



W.P.No.2424 of 2023 & etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **27.06.2023/**

28.06.2023

DELIVERED ON : **12.07.2023**

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

**W.P.Nos.2424, 3295, 3484, 3915, 7562, 17771, 17776, 17784, 17789,
17793, 17864, 17871, 17917, 17926, 17937, 17954, 17975, 17972,
17970, 17974, 17949, 17959, 17966, 17973, 17987, 17860, 17880,
17902, 17915, 17922, 18144, 18148, 18151, 18164, 18170, 18410,
18425, 18429, 18464, 18463, 17867, 17935, 17942, 17901, 17911,
18407, 18768, 17737, 17739, 17744, 17747, 17753 and 19057 of 2023
and connected Civil Miscellaneous Petitions**

W.P.No.2424 of 2023

1.P.Jebasahila

2.S.Asha

3.T.Jone Priya

4.N.Praveena

5.P.Mahalakshmi

... Petitioners

Vs

1.The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai – 09.



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2.The Director,
Medical and Rural Health Services,
DMS Building, Annasalai,
Teynampet,
Chennai – 06.

3.The Chairman,
Medical Services Recruitment Board (MRB),
7th Floor, DMS Building,
Anna Salai, Teynampet,
Chennai – 06.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order passed by the 1st respondent in G.O.(D)No.1412, Health and Family Welfare (AA1) Department, dated 30.12.2022 and quash the same and further direct the respondents to reinstate the petitioners as Nurse and regularise them within a reasonable time with all attendant benefits.

For Petitioner : Mr.K.S.Viswanathan,
Senior Counsel for Mr.S.Sivakumar

For Respondents : Mr.R.Shanmugasundaram,
Advocate General, assisted by
Mr.M.Alagu Gowtham,
Government Advocate and
Miss. A.G.Shakeenaa for R1 and R2
Mr.M.Loganathan for R3



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COMMON ORDER

The brief facts of the cases are as follows:

1.1. The Medical Services Recruitment Board (MSRB) is the recruiting agency dealing with direct recruitment for various posts of Medical and Para Medical categories furnished by the indenting authority, namely the Heads of the Departments in Health and Family Welfare Department. Through a recruitment Notification No.02/MRB/2019, dated 07.02.2019, MSRB had invited online applications for filling up 2345 vacancies of Nurses on contract and consolidated pay basis. Clause 4 of the Notification offered for absorption of the recruitees into regular time scale of pay, after completion of a minimum of 2 years, subject to availability of regular vacancies. All the petitioners herein, who held the required eligibility criteria, participated in the selection process, which consists of written examination and certificate verification. After having been declared successful in the recruitment process, the Director of Medical and Rural Health Services had appointed them as Nurses in the hospitals / Rural Health Services, in the year 2020. Though the terms of the appointment



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was under a contract for a period of six months, their services were extended thrice through G.O.Ms.No.94, dated 25.02.2021, G.O.D.No.696, dated 04.06.2021 and Government Letter No.11358, dated 29.03.2022.

1.2. In the meantime, COVID 19, pandemic was declared as a notified disaster and the Government had permitted the Director of Medical and Rural Health Services to appoint Nurses on temporary basis to meet the pandemic surge of cases and it is in this background, the services of the petitioners along with the other Nurses were engaged. From among the successful candidates in 2019 recruitment process, 1000 and 1323 candidates were offered for appointment through a Special Notification Nos.2/2020 and 3/2020, both dated 30.03.2020. Likewise, through another Notification No.5/2020, dated 02.05.2020, 2570 candidates were offered for appointment out of which 977 Nurses were permanently absorbed. Through a subsequent Special Notification dated 08.06.2020, an additional list of 1166 Nurses, who were successful in 2019 recruitment process were also appointed. All these Nurses, who were permanently absorbed, were the successful candidates in 2019



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recruitment process, like that of the petitioners herein.

