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WP(MD)N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.20605 of 2019

and

W.M.P(MD)No.17243 of 2019

P.Poomariyammal

... Petitioner

Vs.

1. The Secretary,
Health and Family
Welfare Department,
Fort Saint George,
Chennai - 600 009.

2. The Director,
Medical and Rural Health Services,
D.M.S. Campus, Teynampet,
Chennai - 600 006.

3. The Director,
Director of Medical Education,
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of **Writ of Certiorari** Calling for the records of the 3rd respondent in Na.Ka.NO.18263/Se.nil/2019, dated 28.06.2019 and quash the same.

For Petitioner : **(*)Mr.R.Vijayaragavan**

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

This writ petition is filed challenging the order, dated 28.06.2019, wherein, the petitioner was directed to participate in the transfer Counselling and opt for the available vacancy, before the Counselling.

2. The contention of the petitioner is that she had completed Diploma in Nursing course and she was appointed as a Staff Nurse on contract basis during the period from 19.12.2007 to 08.07.2012. Thereafter, she was regularized and posted as Staff



Nurse in Medical College Hospital, Thanjavur, from 31.05.2012, vide reference No.34001/N1/2012 in Serial No.64. The petitioner got married to one A.Rajasekaran, who was working in Dubai and they have a daughter, aged about 8 years and son, aged about 6 years. The petitioner is facing difficulties, since she is serving in Thanjavur and the entire family is at Madurai and she could not maintain her children. Subsequently the petitioner's husband came back to India since he met with an accident and now, he is only looking after their children. From the date of her appointment in Thanjavur Medical Hospital, the petitioner is serving in Thanjavur for more than 7 years. Hence, the petitioner has submitted a representation, dated 26.02.2014 to transfer the petitioner from Thanjavur to Madurai. The petitioner has filed an additional affidavit stating that for more than seven times the petitioner has participated in the transfer Counselling, inspite of the same, the petitioner could not get transfer. Thereafter the petitioner submitted representation, dated 26.02.2014, since the same was not considered, the petitioner has filed a writ petition in **(*)W.P(MD) No.8547 of 2019** and this Court directed the respondents to consider and pass orders. Again, the respondents did not pass any orders and the petitioner filed contempt petition. Pending contempt petition, the respondents had passed the impugned order, wherein it is stated that there is no vacancy in Madurai Rajaji Hospital and further directed the petitioner to participate in the transfer counselling as and when it is conducted.

3. The contention of the petitioner is that even though, she had participated in the Transfer Counselling for more than seven times, the petitioner could not get the transfer. Hence, the petitioner is before this Court.

4. When the writ petition came up for hearing on 09.12.2022, the petitioner submitted before this Court that the transfer counselling is likely to be conducted. This fact was confirmed by the respondents and the respondents further submitted that the transfer Counselling ought to be conducted on 09.12.2022, however the same was postponed. Therefore, this Court directed the petitioner to participate in the counselling which is scheduled to be held on 12.12.2022 and the respondents was also directed to allow the petitioner to participate in the Counselling. A specific direction was issued to the respondents to consider the petitioner's candidature to consider on the existing vacancies available in and around the Madurai District. Based on this direction, the petitioner was allowed to participate in the transfer Counselling held on 12.12.2012, but the petitioner could not get transfer since there is no vacancy in and around the Madurai District.



5. But, it was brought to the knowledge of this Court that the Counselling was conducted on 07.12.2022 and on 07.12.2022, one Jeya (Seniority Serial No.1669) who was working in the Government Rajaji Hospital, Madurai opted for transfer to **(*)Stanley Medical College Hospital, Chennai**. The resulted vacancy was shown, for which, one Parameswari, who was working in Government Stanley Medical College Hospital, Chennai was transferred to Madurai. When this Court posed a specific question, whether the resultant vacancy at Madurai Rajaji Hospital was shown to the petitioner, the respondents submitted that the same was not shown.

