



WP.No.38907/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.38907/2016
& WMP.No.33328/2016

M.Vanarani

... Petitioner

Versus

- 1.The Chief Engineer [Personnel]
Tamil Nadu Generation & Distribution
Limited, [TANGEDCO], No.144,
Anna Salai, Chennai 600 002.
- 2.The Superintending Engineer
Tamil Nadu Generation & Distribution
Limited, [TANGEDCO], Generation Circle
Kadamparai, Attakatti, Minparai 642 101.
- 3.The Chief Medical Officer
Headquarters Dispensary
Tamil Nadu Generation & Distribution
Limited, [TANGEDCO],
No.144, Anna Salai, Chennai 600 002.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of



WP.No.38907/2016

India praying for issuance of a writ of mandamus directing the 2nd respondent not to disengage the service of the petitioner without following due process of law.

For Petitioner	:	Mr.V.Stalin
For Respondents	:	Mr.David Sundar Singh Standing counsel

ORDER

- (1) The writ petition has been filed in the nature of a mandamus seeking a direction to the 2nd respondent, the Superintending Engineer, Tamil Nadu Generation and Distribution Corporation Limited [TANGEDCO], Kadamparai at Attakatti, Minparai-642 101, not to disengage the services of the petitioner without following the due process of law.
- (2) I really wonder as to how the writ petition is maintainable as this Court can never thrusts an employee on any employer and further direct that the employer should never disengage the services of the employee. The employer/employee must follow the Rule of law. The respondents have followed the Rule of law. The only Rule of law which they had apparently insisted on was that the petitioner should



WP.No.38907/2016

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get herself qualified in any one of the recognised courses, namely, 4 years B.Sc. Nursing Course, 3 Years Diploma in Nursing and 2 years Diploma in Auxillary Nurse Midwife If the petitioner had voluntarily comes forward to undergo any one of those courses, then she would have a reasonable right to claim that she should not be disengaged. The petitioner has a Certificate issued by the Voluntary Health Services Medical Centre, Adyar, Chennai, wherein it had been stated that the petitioner had undergone a training as Nursing Assistant for a period of one year between February 1990 and February 1991.

- (3) It is thus seen that the petitioner had only undergone a training and there is no formal course done by the petitioner in Nursing to function as a Nursing Assistant. At the behest of the respondents, the petitioner had been engaged to perform the work of Nursing Assistant. But, it was not a regular employment. It was only on contractual basis for a period of one year. The original appointment was on 23.06.2010. Subsequently, it had been renewed year after year.



WP.No.38907/2016

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(4) In the meanwhile, a communication had been directed to the respondents directing that anybody who is to work as Nursing Assistant in TANGEDCO, has to be outsourced for that particular post, but must have undergone any one of the above mentioned courses.

(5) It is the grievance of the learned counsel for the petitioner that this Court had assumed that it was a communication to the petitioner but that it was only an internal communication. This is all the more the reason to hold that the petitioner had no cause for filing this writ petition since there was no order against the petitioner herein. But, if there is a necessity that the petitioner should undergo any one of those three courses, an obligation was on the petitioner to register herself to any one of the three courses, get herself qualified and then, continue with working, with more authority under the respondents. As on date, her work is only temporary in nature / contractual in nature, being renewed year after year. It had been renewed on the basis of the interim order granted by this Court. That would not lead the petitioner anywhere. It would not give her any permanency in



WP.No.38907/2016

employment.

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- (6) More specifically, since the petitioner had not voluntarily come forward to join any one of the three courses, there could not be any regularisation of the services of the petitioner.
- (7) The petitioner as Nursing Assistant, would be involved in extending her assistance in medical treatment of patients who require emergency treatments. At that particular point of time, if she is not suitably qualified, then it is the patients who will suffer. The petitioner cannot therefore, be kept on a different pedestal and merely because she had been offered employment on contractual basis seek a direction that this Court shall regularize her services.
- (8) The learned counsel for the petitioner placed reliance on a judgment of a learned Single Judge of this Court in a batch of writ petitions in WP.No.29545/2012 etc batch ***[Dr.Arockia Doss Vs. The Union of India, rep.by its Joint Secretary [Languages], Department of Higher Education, Ministry of Home Resource Development, Government of India, New Delhi and Others]***. The relief sought for in those writ petitions was questioning a Notification issued for



WP.No.38907/2016

WEB COPY

appointment to various posts in the Central Institute of Classical Tamil. A further relief was sought for regularization of services of the petitioners therein.

