



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **28.06.2023**

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No. 32036 of 2013

And

W.P.No. 34503 of 2014

And

M.P.No. 1 of 2013

S.Deivathal

... Petitioner in both W.Ps.

..Vs..

1. The Secretary to Government
Health and Family Welfare Department
Fort St. George
Secretariat, Chennai -9.
2. The Director of Public Health and Preventive Medicine
Chennai – 6.
3. The Deputy Director of Health Services
Coimbatore -18.

... Respondents in both W.Ps.

PRAYER in W.P.No. 32036 of 2013: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the third respondent herein in R.No. 3411/A1/2009 dated 07.12.2009 and the order issued in R.C.No. 6305/A4/2012 dated 14.8.2013 and quash the same and consequently direct the respondents to regularise the service of the petitioner with effect from 15.09.1988 on par with the



petitioner's batch mates and juniors and confer all the monetary benefits.

PRAYER in W.P.No. 34503 of 2014: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the first respondent herein in Letter (D).No. 1295/L1/2013 dated 26.11.2013 and quash the same and consequently direct the respondents to regularise the petitioner services on par with the petitioner's batch mates and juniors and confer all the monetary benefits with effect from 11.10.2006 onwards with due regards to petitioner seniority.

For Petitioner in
both W.Ps. :: Ms. Shakila Anand

For Respondents in
both W.Ps. :: Mr. J.C.Durairaj
Additional Government Pleader

COMMON ORDER

The petitioner was appointed on 13.09.1988 by the District Family Welfare Office under Rule 10 (a)(i) of the Tamil Nadu State and Subordinate Service. She was appointed as an Auxiliary Nurse (mid wife) and posted to a remote area, namely, Primary Health Centre at Thalavadi. Within two days of her appointment, she joined service on 15.09.1988.



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2. From 06.12.1988 to 22.02.1989, the petitioner availed leave. Again the petitioner submitted a letter on 22.02.1989 stating that she is availing leave with loss of pay. The Deputy Director of Health and Services, Erode, gave a direction to the petitioner to join duty on 14.06.1991. Accordingly, she also joined duty on 26.06.1991. An inspection was carried out by the Deputy Director on 12.07.1991. He directed the petitioner to produce a medical certificate from the appropriate Medical Board. The petitioner appeared before the medical board on 24.07.1991. Prior to this on 15.07.1991 ie., after the inspection on 12.07.1991 but before the medical board was held on 24.07.1991, the petitioner was called upon to give a letter to join for duty. Accordingly, the petitioner also gave a letter on 26.06.1991 stating that she is ready to join for duty.

3. A curious view was taken by the respondent that a charge memo dated 10.05.1989 had been issued to the petitioner and hence, cannot join for duty. The petitioner on coming to know of it, wanted a copy of the charge memo to be sent to her, but the same was not served on her.



4. Ms. Shakila Anand, learned counsel appearing for the petitioner would submit that till date, no charges have been framed against the writ petitioner. The petitioner in pursuance of her letter dated 26.06.1991 continuously requested the authorities to give her duty, but for lack of instructions from the superior authorities, duty was not given to her. Therefore, she moved the then existing Tamil Nadu Administrative Tribunal in O.A.No. 1164 of 1993. The prayer in O.A.No. 1164 of 1993 was to direct the Director of Medical and Rural Health Services Chennai to pass orders to the Deputy Director of Health Services and Medical Officer Primary Health Centre, Thalavady, to permit the writ petitioner to rejoin duty and also to direct the respondents to pay her the salary from 26.06.1991 (the date on which she gave letter to join duty) with all attendant benefits.

5. The matter was kept pending before the Tribunal and was finally renumbered before this Court in W.P.No. 13824 of 2006 (T). The said Writ Petition was disposed of by this Court on 11.10.2006 with the following directions:-

“When representation were submitted by the Government Servant, duty is cast upon the authorities to pass orders on the said representation. Evading the same amounts to failure to discharge the official duty. Since the



petitioner's appointment was not for a specified period, she is entitled to continue in service until her services are ousted or terminated by a specific order. As such, a direction is issued to the respondents to permit the petitioner to join duty in the capacity in which she was working from 1991 and orders to this effect shall be passed within a period of 4 weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is not entitled for any other benefits."

6. A reading of this order makes it clear that the Department was called upon to give her duty and what was returned was her request for payment of back wages.

7. Pursuant to the order of the Court, the petitioner was appointed as Village Health Assistant, Annaimudi, in Coimbatore district. This order was passed on 14.12.2006. The third respondent herein regularised the services of the petitioner from 03.01.2007.

