



W.P.No.14484 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14484 of 2017

Sarah Rosaline Ebenezer

... Petitioner

Vs.

1.The Secretary to Government of Tamilnadu,
Municipal Administration and Water Supply
Department,
Chennai-600 009.

2.The Commissioner of Municipal Administration,
Chennai-600 005.

3.The Commissioner,
Pudukottai Municipality,
Pudukottai.
Respondents

...

Prayers : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in pursuant to the rejection order vide letter No.27729/ME.3/2017-19 dated 28.02.2017 issued by the 1st respondent and quash the same with a consequential direction to the respondents to fix the scale of pay of 705-



W.P.No.14484 of 2017

1230 applicable to the post of Lady Health Visitor instead of the scale of pay of 610-1075 fixed for the petitioner from the date of her appointment on 26.02.1990 with all consequential and attendant benefits within a stipulated time.

For Petitioner : Mr.T.P.Prabakaran

For Respondents

For R1&R2 : Mr.Dr.T.Seenivasan
Special Government Pleader

For R3 : Mr.K.P.P.Rajarajachozhan
Standing Counsel

ORDER

This Writ Petition has been filed to quash the order of the 1st respondent dated 28.02.2017 and to direct the respondents to fix the scale of pay of 705-1230 applicable to the post of Lady Health Visitor instead of the scale of pay of 610-1075 fixed for the petitioner from the date of her appointment on 26.02.1990 with all consequential and attendant benefits.

2.The learned counsel for the petitioner would submit that the petitioner joined as Nurse Midwife on 26.02.1990 in Pudukottai Municipality and she is continuing in the same post till now. The petitioner



W.P.No.14484 of 2017

issued with the Certificate of Registration of Midwife and the Certificate of Registration of Nurse. For re-organization of Urban Family Welfare Centers and for creation of Urban Health Post, Government Order was issued. In the said Government Order, no scale of pay was mentioned in the column of Nurse Midwife. The petitioner was issued with an appointment order for the post of Nurse Midwife and she joined in the said post. Thereafter, the petitioner gave a representation to the 1st respondent stating that the post of Nurse Midwife was wrongly considered as equivalent to the post of Auxiliary Nurse Midwife. She further represented that the educational qualification required for Nurse Midwife is higher than the educational qualification required for health visitor and she requested the 1st respondent to fix the scale of pay equivalent to the Public Health Nurse. He would submit that the Regional Director of Municipal Administration, Thanjavur, recommended the petitioner's case for fixation of scale of pay at par with the post of Staff Nurse in Tamilnadu Medical Services. The claim of the petitioner was rejected by the 2nd respondent stating that the post of Nurse Midwife is the lower post and the post of Staff Nurse is the higher post and



W.P.No.14484 of 2017

her claim for fixation of scale of pay at par the Staff Nurse could not be entertained. Aggrieved over the same, the petitioner filed W.P.No.13734 of 2009 for setting aside the rejection order dated 07.01.2009 and the said Writ petition was disposed of on 17.08.2016 directing the petitioner to make a representation to the Government, who is the Competent Authority seeking for upgradation to the post of Sector Health Nurse. Therefore, the petitioner made a representation based on the orders of the Writ Petition before the 1st respondent on 24.10.2016 and the same was rejected by the 1st respondent on 28.02.2017. Hence, this Writ Petition.

3.The learned Special Government Pleader appearing for the respondents would submit that the petitioner was appointed as Auxiliary Nurse Midwife in the Family Welfare Centre under the control of Pudukkottai Municipality carrying in the new scale of pay of Rs.975-25-1150-30-1660. In the year 1996, the petitioner made a representation claiming salary as paid to Staff Nurse and the petitioner was not appointed as Staff Nurse. The Tamil Nadu Government has fixed the pay scales for



W.P.No.14484 of 2017

Nurse Midwife, Auxiliary Nurse Midwife and Multipurpose Health work as 610-1075 (New scale 975-1660) vide G.O.Ms. No 764, Health and Family Welfare Department dated 31.03.1998 and the petitioner has been receiving the same all these years. The petitioner having worked as Auxiliary Nurse Midwife for the three years and has sent a representation on 10.03.1993 seeking revision of pay as applicable to the Staff Nurse on the ground that she possessed educational Technical qualification to hold the post of Staff Nurse. The said representation dated 10.03.1993 was rejected by the 2nd respondent on 24.01.1994. Without challenging the said order, the petitioner again sent a representation dated 11.12.1995. Thereafter, W.P.No.27706 of 2006 filed by the petitioner was disposed of by this Court on 23.06.2008 directing the 1st respondent to dispose of the petitioner's representation dated 11.12.1995. In compliance of the said order, the 1st respondent passed an order rejecting the petitioner's representation as the post of Auxiliary Nurse Midwife is a lower post compared to Staff Nurse and hence, the petitioner is not entitled to any revision of pay vide Government Letter No.40980/ME.3/2008-1, dated 07.01.2009. Aggrieved over the same, the



W.P.No.14484 of 2017

petitioner filed W.P.No.13734 of 2009 and the same was disposed of by this

Court on 17.08.2016 observing that this Writ Petition is not maintainable.