- (9) The petitioners therein had been working without being regularised in the Central Institute of Classical Tamil. An Advertisement was published calling for appointment to various posts such as Professor, Reader, Lecturer, Junior Research Officer on the academic side and also for various posts on the non-academic side. The petitioners therein had filed writ petitions complaining that their services should be regularised and they should not be ousted. In the very same judgment, there had been references to the pronouncements of the Hon'ble Supreme Court with respect to appointments made in transgression of recruitment rules.
- (10) Let me quote from the very same judgment, paragraphs No.14[a] to 14[g]:-

"14.The learned counsel would rely upon the following decisions of the Hon'ble Supreme Court of India, in support of his contentions and to resist the grant of any relief to the petitioners herein.



WP.No.38907/2016

a)"(2006) 4 SCC 1 (Secretary, State of Karnataka and others versus Umadevi and others)".

In this landmark judgment, the Constitution Bench has held that however long employment may continue whether on temporary, contractual, casual, daily-wage or ad hoc basis, if the appointment is outside the constitutional scheme of public employment, cannot be regularized merely on the basis of continuous for a long period. According to the Hon'ble Supreme Court, even if any such regularization is granted, that would defeat social justice, equal opportunity for all and the constitutional scheme of public employment.

b)"(2006) 5 SCC 493 (National Fertilizers Ltd. and others versus Somvir Singh)" wherein, the Hon'ble Supreme Court has held that appointments made in transgression of recruitment rules, cannot be valid and the question of regularization does not arise in such cases.

c)"(2007) 9 SCC 337 (Punjab State Warehousing Corpn., Chandigarh versus Manmohan Singh and another)", wherein, the Honble Supreme Court has held that a person who was illegally appointed, cannot stake claim for regular appointment thereafter as that would be against law laid down by



WP.No.38907/2016

the Hon'ble Supreme Court in 'Umade Devi' case as cited supra.

*d) "**2008 (10) SCC 1 (Official Liquidator versus Dayanand and others)**", wherein, the Hon'ble Supreme Court has held that after the law laid down in 'Umade Devi' case, any appointment made contrary to the recruitment rules, cannot be regularized as that would encourage back door entry in public employment.*

*e) "**(2009) 13 SCC 90 (Harinder Kaur and others versus Union of India and others)**". In this case also, the Hon'ble Supreme Court relied upon the law laid down in Uma Devi case and refused to grant relief of regularization.*

*f) "**(2014) 5 SCC 300 (Nand Kumar versus State of Bihar and others)**", wherein, the Hon'ble Supreme Court has held that the persons who were not appointed through a proper procedure and consequences of their appointment being temporary which was within their knowledge, they cannot have a right to invoke the theory of legitimate expectation for being confirmed in the posts. The Supreme Court has refused to grant regularization as there were no Rules or Regulations governing the appointment of casual employees therein.*



WP.No.38907/2016

g) *"(1992) 4 SCC 99 (Delhi Development Horticulture Employees Union versus Delhi Administration & others)". In this case, the workers were employed under the scheme "Jawahar Rozgar Yojna" by the District Rural Development Agency (DRDA), a registered autonomous society. The Hon'ble Supreme court has held that the workers have no right to claim regularization of their service because of completion of 240 or more days of work and that indiscriminate regularization jeopardizes public interest."*

- (11) In the very same judgment, in paragraph No.16, the judgment which had been relied on by the learned counsel who appeared for the petitioners therein had also been reduced and let me also extract that particular paragraph also:-

"16.Per contra, Mr.N.G.R.Prasad, learned counsel appearing for the petitioners would strongly place reliance on the judgment of the Hon'ble Supreme Court reported in #2013(5) LLN 109 (SC) = 2013 (14) SCC 65 (Nihal Singh versus State of Punjab)#. He would draw the attention of this Court particularly to paragraphs 19 to 36, which are extracted hereunder:



WP.No.38907/2016

"19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by



WP.No.38907/2016

the appellants.

