. This order is impugned in the writ appeal.

4.The learned Additional Advocate General appearing for the appellants submitted that the writ petitioner having opted for promotional post and agreed to retire at the age of 58 years by giving consent letter to the effect, he is estopped to claim the advantage of basic servant as far as the retirement age is concerned. The learned Additional Advocate General



W.A(MD)No.1605 of 2021

further submitted that under Rule 56(1) of the Tamil Nadu Medical Subordinate Service and Fundamental Rules, the Government empowers to issue special orders in respect of service and G.O.Ms.No.325, dated 20.11.2012 was issued, in exercise of the said power, the State Government by taking note of the fact of huge vacancy and with intention to formulate new policy for recruitment of Hospital Workers in Government Medical Institution, which will provide for adequate incentive for the employees, who were promoted as health workers without one year diploma to officiate as Medical Nursing Assistant Grade-II, at the same time, the age of superannuation was retained as 60 years. This G.O., came into effect much later, after the writ petitioner got promotion as Nursing Assistant Grade-II being in possession of the required educational qualification and service. He cannot claim parity with the other hospital workers without educational qualification and promoted subsequently to officiate as Nursing Assistant Grade-II.

5.The learned counsel for the respondent/writ petitioner submitted that the undertaking letter alleged to have been given by the writ petitioner has no force or it cannot be taken as conceding or estoppel, since the State



W.A(MD)No.1605 of 2021

has taken a policy decision in respect of the similarly placed basic servant to allow to serve upto 60. The petitioner cannot be isolated and discriminated, because he got promotion based on the educational qualification on merits few years earlier to his counter part, who have not possessed the additional qualification, but got the promotional post by virtue of the Special G.O.Ms.No.325 of 2012. He was further submitted that though the writ petitioner was promoted in the year 2010, as Nursing Assistant Grade-II, he was not even granted the increments to which he is entitled, stating the pendency of the writ appeal. He also submitted that even pension has not been provided to him.

6.The learned Additional Advocate General would fairly submitted that if the retirement benefits and pension not been paid, the same will be considered positively within a reasonable time. However, he insisted that the extension of service age 60 years to the writ petitioner will cause cascading effect in the cadre and the financial impact will be huge.

7.This Court, on perusing the records and considering the reason given by the learned Single Judge and in the light of the G.O.Ms.No.325,



W.A(MD)No.1605 of 2021

dated 20.11.2012, finds that the State ought not to have discriminated the petitioner herein and deprived his two years service, while his counter part, who, possess less educational qualification, were provided with promotional post though it was two years later. The fact remains that similarly placed hospital workers were provided with promotional post even without acquiring necessary educational qualification and allowed to retire at the age of 60.

8.As far as this case is concerned, the writ petitioner has already crossed the age of 60 and therefore, it is suffice to direct the appellant herein to fix the pay scale of the writ petitioner from the date of his promotion as Nursing Assistant Grade-II with periodical increments and taking his date of superannuation notionally as 30.06.2021 instead of 30.06.2019. The two years service should be treated as “no work no pay” and the service period of 60 years is only for the purpose of fixing retirement benefits and pension.

9.It is submitted by the learned counsel for the respondent/writ petitioner that the increment from the year 2011 has not been paid to the respondent/writ petitioner and neither the retirement benefits nor the



W.A(MD)No.1605 of 2021

pension benefits were paid to the writ petitioner. If it is so, the difference in pay after fixing of the pay scale with periodical increment in the post of Nursing Assistant Grade-II should be paid with 6% interest p.a., the retirement benefits as well as the pensionary benefits to be paid within a period of eight weeks from today.

10.It is made clear that the period of service till the age of 60, instead of 58 is to be taken notionally, for the sole purpose of fixation of retirement benefits and pensionary benefits and not for other purpose. The petitioner is not entitled to claim any pay for the period which he has not worked.

11.With the above direction, this Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(G.J.,J.) (S.M.,J.)
07.12.2022

Index:Yes/No
Internet:Yes/No
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