



W.P.(MD)No.3351 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.3351 of 2023
and
W.M.P.(MD)No.3095 of 2023**

Vijayarani

... Petitioner

Vs.

1. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Chennai - 600 009.
2. The Director,
Medical and Rural Health Services,
Chennai - 600 006.
3. The Assistant Director,
Health Services,
Sivagangai.
4. The Block Medical Officer,
Government Primary Health Center,
Maravamangalam - 630 554,
Sivagangai District.

... Respondents



W.P.(MD)No.3351 of 2023

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent in his proceedings in Na.Ka.No.72939/sebi1/2/2017, dated 27.06.2018 and the consequent order passed by the second respondent vide proceedings in Na.Ka.No.22246/sebi1/2/2021, dated 23.07.2021 and quash the same as illegal and consequently, directing the respondents to permit the petitioner to continue the duty as Nurse under the respondents 3 and 4 within a time stipulated by this Court.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

O R D E R

This Writ Petition has been filed to call for the records of the order passed by the second respondent vide proceedings in Na.Ka.No. 72939/sebi1/2/2017, dated 27.06.2018 and the consequent order passed by the second respondent, vide proceedings in Na.Ka.No.22246/sebi1/2/2021, dated 23.07.2021, quash the same as illegal and consequently, direct the respondents to permit the petitioner to continue the duty as Nurse under the respondents 3 and 4.



W.P.(MD)No.3351 of 2023

WEB COPY

2. The case of the petitioner is that the petitioner was appointed as Nurse on contract basis by the second respondent, vide order, dated 25.02.2011 at Government Additional Primary Health Centre Paganeri, Sivagangai HUD, Sivagagai District and worked till 03.03.2015 without any blemish. She was on leave for the delivery and thereafter, to take care her baby who was sick till 03.03.2016. Thereafter, she had not applied leave and absented from duty. On 26.04.2017, she applied for permission to join duty, which was rejected by the impugned orders, dated 27.06.2018 and 23.07.2021. Challenging the same, the present writ Petition.

3. The learned counsel appearing for the petitioner would submit that admittedly, the petitioner obtained medical leave from 04.01.2016 to 02.03.2016. Thereafter, the petitioner ought to have joined duty on 03.03.2016. However, due to unfortunate situation, the petitioner did not join duty on 03.03.2016 and had not obtained any leave from the respondents. Hence, she made a representation on 26.04.2017 to the respondents to permit her to join duty. Since the petitioner is a contract



W.P.(MD)No.3351 of 2023

employee, there is no legal bar for the respondents for taking back the petitioner into service without paying any salary for the absence period. However, without doing so, rejecting the petitioner's representation is not sustainable one. Accordingly, he prayed for appropriate orders.

4. The learned Special Government Pleader appearing for the respondents would submit that the petitioner is not a full member of service and she is a contract employee and the contract basis employee will be terminated, if they did not regularly attend duty. Since the petitioner without obtaining any permission, deserted from duty on 03.03.2016 and she made representation after one year, which cannot be entertained. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner is a contract employee and she worked from 2011 onwards.



W.P.(MD)No.3351 of 2023

WEB COPY

Further, the medical leave obtained from 03.03.2016 to 26.04.2017 is also not in dispute. However, she made a representation on 26.04.2017 to permit her to join duty after lapse of one year, for which, there is no explanation. The petitioner is not a full member of the service. There is no need for taking disciplinary action against the petitioner. Since the petitioner is the contract employee, the contract employee can be terminated at any point of time. However, the rejection order passed by the second respondent is not a bar for the petitioner to participate in the future selection process either on contract basis or through Medical Recruitment Board.

7. With the above observations, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.02.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

Page 5 of 7



W.P.(MD)No.3351 of 2023

WEB COPY

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