20. No doubt that the powers under section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in



WEB COPY



WP.No.38907/2016

resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

"4....The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under



WP.No.38907/2016

Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over."(emphasis supplied)

23.It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This court while recognising the authority of the State to make temporary appointments engaging workers on daily wages declared that the regularization of the employment of such persons which was made without following the procedure conforming to the requirement of the Scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment. It was further declared that the jurisdiction of the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage



WEB COPY



WP.No.38907/2016

workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

24.Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

25.In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us. The High Court in its decision in LPA No.209 of 1992 recorded that the decision to resort to the procedure



WP.No.38907/2016

under section 17 of the Act was taken in a meeting dated 24.3.1984 between the Advisor to the Government of Punjab and senior officers of the various Banks in the public sector. Such a decision was taken as there was a need to provide necessary security to the public sector banks. As the State was not in a position to provide requisite police guards to the banks, it was decided by the State to resort to section 17 of the Act. As the employment of such additional force would create a further financial burden on the State, various public sector banks undertook to take over the financial burden arising out of such employment. In this regard, the written statement filed before the High Court in the instant case by respondent nos.1 to 3 through the Assistant Inspector General of Police (Welfare & Litigation) is necessary to be noticed. It is stated in the said affidavit:

"2.That in meeting of higher officers held on 27.3.1984 in Governor House Chandigarh with Shri Surinder Nath, IPS, Advisor to Governor of Punjab, in which following decisions were taken:-

i) That it will not be possible to provide police guard to banks unless the Banks were willing to pay for the same and additional force could be arranged on that basis, it was decided that police guards should be requisitioned by



WEB COPY



WP.No.38907/2016

the Banks for their biggest branches located at the Distt. and Sub Divisional towns. They should place the requisition with the Distt. SSPs endorsing a copy of IG CID. In the requisition, they should clearly state that the costs of guard would be met by them. It will then be for the police department to get additional force sanctioned. This task should be done on a top priority. In the meantime depending upon the urgency of the need of any particular branch, police Deptt. may provide from police strength for its protection.

ii) For all other branches guards will be provided by Distt. SSP after selecting suitable ex-servicemen or other able bodied persons who will be appointed as Special Police Officer in terms of Section 17 of the Police Act. Preference may be given to persons who may already be in possession of licence weapons. All persons appointed as SPO for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons taking suitable position for protection of branches. These SPOs will work under the discipline and control and as per Police Act, they will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

26. It can be seen from the above that a selection process was designed under which the District Senior Superintendent of Police is required to choose suitable ex-servicemen or other able bodied persons for being appointed as Special Police Officers in terms of section



17 of the Act. It is indicated that the persons who are already in possession of a licensed weapon are to be given priority.

27.It is also asserted by the appellants that pursuant to the requisition by the police department options were called upon from ex- servicemen who were willing to be enrolled as Special Police Officer (SPOs) under section 17 of the Police Act, 1861.[3]

28.Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in Union of India and Ors. v. N. Hargopal and Ors. (1987) 3 SCC 308.[4]

29.The above mentioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

30.Such a process of selection is sanctioned by law under section 17 of the Act. Viewed in the context of the situation prevailing at that point of time in the State of Punjab, such a process cannot be said to be irrational. The need was to obtain the services of



WP.No.38907/2016

persons who had some experience and training in handling an extraordinary situation of dealing with armed miscreants.

31.It can also be noticed from the written statement of the Assistant Inspector General of Police (Welfare & Litigation) that preference was given to persons who are in possession of licensed weapons. The recruitment of the appellants and other similarly situated persons was made in the background of terrorism prevailing in the State of Punjab at that time as acknowledged in the order dated 23.4.2002 of the SSP. The procedure which is followed during the normal times of making recruitment by inviting applications and scrutinising the same to identify the suitable candidates would itself take considerable time. Even after such a selection the selected candidates are required to be provided with necessary arms and also be trained in the use of such arms. All this process is certainly time consuming. The requirement of the State was to take swift action in an extra-ordinary situation.

32.Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate



other eligible candidates. It may be worthwhile to note that in Umadevi's case, this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States.

33. Coming to the other aspect of the matter pointed out by the High Court - that in the absence of sanctioned posts the State cannot be compelled to absorb the persons like the appellants into the services of the State, we can only say that posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge.