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1.3. While all these petitioners were continuing in contract basis and were awaiting for permanency, the present impugned order in G.O.(D.)No.1412, Health and Family Welfare (AA1) Department, dated 30.12.2022, came to be passed, wherein it was decided not to extend the services of all the temporary Nurses working in the institution under the Directorate of Medical Education and Directorate of Medical and Rural Health Services, beyond 31.12.2022, which includes the petitioners herein.

2. Mr.K.S.Viswanathan, learned Senior Advocate who appears for some other petitioners herein and whose arguments were adopted by the other petitioners as well, submitted that when the original recruitment notification for appointment on contract and consolidated pay basis had promised that these petitioners would be absorbed into regular time scale of pay after completion of a minimum of 2 years, their contract services were also regularly extended on three occasions, these petitioners had



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accepted the appointment orders under a legitimate expectation that they would be permanently absorbed. Thus, the present impugned order, discontinuing their services is opposed to the principles of legitimate expectations and promissory estoppel. He also submitted that since 1000 of other Nurses who were also successful in 2019 recruitment process as that of the petitioners have been permanently absorbed, discontinuance of the petitioners' contracts and failing to regularize their services would amount to hostile discrimination.

3. The learned Advocate General would submit that the terms of the engagement of the services of these petitioners was purely on contract and consolidated basis and therefore, they cannot claim permanency or continuance of their contract as a matter of right. Insofar as the clause 4 in 2019 recruitment for permanent absorption after completion of two years is concerned, he would submit that such absorption was subject to availability of regular vacancies only and therefore, this clause cannot be put against the respondents.



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4. The learned Standing Counsel for MSRB also submitted that they are only recruiting agency and that the grievances of the petitioners seeking for regularization is under the purview of the Directorate of Medical and Rural Health Services alone.

5. I have given careful consideration to the submissions made by the respective counsel.

6. The crucial recruitment process in which all the writ petitioners herein had participated was through MSRB Notification No.02/MRB/2019. The written examination was held on 23.06.2019. All the petitioners herein were successful in the written examination and were awaiting further participation in the recruitment process.

7. By this time, there was an onset of COVID -19 pandemic and the World Health Organization had declared the virus as Public Health Emergency of International Concern in the month of January 2020. The Government of India also declared COVID -19 as a notified disaster and had instructed to increase manpower to meet the requirement of Health



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Personnel to tackle the pandemic. Accordingly, the Government of Tamil Nadu had also issued necessary directions under the Disaster Management Act, 2005, for effective management of COVID -19 affected patients and had permitted the Director of Medical and Rural Health Services to appoint Nurses on temporary basis for a period of six months. It is in this background, the Director of Medical and Rural Health Services had conducted certificate verifications for all these petitioners and other successful candidates and appointed them as Nurses in the month of June 2020. Thereafter, their services were extended for three more times and were continuing to render their services. While the majority of the successful candidates in 2019 recruitment were permanently absorbed by the Director of Medical and Rural Health Services, the petitioners alone have not only been left out, but the engagement of their services have also been stopped.

8. It is stated that almost all these successful candidates in 2019 recruitment were earlier employed in other hospitals / medical institutions as Nurses. In view of the offer made by the MSRB, in 2019 Notification for permanent absorption after completion of 2 years, they



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had all resigned from their respective employment and joined the Government services. After successful completion in the written examination and when the entire nation was in the grip of fear and panic due to the pandemic, these petitioners had risked not only their own lives by direct exposure to the virus infected patients, but also to that of their kith and kin and had accepted the appointment orders thereby and started to extend their services to attend the COVID – 19 affected patients. The services of these Nurses and all other frontline workers were commended by the entire society of the world. Unfortunately countless number of these medics and paramedics including their passive family members had succumbed to the dreadful virus. It is in this despicable scenario that these Nurses had chosen to accept the appointment orders and render their humane services. The Government of Tamil Nadu also was benevolent enough to appreciate their services time and again.