8. M/s. Shakila Anand, learned counsel would submit that persons similarly situated had been regularised in service from the date of actual appointment. This is as per the order of the Government in G.O.Ms.No. 311 dated 13.10.2015, Health and Family



Welfare (L-1) Department. She would further submit that the persons, who were working as Village Health Nurse, community nutritious worker or Anganwadi workers were regularised in their services in the post of Village Health Nurse from the date of actual appointment.

9. It is the grievance of the petitioner that her date of actual appointment is 13.09.1988 and regularisation had given her effect from 03.01.2007. This according to her is contrary to the order passed by the Government. I directed the learned Additional Government Pleader to confirm from the Department as to whether persons similarly situated like that of the petitioner have been regularised from the date of actual appointment or from a date fixed by the Department subsequent to them rejoining the duty.

10. Pursuant to this direction given on 27.06.2023, Mr.Ragothaman, Superintendent O/o. DHPS PM, Chennai, is present in Court along with file.

11. Mr.J.C.Durai Raj, learned Additional Government Pleader verified the situation with Mr.Ragothaman and confirmed that the statement of M/s. Shakila Anand, learned counsel for the petitioner is



correct. He would state that the persons similarly situated were regularised from the date of actual appointment and not from the date on which they reported for duty. Now, we turn to the cause of action for the present writ petitions.

12. The petitioner, having not conferred the benefits of regularisation, gave a representation on 21.02.2013. As no orders were passed on the same which sought to regularise her service on par with her batchmates and to pay monetary benefits from 11.10.2006, she filed W.P.No. 11920 of 2013. The said Writ Petition was ordered with a direction to the respondents to consider the representation and pass orders within a period of 12 weeks from the date of receipt of a copy of the order.

13. On 14.08.2013, the third respondent herein issued a revised regularisation order. As per that order, he regularised the services of the petitioner with effect from 29.06.2012, cancelling the earlier regularisation order issued on 07.12.2009. Consequently, an order was passed on 26.11.2013 rejecting the request of the petitioner to consider her to be treated on par with her batchmates. Therefore, this gave rise to two writ petitions, namely, W.P.No. 32036 of 2013 challenging the regularisation order dated 07.12.2009 and



the revised regularisation order dated 14.08.2013. The second writ petition is W.P.No. 34503 of 2014 challenging the rejection of the request of the petitioner dated 21.02.2013 by an order dated 26.11.2013.

14. The narration of the aforesaid facts would go to show that the only ground on which the petitioner was not permitted to rejoin duty was there was a charge memo dated 10.05.1989. It has already been recorded by this Court that the said charge memo was neither served on the petitioner nor was it followed up. For reasons best known to the Department, they did not grant her duty which constrained this Court to interfere by way of an order in W.P.No. 13824 of 2006.

15. It is not the case of the respondent that the petitioner did not report for duty after the order. The petitioner had reported for duty, but the grievance today is that she has not been regularised and treated on par with her batchmates. This Court by its order dated 11.10.2006 as seen from above, had directed the respondents to permit the petitioner to rejoin duty in the capacity in which she was working from 1991. It was only the monetary benefits which she had sought for had been rejected. Therefore, there is continuity of service in favour of the petitioner from 1991 till date.



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16. As per the statement of Mr.J.C.Durai Raj, learned Additional Government Pleader, persons similarly situated like the petitioner have been granted regularisation from the date of their appointment. As the petitioner has not worked for a specific period from 1991 till 2006, her request for backwages has been rejected. The respondents have passed an order without application of mind and treating the writ petitioner different from similarly placed persons. Hence, it is arbitrary and such to be interfered with. Therefore, the impugned orders are quashed. The matter is remitted to the first respondent. The petitioner will be regularised in service from 13.09.1988 ie., the actual date on which she was appointed. This is in line with the orders passed by the Government in G.O.Ms.No. 311 dated 13.10.2015, Health and Family Welfare (L-1) Department.

17. It is made clear that the regularisation is granted notionally. The petitioner will not be entitled to any financial benefits for the period from 13.09.1988 till the date they reported for duty pursuant to the order of the Court in W.P.No. 13824 of 2006. Consequently, both writ petitions are allowed. The exercise of passing a revised regularisation order shall be done within a period of 12 weeks from the date of receipt of a copy of this order.



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V.LAKSHMINARAYANAN, J.,

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18. Hence, this Writ Petition is allowed. No costs.
Consequently, connected Civil Miscellaneous Petition is closed.

28.06.2023

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Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

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