"Every sovereign Government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration"

34. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive Government of the day subject to the overall control of the Legislature. That does not mean that an examination by a Constitutional Court regarding the accuracy of



WP.No.38907/2016

the assessment of the need is barred. This Court in S.S. Dhanoa v. Union of India (1991) 3 SCC 567 did examine the correctness of the assessment made by the executive government. It was a case where Union of India appointed two Election Commissioners in addition to the Chief Election Commissioner just before the general elections to the Lok Sabha. Subsequent to the elections, the new government abolished those posts. While examining the legality of such abolition, this Court had to deal with an argument[6] whether the need to have additional commissioners ceased subsequent to the election. It was the case of the Union of India that on the date posts were created there was a need to have additional commissioners in view of certain factors such as the reduction of the lower age limit of the voters etc. This Court categorically held that "The truth of the matter as is apparent from the record is that.....there was no need for the said appointments..."

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as



the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36.The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional



WP.No.38907/2016

burden. Apparently no such demand has ever been made by the State. The result is- the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities."

- (12) Thereafter, the learned Single Judge had observed in paragraph No.20 that after many years from the date of initial appointment, the right which had accrued to the petitioners cannot be taken away. It had been stated that the Rules which had been brought in after the petitioners had been employed will only have prospective application for future appointment and cannot be used as a yardstick for deciding the correctness of appointment of the petitioners. The learned Judge had observed as follows:-

"20.....Any subsequent development that too



after many years from the date of initial appointment of the petitioners, cannot take away the accrued rights of the petitioners for continuing in their employment. The Rules which were brought in 2013 can at best have a prospective application for future appointment and the same cannot be used as yardstick for deciding the correctness of the appointment of these petitioners which had taken place much earlier to coming into force of the present Recruitment Rules. In the above circumstances, the arguments advanced by the learned counsel, Shri N.G.R.Prasad would assume larger legal significance in favour of the writ petitioners, particularly, the legal dictum expressed by the Hon'ble Supreme Court of India, in the matter of "Nihal Singh versus State of Punjab)" (cited supra), which judgment has been extracted in extenso supra. The observations made by the Hon'ble Supreme Court in the said judgment would squarely apply to the factual matrix of the present case."

- (13) Thereafter, the learned Judge also examined the communication which had been issued in the year 2017 whereby there was a recommendation that temporary posts can be converted into permanent posts in the very same Institution. Therefore, an argument



WP.No.38907/2016

was placed before the Court that the petitioners therein should be favourably considered in accordance with the said communication of the year 2017. On the basis of that particular argument advanced, the learned Judge had further observed as follows:-

"21..... This Court does not find any impediment in taking forward such proposal and as far as these writ petitioners are concerned. There are only 13 employees before this Court, out of which, 8 are on academic side and 5 are on non-academic side and admittedly, these persons have been continued since their initial appointment from 2007 onwards. As rightly contended by the learned counsel for the petitioners that the case was relied upon by the learned counsel for the respondents 3 and 4 would assume legal significance only when there were Recruitment Rules in force and such Recruitment Rules were not followed while making appointments. In the absence of Recruitment Rules, the appointment of the writ petitioners which were made by a due selection process, cannot either be termed as illegal or irregular and therefore, catena of decisions relied upon by the learned counsel for the respondents 3 and 4 cannot be



WP.No.38907/2016

of any help to him for advancing his case as against the writ petitioners. On the other hand, the writ petitioners have made out a case for grant of relief as prayed for."

- (14) It was only on that ground, that the Court had directed that the claim of the petitioners therein for regularization should be taken into consideration particularly because of the communication which had been issued by the respondents themselves in the year 2017.
- (15) The facts in the present case are entirely different. The petitioner had been appointed after an interview conducted. The initial appointment was only for one year. After every year, the respondents had been extending the period of employment which itself shows that the respondents had the right to terminate the employment, but had exercised the discretion to extend the employment. That does not give any vested right to the petitioner herein. She had not been in continuous employment and cannot be considered as an employee with continuous period of service. It was all dependent on the extension given by the respondents. She could not as a matter of right step into the next year, but should await orders of extension of service. Therefore, on the facts itself, the case of the present writ



WP.No.38907/2016

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petitioner is clearly distinguishable from the facts of the case referred to above.