9. Having utilised the services of these Nurses during the pressing time and after having regularised the services of similarly appointed the Nurses, the Government has now chosen to disregard the offer to permanent absorption after two years and had passed the impugned order



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12. In a recent decision of the Hon'ble Supreme Court in the case



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of *State of Jharkhand and Others Vs. Brahmputra Metalics Ltd.*, reported in *2020 SCC OnLine SC 968*, the Hon'ble Supreme Court had elaborately dealt with the doctrine of promissory estoppel and legitimate expectations. On the facts of that case, the State of Jharkhand has made a representation to the Industrial Units and other Units under the Industrial Policy 2012, which gave rise to legitimate expectations on their behalf that they would be offered 50% of rebate / deduction in electricity duty for the next five years. However, due to the failure to issue a notification within the stipulated time by grant of a prospective exemption, the expectation and trust in the State stood violated. The Hon'ble Supreme Court of India, had held that since the State had not justified the delay in issuance of the notification or provided reasons for it, such a course of action by the State was held as arbitrary and in violation of Article 14 of the Constitution of India.

13. In another recent decision of three Hon'ble Judges of the Supreme Court of India in the case of *WG CDR A.U.Tayyaba and others Vs. Union of India and others* reported in *(2023) 5 SCC 688*, a similar



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view was taken on the strength of the ***Brahmputra Metallica's case*** (*supra*) and other decisions and held that when a representation or promise is made by an authority, either expressly or impliedly, it would give rise to a legitimate or reasonable expectations. It was also held therein that doctrine of legitimate expectation is grounded in the rule of law, required regularity, predictability and certainty in Government dealings with public, operating on substantive and procedural matters. The relevant portion of the decision reads as follows:

“29. A person is said to have a reasonable or legitimate expectation if a representation or a promise made by an authority, either expressly or impliedly, gives room for such expectation in the normal course. While applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the state action. In State of Jharkhand v. Brahmputra Metallica Ltd., this Court speaking through of one us (D.Y. Chandrachud J) elaborated on the doctrine of legitimate expectation in the following terms:

“50. ...The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act



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fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts.”

30. In the present case, the appellants had a legitimate expectation since the respondents by their representations in the policy circular dated 25 November 1991 and in published advertisements created expectations among the women SSCOs regarding the grant of PC on completion of five years of service, subject to vacancies and suitability. All the women officers were eligible to be considered for grant of PC between years 2000 to 2003, but they were only given an extension of SSC in teeth of the legitimate expectation which was held out in the initial terms and conditions of appointment. The male counterparts of the appellants were considered for and granted PC after their five years of service.

31. The women SSCOs continued to be under a legitimate expectation that their extended SSC tenure would be converted into a PC as they were induced in service with a specific representation of being considered for PC. The Delhi High Court in the Babita Puniya judgment dated 12 March 2010 had also applied the doctrine of legitimate expectation and observed that the doctrine of legitimate expectation, grounded in the rule of law, required regularity, predictability and certainty in government dealings with the public, operating on procedural and substantive matters.”



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14. By applying the ratio laid down by the Hon'ble Supreme Court of India on the doctrine of legitimate expectation and promissory estoppel to the facts of the present case, the present decision of the Government in having given a promise for permanent absorption and creating an expectation on the petitioners and thereafter, retracting such a promise, is highly arbitrary and would be in violation of Article 14 of the Constitution of India, apart from being opposed to the well established doctrine of legitimate expectation and promissory estoppel.

15. This apart, there has also been a selective discrimination on the part of the respondents when majority of the successful candidates in 2019 recruitment were permanently absorbed, apart from others from the Reserve List under the 2015 recruitment and not considering the candidature of the petitioners herein, is a clear and arbitrary act of discrimination. In the case of *T.Devi and others Vs. The State of Tamil Nadu and others* passed in *W.P.No.28903 of 2019 etc., dated 06.10.2021*, I had an occasion to render a judgment involving the principle of discrimination by following the earlier decision of the Hon'ble Supreme Court in State of *Karnataka Vs. Umadevi* reported in



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2006 (4) SCC 1 and State of U.P. and Others Vs. Arvind Kumar

