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W.P.(MD)NO.15260 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15260 of 2023

T.Jeba Stella

... Petitioner

Vs.

1. The Director of Medical and Rural Health Services,
258, Second Floor, DMS Campus,
Anna Salai, Teynampet,
Chennai – 600 0018.

2. The Joint Director of Medical and Rural Health Services,
Kottar, Nagercoil – 629 002,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to grant regular time scale of pay to the petitioner as per the 1st respondent proceedings in Ref. No.12532/N2/2/2019-368, dated 09.03.2019 and consequential benefits with arrears of time scale of pay from 09.03.2019 based on the petitioner's representation dated 04.10.2021.

For Petitioner : Mr.K.Vamanan

For Respondents : Mr.T.Villavankothai,
Additional Government Pleader.

**ORDER**

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Heard the learned counsel on either side.

2. The petitioner was appointed as Nurse on contract basis in the year 2015. On 09.03.2019, the following posting order was issued:-

“ Under Rule 17(1) of Tamil Nadu Government Servants (Conditions of Service) Act 2016 Tamil Nadu Act 14/16 the following Nurse on Contract Basis who has been absorbed into regular time scale of pay in the reference cited is posted as Regular Nurse in the Revised scale of pay of Rs.36000-114000 (Level 14) in the institution noted against his/her name.

S.No.	Seniority Number in the Contract post	Name and present of the individual Thiru/Tmt./Selvi	Place of posting
47	622	JEBA STELLA T Government Hospital, Kuzhithurai, Kanyakumari.	Government Thanjavur Medical College Hospital, Thanjavur (Multi Super Speciality Block)

He/She is directed to join duty in the new station to which posted immediately on relief from the old station.

He/She should produce the following documents at the time of joining duty to the Heads of institutions concerned to which posted. ”



3. The petitioner challenges a part of the posting order by filing

W.P.(MD)No.6461 of 2019. Interim stay was granted. The writ petition was disposed of 09.09.2021 in the following terms:-

“ 3. The learned counsel appearing for the petitioners submitted that the order of absorption does not warrant any transfer and further submitted that the respondent without conducting any transfer counseling, transferred the petitioners and therefore, the impugned orders are liable to be set aside. He further submitted that the counseling for this academic year was completed in the month of June 2021. The learned counsel appearing for the petitioners undertakes that the petitioners will participate in the transfer counseling for the next year 2022-2023.

4. Though this Court by order dated 09.04.2019, granted interim orders, directing the petitioners to continue to work in the same station, till date the respondent has not filed any vacate stay petitions nor filed the counter-affidavits.

5. In view of the undertaking given by the



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learned counsel appearing for the petitioners, liberty is given to the petitioners to participate in the transfer counselling for the next year viz., 2022-2023. It is open to the petitioners to submit applications, requesting to continue to work in the same station. In the event of such applications being made, the respondent shall consider the same and pass appropriate orders within a period of twelve weeks therefrom. Till such time, the interim orders granted by this Court shall be in force. ”

4. The petitioner's grievance is that till date she continues to receive pay only on consolidated basis and that she has not been granted the benefit of absorption in regular time scale of pay.

5. The stand of the respondents is that a reading of the posting order would indicate that the petitioner was to receive her regular pay only from the institution to which she was posted.

6. This contention is no doubt well founded. But there are two



impediments in accepting the contention as such. The posting order reads that the candidate who has been absorbed into time scale of pay is posted as regular Nurse. In other words, the absorption of the petitioner precedes posting. Therefore, the petitioner cannot be denied the benefit of absorption and payment of regular time scale of pay. The respondents cannot also be blamed because the posting order reads that the institution to which the petitioner was posted is from where the petitioner must draw future pay. But then, that part of the order posting the petitioner has been stayed by the High Court. The respondents failed to apply for vacating the interim order, nor they filed any counter affidavit. The writ petition came to be disposed of on 09.09.2021. The petitioner had been permitted to work at Kanyakumari District. In these circumstances, regular time scale of pay with effect from 09.03.2019 cannot be denied to the petitioner. But the petitioner cannot insist that she will work only at Kanyakumari District.

7. The petitioner through her counsel gives an undertaking that she will participate in the counselling to be held on 28.06.2023 and join in the posted place without any challenge. Subject to the petitioner adhering to the undertaking, the benefits sought for by the petitioner shall be



disbursed and granted. In normal circumstances, I would not have put the petitioner on terms. But then, interim stay was obtained in the previous case only by obtaining the undertaking. Since the petitioner had been working in Kanyakumari District since 2015 onwards, it is time she moves out of the district. Subject to the petitioner abiding by her undertaking now given before this Court, this writ petition stands allowed. No costs.

26.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

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