At the same time, the petitioner has rendered service for the past 25 years

and though she has been getting the revised pay she has been stagnated at

one post and she was not given any promotion. In such view of the matter,

the petitioner can make a representation to the Government, who is the

Competent Authority, seeking for up-gradation to the post of Sector Health

Nurse within a period of 10 days from the date of receipt of a copy of that

order and if any such representation is made the same shall be disposed of,

on merits and in accordance with law as expeditiously as possible. As per

the direction of this Court the petitioner made a representation dated

24.10.2016 and the same was rejected by the 1st respondent dated

28.02.2017 stating that the petitioner is working as Auxiliary Nurse Midwife

under IPP.V Project of Pudukottai Municipality. As per the orders issued in

G.O.Ms.No.35, Municipal Administration under Water Supply Department

dated 07.03.2008, the staff employed under IPP.V Project have been

brought under the Tamil Nadu Municipal Medical Service Rules 1970 and



W.P.No.14484 of 2017

the qualification prescribed for the post of Auxiliary Nurse Midwife and Sector Health Nurse (Health Visitor) are different and both these posts are classified in different categories and recruiting and appointing Authority for the above two posts are also different. Therefore, the petitioner's request either to fix pay in the scale of Sector Health Nurse or to re-designate the post cannot be complied with since the petitioner did not possess the required qualifications for Sector Health Nurse. Therefore, the petitioner is not entitled to claim as that of Sector Health Nurse.

4.Heard the learned counsel appearing on either side and perused the material on record.

5.On a perusal of the records, it is seen that the petitioner joined as Nurse Midwife on 26.02.1990 in Pudukottai Municipality and she is continuing in the same post till now. The petitioner was issued with an appointment order for the post of Nurse Midwife as per proceedings in Na.Ka.No.5579/88/H1, dated 15.02.1990 by the Commissioner, Pudukottai



W.P.No.14484 of 2017

Municipality in the scale of pay of Rs.975-25-1150-30-1060. Further, the petitioner has given a representation to the 1st respondent stating that the post of Nurse Midwife was wrongly considered as equivalent to the post of Auxiliary Nurse Midwife. She further represented that the educational qualifications required for the post of Nurse Midwife is higher than the educational qualifications required for Health Visitor. As per proceedings in Letter No.27729/ME.3/2017-19 dated 28.02.2017, the order passed is as follows:

2. Based on the remarks obtained from the Commissioner of Municipal Administration, your representation has been considered in Government and the following were observed:-

a) You were working as Auxiliary Nurse Midwife under IPP.V project of Pudukottai Municipality. As per the orders issued in G.O.Ms.No.35, Municipal Administration and Water Supply Department dated 07.03.2008, the staff employed under IPP. V project have been brought under the Tamil Nadu Municipal Medical Service Rules, 1970.

b) The qualification prescribed for the post of Auxiliary Nurse Midwife and Sector Health Nurse (Health



W.P.No.14484 of 2017

Visitor) are different and both these posts are classified in different categories i.e., Auxiliary Nurse Midwife under Rule 9(ii) and Sector Health Nurse (Health Visitor) under Rule 5(a) of Tamil Nadu Municipal Medical Service Rules, 1970. The Recruiting and appointing authority for the above said two posts are also different.”

6.Further, the petitioner has claimed the scale of pay of Sector Health Nurse post or to re-designate the post and she is entitled to the scale of pay of Sector Health Nurse. The post of Nurse Midwife was wrongly considered as equivalent to the post of Auxiliary Nurse Midwife by the 1st respondent. Therefore, the petitioner is entitled to the upgradation of Sector Health Nurse and also all the consequential and attendant benefits. At the same time, the petitioner has rendered service for the past 25 years and though she has been getting the revised pay she has been stagnated at one post and she was not given any promotion. The qualification prescribed for the post of Auxiliary Nurse Midwife and Sector Health Nurse (Health Visitor) are different and both these posts are classified in different categories and recruiting and



W.P.No.14484 of 2017

appointing Authority for the above two posts are also different.

Accordingly, this Writ Petition is allowed. The order dated 28.02.2017 passed by the 1st respondent is quashed. The respondents are directed to fix the scale of pay of 705-1230 applicable to the post of Lady Health Visitor instead of the scale of pay of 610-1075 fixed for the petitioner from the date of her appointment on 26.02.1990 with all consequential and attendant benefits within a period of four weeks from the date of receipt of a copy of this order. No costs.

21.12.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
mps

To

1. The Secretary,
Municipal Administration and Water Supply Department,

10/12



W.P.No.14484 of 2017

Chennai-600 009.

WEB COPY

2.The Commissioner of Municipal Administration,
Chennai-600 005.

3.The Commissioner,
Pudukottai Municipality,
Pudukottai.

V.BHAVANI SUBBAROYAN, J,
mps



WEB COPY



W.P.No.14484 of 2017

W.P.No.14484 of 2017

21.12.2023