Srivastava reported in **2015 (1) SCC 347**, by holding that such discrimination would be fatal to the Government. The relevant portion of the order reads as follows:

“11. A co-joint reading of the Hon'ble Supreme Court's decision together with the aforesaid orders of this Court, it could be said that denial of consideration of the petitioners' case herein, particularly when similarly placed persons were given the benefits, the same would amount to discrimination. Moreover, when this Court had passed orders in the petitioners' case on 06.12.2018, it had suggestively condoned the delay and laches on the facts of the case by calling upon the Government to reconsider the petitioners' case. It is needless to point out that the ground of laches and delay, was available even at that point of time. Thus, when this Court has condoned such laches and directed the Government to reconsider ground of laches and delay. Even otherwise, the absorption of some of the similarly placed employees in G.O.(Ms) No.83 dated 22.03.2017 and G.O.(Ms) No.292 dated 22.08.2017, was pursuant to the orders passed by this Court, which orders were based on the decision rendered by the Hon'ble Supreme Court in Umadevi's case (supra), which is a “judgment in rem”.

12. In the State of U.P. and Others Vs. Arvind Kumar Srivastava reported in 2015 (1) SCC 347, it was held that when



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similarly situated persons were given certain benefits, the resultant cannot be treated differently. It was also held therein that if there is any delay and laches in making such a claim, the same would not apply to cases where benefit was given to similarly situated persons through judgment of the Court which is considered to be a judgment in rem. The relevant portion of the order reads as follows:-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid



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ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India* (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

13. The aforesaid ratio is squarely applicable to the present case in hand on two ratios held therein. Firstly, as a normal rule, the Government cannot refuse to absorb the petitioners herein since similarly placed persons have already been absorbed. Secondly, the Government had chosen to pass orders for absorption to similarly placed persons based on the decision of this Court in W.P.No.21824 of 2013, which was in turn based on *Umadevi's case* (supra), which is a judgment in rem, intended to grant relief to all persons seeking employment on the ground of discrimination. When such a ratio laid is pursuant to a judgment in rem, the decision in *Arvind Kumar Sri Vastava* extracted above, would squarely apply and



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therefore rejection of the petitioners' claim on the ground of delay and laches, cannot be sustained.

14. Thus, the cases of the petitioners could be concluded by holding that, denial of their requests, inspite of similarly placed persons being absorbed, would amount to discrimination. Likewise, when the Government had chosen to absorb similarly placed persons on the basis of the orders of this Court, which in turn is based on the decision of the Hon'ble Supreme Court in Umadevi's case (supra), such a denial is against the well laid principles, as substantiated in the decisions referred to in the above paragraphs."

16. In the light of the foregoing discussions, I am of the affirmed view that the petitioners' legitimate expectations for being permanently absorbed in the respective posts is unjustifiable in view of the initial promise made in the recruitment notification and owing to the decision of the Government in permanently absorbing some and denying the same to the petitioners, is an act of hostile discrimination. Thus, the resultant impugned order, discontinuing the services of the petitioners cannot be legally sustained and consequently all the petitioners herein would be entitled for permanent absorption as Nurses in the concerned hospitals / other medical institutions.



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17. For all the foregoing reasons, the impugned orders in all these writ petitions are quashed. Consequently, there shall be a direction to the Secretary to the Government, Health and Family Welfare Department, to forthwith pass appropriate orders, permanently absorbing the petitioners to the post of Nurses in Government hospitals / Health care Institutions and issue relevant posting orders, within a period of six weeks from the date of receipt of a copy of this order. If required, the petitioners may be subjected to certificate verification by the MSRB for their appointment under the Notification No.02/MRB/2019, dated 07.02.2019.

18. All the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.07.2023

Index:Yes
Neutral Citation:Yes
Order : Speaking

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- 1.The Principal Secretary to Government,
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Fort St. George,
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- 2.The Director,
Medical and Rural Health Services,
DMS Building, Annasalai,
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- 3.The Chairman,
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M.S.RAMESH,J.



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