



W.P.(MD)Nos.24648 of 2022 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 21.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P.(MD)Nos.24648, 24871, 25552, 25579,
25580, 25581 and 25582 of 2022**
and

**W.M.P(MD).Nos.18750, 18751, 18961, 18964,
19637, 19640, 19667, 19668, 19663, 19664, 19665,
19666, 19670 and 19671 of 2022**

W.P(MD).No.24648 of 2022

Tamil Nadu Local Bodies
Urban Health Nurses Association
(Registration No.86/2007),
Rep., by its State President,
Mrs.L.Vijayalakshmi

... Petitioner

Vs

- 1.The State of Tamil Nadu
rep., by its
Additional Chief Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai 600 009.
- 2.The Principal Secretary to Government,
Department of Health & Family Welfare,
Fort St.George, Chennai 600 009.
- 3.The Director of Municipal Administration,
Urban Administration Buildings,
No.75 Santhome High Road,
Raja Annamalai Puram, Chennai 600 028.
- 4.The Director of Public Health & Preventive Medicine,
DMS Compound, Teynampet,
Chennai 600 006.

... Respondents



W.P.(MD)Nos.24648 of 2022 etc., batch

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in pursuant to the first impugned order issued by the second respondent in G.O.Ms.No.288, Health and Family Welfare (EAP II-1) dated 12.09.2022 and the consequential second impugned order issued by the fourth respondent in proceedings R.No.98089/UPHC/A1/2020 dated 08.10.2022 and to quash these orders.

For Petitioner : M/s.M.Padmavathi
For Respondents : Mr.Veerakathiravan
Additional Advocate General
Assisted by Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

Heard the learned Counsel appearing for the writ petitioners and the learned Additional Advocate General assisted by Mr.R.Sureshkumar, learned Additional Government Pleader appearing for the respondents.

2.While one of the writ petitions has been filed by the Association, the rest of them have been filed by individuals. In all these writ petitions, G.O.Ms.No.288, Health and Family Welfare Department, dated 12.09.2022 has been challenged. The Government under the said Government Order has permitted the Mission Director, National Health Mission, Chennai, to engage 115 Sector Health Nurses/Urban Health



W.P.(MD)Nos.24648 of 2022 etc., batch

Managers for the Urban Primary Health Centres on contractual basis on payment of a sum of Rs.25,000/- per month.

3.The learned counsel appearing for the writ petitioners contends that as per the Tamil Nadu Municipal Corporations Public Health Subordinate Service Rules, 1996, the post of Sector Health Nurse is falling under category 3 of Group-II of Class III post. It is to be filled up by promotion from the holders of the post of Multi-purpose Health Workers (female). The qualification prescribed for the said post is that they must have undergone the training conducted by the Government or Government recognized Institute. The petitioners herein possess the said training.

4.The grievance of the petitioners is that if the impugned Government Order is implemented, their promotional chances will be drastically affected. They also would point out that the petitioners, who are holding sanctioned posts and had put in long years of service, will now be supervised and controlled by the newly recruited contractual employees. They draw my attention to a similar move made in the year 2017. Since it was realized that it would not be effective, it was given up. My attention is drawn to the communication dated 16.08.2017 issued



W.P.(MD)Nos.24648 of 2022 etc., batch

by the Director of Public Health and Preventive Medicine, Chennai. The petitioners' counsel emphasizes that the move that was dropped as unnecessary is now being revived. They reiterated all the contentions set out in the affidavit filed in support of the writ petitions and called upon this Court to quash the impugned Government Order.

5.The respondents have filed detailed counter affidavit. The learned Additional Advocate General appearing for them took me through its contents. His primary contention is that by the impugned Government Order, a scheme for catering to the health requirements of the people is sought to be implemented and that it does not in any way affect the rights of the petitioners. He pointed out that the qualification and mode of appointment of the Sector Health Nurses/Urban Health Manager to be appointed under the Government Order would be as follows:



W.P.(MD)Nos.24648 of 2022 etc., batch

Name of the Post	Qualification	No.of Posts	Mode of Appointment		Remuneration
			Corporations	Municipalities	
Sector Health Nurse/ Urban Manager	1. M.Sc. Nursing a)Community Health b)Paediatrics c)Obstetrics & Gyanacology (Experience in Public Health (Preferable))	115	On contract basis through City Health Societies	On contract basis through District Health Societies	Rs. 25,000/- Per Month.
	2) B.Sc. Nursing with minimum 3 years experience in Public Health (Compulsory)				

6.The petitioners herein have undergone only certificate courses, on the other hand, the contractual employees proposed to be appointed would be having degree qualifications. According to the learned Additional Advocate General, the petitioners lack the *locus standi* even to question the impugned Government Order. He pressed for dismissal of the writ petition.



