



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.1268 of 2016

and

W.M.P. (MD)Nos.1039, 1040 of 2016

WEB COPY

1. K.Ranjith
2. C.Suresh Kumar
3. P.Jeyapandi
4. Tamil Nadu Medical Department
All Workers and Sanitary Workers Association,
represented by the President,
M.Venkatacham. ... Petitioners
vs.

1.The State of Tamilnadu,
represented by Principle Secretary,
Finance (Pay Cell) Department,
Secretariat, Chennai - 9.

2.The State of Tamil Nadu,
represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai - 9.

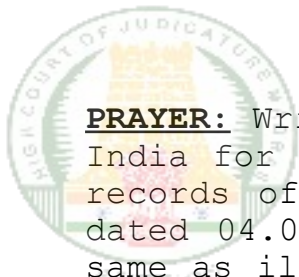
3. The Director,
Directorate of Medical Education,
Kilpauk, Chennai - 10.

4. The Director,
Medical and Rural Health Services,
Teynampet, Chennai - 6.

5. The Director,
Public Health and Preventive Medicine,
Teynampet, Chennai - 6.

6. The Director,
Indian Medicine and Homeopathy,
Arumpakkam,
Chennai - 108.

7. The Director,
Medical and Rural Health Services,
Esi Schemi,
Teynampet,
Chennai - 6. ... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, call for the records of the Impugned order in Letter No.14190/PAYCELL II/2015-1 dated 04.09.2015 on the file of the Respondent No.1 and quash the same as illegal and direct the Respondents to extend the benefit of G.O.Ms.No.316 dated 28.06.2010 passed by the Respondent No.1 to the Petitioners No.1 to 3 and other Male and Female Nursing Assistants working with the government hospitals all over Tamilnadu and revise their salary as 5200-20200+2400 instead of current scale of pay + grade pay i.e., 4800-10000+1300 with all consequential benefits.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the records relating to the proceedings of the first respondent made in letter No.14190/Pay Cell-II/2015-1, dated 04.09.2015 and consequently to direct the respondent to fix the pay scale of the petitioner in parity with the Nursing Assistants working at Primary Health Centers under Rural Development and Panchayat Raj Department.

2.The petitioners are working as Male Nursing Assistant at Government Rajaji Hospital, Madurai which is under the control of the third respondent. The post of the Nursing Assistant is a Class IV post and are recruited through employment exchange and thereafter, training will be given in the Government Hospital attached to the Medical Colleges. After the training is over, the candidates will be posted in Medical College Hospitals, Urban dispensaries, Taluk Hospitals and as well as in Rural Primary Health Centers. Even though, the recruitment and training are one and the same, the placement may be different based on the need. In Tamil Nadu, the hospitals are functioning under three different heads, namely,

1. Director of Medical and Rural Health Service.
2. Director of Public Health and Preventive Medicine.
3. Director of Medical Education.

3. In so far as the Primary Health Centers are concerned, they come under the Director of Medical and Rural Health Service and under the control of Rural Department and Panchayat Raj Department. The other two Directorates are under the control of Health and Family Welfare Department. Even though the Department Heads are different, the recruitment, training and nature of work prescribed for the Nursing Assistants are one and the same.



4. The grievance of the petitioner is that after the implementation of the 6th Pay Commission, the Nursing Assistants in the Government Hospital were fixed with a pay scale from 4800-10000+G.P.1300. Prior to the pay commission, the petitioner's salary was 2550-55-2660-60-3200. After the 6th Pay Commission, the Government formed "One Man Commission" to consider the grievance of the employees' pay anomaly. Therefore, the Government passed G.O.Ms.No.234, Finance Department, dated 01.06.2009. Thereafter, the "One Man Commission" revised the scale of pay of Nursing Assistants under Rural Department and Panchayat Raj Department as Rs.5,200-20,200+GP 2,400 and the same was implemented through G.O.Ms.No.316, Finance Department, dated 26.08.2010. Even though the petitioner is discharging the same work, the petitioner's pay was not fixed on par with the Nursing Assistants working under Rural Department and Panchayat Raj Department. Therefore, the Association submitted a representation to the respondents. The petitioner has also submitted a representation to the "One Man Commission" formed under G.O.No.123 (Finance Department), dated 10.04.2012 and to the respondents on 08.10.2014.