6. It is seen that the Counselling will be conducted based on the available vacancies. However, the resulted vacancy will not be shown to all the participants. In the present case, admittedly, the said Jeya has opted for transfer to **(*)Stanley Medical College Hospital, Chennai** from Madurai Rajaji Hospital, the resulted vacancy is Madurai Rajaji Hospital (Jeya's place) ought to be shown to the Seniors in the seniority list. Admittedly, the petitioner is senior than the said Parameswari. In the list the petitioner's seniority No.304 and Parameswari seniority No.1674. The petitioner is working in Thanajvur from 31.05.2012. The said Parameswari was working in Stanley Medical College Hospital, Chennai from 22.03.2019. Hence the said transfer of Parameswari is in violation of the seniority list. The said Parameswari was serving in the said place for four years but the petitioner is working in the said place for more than 10 years, but the said Parameswari was granted the transfer.

7. The respondents are following a method which is causing serious prejudice to the employees seeking transfer. There are more than 2000 employees listed in the seniority list and the counselling is conducted in phases. In the 1st phase some 500 candidates are allowed to participate and the vacancy would be shown to the candidates and they can choose the place. But the resultant vacancy would be shown to the same candidates who are participating in the 1st phase. This resultant vacancy would not be shown for the other candidates who would be allowed in 2nd phase or 3rd phase of counselling. In the present case on 07.12.2022, one Jeya (Seniority Serial No.1669) was granted transfer from Madurai Rajaji Hospital to **(*)Stanley Medical College Hospital, Chennai**. And the resultant vacancy at Madurai Rajaji Hospital was shown on the same day i.e. 07.12.2022 and one Parameswari (Seniority Serial No.1674) was granted the said place. But the petitioner Poomariyammal (Seniority Serial No.304) was allowed to participate on 12.12.2022 and was informed that there is no vacancy at Madurai. Had the respondents shown the resultant vacancy which fell vacant on 07.12.2022 to the employees listed in Serial No. 1



to 500, then the petitioner would get an opportunity. In short, the resultant vacancy cannot be shown then and there, but ought to be thrown open to candidates again to 1st phase candidates, if available then to 2nd phase candidates. Therefore, this Court is of the considered opinion that the method followed by the respondents in transfer Counselling is arbitrary and causing serious prejudice to the candidates. Therefore, this Court is passing the following order:

(i). The transfer granted to Parameswari is set aside.

(ii). The petitioner shall be granted the resulted vacancy of Jeya's transfer from Rajaji Government Hospital, Madurai to **(*)Stanley Medical College Hospital, Chennai**

(iii) The respondents are directed to grant transfer to the petitioner, within a period of four weeks from the date of receipt of a copy of the order.

(iv) The respondents are directed to conduct proper transfer counselling. The respondents shall show the available vacancy all the participants.

(v) The resulted vacancy that shall be shown to all the persons simultaneously.

(vi) The respondents shall modify the method of transfer as stated supra.

8. With these directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

(*)Corrected as per the order of this court dated 19.04.2023.

Sd/-

Assistant Registrar(CS III)

// True Copy //

/04/2023

Sub Assistant Registrar(CO)

Ksa



To

**To be substituted to the order which is already despatched on
13/04/2023**

WEB COPY

1. The Secretary,
Health and Family
Welfare Department,
Fort Saint George, Chennai - 600 009.
2. The Director,
Medical and Rural Health Services,
D.M.S. Campus, Teynampet, Chennai - 600 006.
3. The Director,
Director of Medical Education,
Poonamallee High Road, Kilpauk, Chennai - 600 010.

+1 CC to M/s.SPL.GP (SR-3963, 22352[F] dated 25/01/2023)

+1 CC to Mr.R.VIJAYARAGAVAN, Advocate (SR-22388[F])

**W.P (MD) No.20605 of 2019
24.01.2023**

MGJ(10.04.2023) 5P 5C

MK(26.04.2023) 5P 6C