W.P.(MD)Nos.24648 of 2022 etc., batch

7.I carefully considered the rival contentions and went through the materials on record. I would sustain the contention of the learned Additional Advocate General that when scheme posts are sought to be created, it is not for the incumbent employees to challenge the same. These are matters that exclusively fall within the policy domain of the Government. I, therefore, decline to quash the impugned Government Order.

8.I must also note that the post of Sector Health Nurse is figuring not only in Tamil Nadu Municipal Corporations Public Health Subordinate Service Rules, 1996, but also in Tamil Nadu Municipal Public Health Service Regulation, 1970. Under the latter Rules the said post is to be filled up only by way of Direct Recruitment.

9.However, one very vital aspect deserves to be noted. For instance, Mrs.S.Susheela, the petitioner in W.P(MD).No.25552 of 2022 joined as Multi-purpose Health Worker (Subsequently re-designated as Urban Health Nurse) way back on 31.10.1988. She has put in more than 34 years of service. She continues to stagnate in the very same post. The Hon'ble Apex Court in the case of *State of Tripura and others Vs.,*

K.K.Roy has held that any Organization must provide atleast two



W.P.(MD)Nos.24648 of 2022 etc., batch

promotional avenues. In the case on hand, the person holding the post of Urban Health Nurse is entitled to atleast one promotional avenue. She can hope to be promoted as Sector Health Nurse. I wanted to know from the learned Additional Advocate General as to how many vacancies are presently available in the said post.

10.The learned Additional Advocate General submitted that at present there are more than 60 vacancies in the post of Sector Health Nurses falling under the control of Corporations. He also admitted that the said vacancies have not been filled up right from the year 2016 onwards. He produced a copy of the communication dated 02.08.2021 issued by the Director of Public Health and Preventive Medicine addressed to the Commissioner of Municipal Administration giving their No Objection for the latter to fill up the vacancies.

11.While those holding the post of Urban Health Nurse under the Tamil Nadu Municipal Public Health Service may not have a right, those working in the Tamil Nadu Municipal Corporations Public Subordinate Service are definitely entitled to demand that when there are available vacancies, they should be promoted. According to the learned counsel for the petitioners, the vacancies are around 160. I do not want to go into



W.P.(MD)Nos.24648 of 2022 etc., batch

this factual controversy. I make it clear that before implementing the impugned Government Order, the Government as well as the competent authority should first promote the eligible Urban Health Nurses working under the various corporations to the post of Sector Health Nurses.

12.These Writ Petitions are disposed of. While I sustain the impugned Government Order, I also issue the aforesaid direction. No costs. Consequently, connected Miscellaneous Petitioners are closed.

21.11.2022

Index : Yes/No

Internet : Yes/No

Rmk

To

- 1.The Additional Chief Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai 600 009.
- 2.The Principal Secretary to Government,
Department of Health & Family Welfare,
Fort St.George, Chennai 600 009.
- 3.The Director of Municipal Administration,
Urban Administration Buildings,
No.75 Santhome High Road,
Raja Annamalai Puram, Chennai 600 028.
- 4.The Director of Public Health & Preventive Medicine,
DMS Compound, Teynampet, Chennai 600 006.



WEB COPY



W.P.(MD)Nos.24648 of 2022 etc., batch



WEB COPY



W.P.(MD)Nos.24648 of 2022 etc., batch

G.R.SWAMINATHAN, J.,

Rmk

W.P.(MD)Nos.24648, 24871, 25552, 25579,
25580, 25581 and 25582 of 2022
and
W.M.P(MD).Nos.18750, 18751, 18961, 18964,
19637, 19640, 19667, 19668, 19663, 19664, 19665,
19666, 19670 and 19671 of 2022

21.11.2022