- (16) Further, in the said case, which had been relied upon by the learned counsel, there had been a communication in the year 2017 wherein a proposal was mooted out to regularise the service of those who were not in regular service. Therefore, taking advantage of that particular communication, a direction was given to examine regularization of the petitioners therein. In the instant case, if again the same ratio is to be upheld, the communication was that, anybody who has to be outsourced for Nursing activities by TANGEDCO, should have one of the three qualifications which had been stated above.
- (17) In the year 2016 instead of filing this writ petition, the petitioner could have very well applied to the respondents seeking permission to study any one of those courses. It is seen that the petitioner had already undergone one year Diploma in training. She could have opted for the two years Diploma and I am confident that since the respondents had given her extension of service, they would also have considered at that particular point of time, any request placed by her.



WP.No.38907/2016

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On the other hand, without taking any steps to professionally upgrade her own standards, the petitioner had come to this Court and is surviving, not on the basis of the extension given by the respondents or on her skills, but on the interim order granted by this Court.

- (18) As stated at the very beginning, the Court never thrust any employee on any employer. It is purely the discretion of the employer to consider the eligibility and suitability of any employee. In the instant case, as stated, there is no continuity of service. It was only dependent on the extensions given by the respondents.
- (19) The learned counsel for the petitioner relied on paragraph No.16 of the judgment of the learned Single Judge, which had been extracted above, still probably without confidence in the manner in which the Court would examine the issues, had justified a copy of the said judgment. The relevant portion had already been referred and since the facts differ, the ratio therein does not apply to the facts of this writ petition.
- (20) Not only has the petitioner been led through a wrong path by the learned counsel by filing the writ petition, she seeks to take advantage



WP.No.38907/2016

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of having gone through wrong path by insisting an order from this Court. The option is open to the petitioner herein. She can seek, if she is otherwise eligible and if she is otherwise qualified, to undergo any one of the three courses. The respondents are under an obligation to follow the Rules and guidelines. The Court can never thrust anybody on them. If the petitioner is not suitably qualified, the respondents can discharge her. They have every right to do so. If the petitioner gives application undertaking to study any one of the courses, the respondents may accept it or may not accept it. They may also extend her services or may not extend her services. The discretion is entirely with the respondents. The Court can never give a direction as sought for by the petitioner that the petitioner should never be disengaged from services by the respondents. The right to disengage is vested with the offer of employment given by any employer. The qualifications which an employee should possess, is an obligation of the employee and without proper qualification, no employee can seek a vested right to continue to work.

(21) It is also pointed out by the learned Standing counsel appearing for



WP.No.38907/2016

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the respondents that one of the conditions was to register in the Medical Council and it is stated that such registration is required because if any act of negligence is committed, then the responsibility could be fixed and the act of negligence can be further probed and action could be taken. But, if a person is not registered and still, discharges duty as a Nurse or Nursing Assistant in a critical care department treating patients who require emergency treatments, and is found responsible for any negligent act, then, the respondents must have authority to take action on such negligent act.

- (22) The petitioner today is a free bird. She can take a considered decision either to continue in employment and if she wants to continue employment, she must get herself qualified and she must get herself registered with the Medical Council or any other Council as recognized by the respondents and stipulated in the Rules. If she is not eligible to so register herself, she can always be discharged from employment by the respondents.
- (23) The argument that after the petitioner had been taken into employment, further Rules and Regulations have been brought in by



WP.No.38907/2016

WEB COPY

the respondents, would not take the petitioner anywhere. She has to apply as per Rules. No Rule can only be prospective. Every Rule will apply to every employee who is in service. It is only a qualification required and a qualification that the petitioner could have joined in the year 2016 and could have obtained by the year 2018 and could have been placed happily as on date instead of suffering an order from this Court.

(24) Options are given to the petitioner and it is for the petitioner to take upon herself to register herself and undergo the courses and to seek necessary permission. Again, options are with the respondents to either to accept or not to accept any such request of the petitioner. The relief sought for in the writ petition can never be granted.

(25) The writ petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

AP
Internet : Yes

To

1.The Chief Engineer [Personnel]



WP.No.38907/2016

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C.V.KARTHIKEYAN, J.,

AP



WEB COPY



WP.No.38907/2016

WP.No.38907/2016

22.08.2023