5. Since the representation was not considered, he approached this Court and filed a Writ Petition in W.P.(MD)No.21324 of 2014, for issuance of a Writ of Certiorarified Mandamus, to revise the salary of the Nursing Assistants working in Government Hospitals from 4800-10000+G.P.1300 to 5200-20200+G.P.2400. This Court disposed the Writ Petition, vide order, dated 05.01.2015, directing the respondents to consider the representation. Since the said order was not obeyed, a Contempt Petition was filed. Thereafter, the impugned order, dated 04.09.2015, was passed. In the meanwhile, the "One Man Commission" formed under G.O.No.123 (Finance Department), dated 10.04.2012, was closed through G.O.No.200, Finance Department, dated 10.07.2015. In the impugned order, the respondents have categorically stated that since the "One Man Commission" is closed, the Pay Grievance Redressal Cell had not made any recommendation to revise the salary. Therefore, the petitioner has approached this Court in the present Writ Petition.

6. The respondents have filed a detailed counter affidavit stating that the basic servants, who were working in Primary Health Centers and who had completed Nursing Assistant training for one year, after getting their option to work as Male / Female Nursing Assistants, will be sanctioned one advance increment as per G.O.Ms.No.747, Health and Family Welfare Department, dated 29.03.1976. Based on the report and G.O.Ms.No.747, Health and Family Welfare Department, dated 29.03.1976, the petitioner's representation was examined and rejected, vide the impugned order.

<https://hccases.hccourts.gov.in/hccservices/> pay is applicable only to the Rural Department and



Panchayat Raj Department and not applicable to the Nursing Assistants in Medical Department.

7. Heard Mr.T.Lajapathi Roy, learned Counsel appearing for the petitioner and Mr.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

8. On perusing the affidavit and the counter affidavit, this Court is of the considered opinion that the claim of the petitioner will come under the purview of policy decision of the Government. The judicial interference in policy decision is very limited. However, as rightly pointed out by the petitioner, the Nursing Assistants are recruited by a common notification and they are trained in the same manner. Thereafter, they are allotted to various Rural Health Centers, Urban Dispensaries and Taluk Hospitals. The candidates, who are appointed will not have any say or rather choose the department. When the recruitment for all these Nursing Assistants are carried out in a common way, the salary also ought to be paid uniformly to all the persons. The Government cannot state that they have been allotted under different departments and different Service Rules will be applicable and hence, different salary will be applicable to the said candidates. The Government ought to have categorized all these candidates in a common Service Rule and ought to have paid the salary uniformly to all the persons. Therefore, the grievance of the petitioner has to be addressed in a proper perspective.

9. The impugned order states that the Nursing Assistants have been placed on par with the Maternity Assistant in the Medical Department and hence upward pay revision is suggested. This Court is of the considered opinion that the "One Man Commission" is wrong in stating so, the commission has not taken into account that the Nursing Assistants are recruited on the same notification and trained on the same way and suddenly keep the Nursing Assistants in RD&PR on par with Maternity Assistant is absolutely wrong. The Government should fix the pay during revision by taking all factors into consideration. Otherwise there will be huge loss to the government exchequer and the same would be mishandling of public money. Therefore, this Court set aside the impugned order dated 04.09.2015 and the first respondent shall resolve this pay anomaly to the Male / Female Nursing Assistants coming under Rural Department and Panchayat Raj, Director of Medical and Rural Health Services and Director of Medical Education Department. The said exercise shall be carried out within a period of 12 weeks from the date of receipt of the copy of the order.



10. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Principle Secretary,
The State of Tamilnadu,
Finance (Pay Cell) Department,
Secretariat, Chennai - 9.
2. The Secretary,
The State of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat,
Chennai - 9.
3. The Director,
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Kilpauk,
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Medical and Rural Health Services,
Esi Schemi,
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Chennai - 6.

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-14405 & 14730[F]

+1 CC to M/s.SPL GP (SR-14560[F] dated 25/03/2022)

W.P. (MD) No.1268 of 2016

24.03.2022

nsn (CO)

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