



W.P.(MD).Nos.20470 to 20476 of 2015, 10102 and 10103 of 2016,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).Nos. 20470 to 20476 of 2015,
10102 and 10103 of 2016**

and

W.M.P.(MD).Nos.7915, 7916, 7917, 7918, 7919, 7920 of 2016,

M.P(MD).Nos.1, 1, 1, 1, 1, 1 of 2015

2, 2, 2, 2, 2, 2 of 2015

and

3, 3, 3, 3, 3, 3, 3, of 2015

W.P.(MD).No.20470 of 2015:

A.Ganesa Rani

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Health & Family Welfare Department,
Secretariat,
Chennai – 9.
- 2.The Secretary,
The Tamil Nadu Public Service Commission,
O/o.the Tamil Nadu Public Service Commission Office,
Chennai – 3.
- 3.The Director of Public Health & Preventive Medicine,
O/o. the Directorate of Public Health & Preventive Medicine,
Chennai – 6.



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4. The Deputy Director of Health Services,
O/o. the Deputy Directorate of Health Services,
Gandhiji Road,
Thanjavur,
Thanjavur District.

... Respondents

Prayer in W.P.(MD).No.20470 of 2015: : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the notification issued by the second respondent vide notification no. 11/2015 dated 31.07.2015 and quash the same as illegal and consequently to direct the respondent No.1 and 3 to consider the petitioner for promotion to the post of Maternal and Child Health Officer (Public Health Nurse) in conformity with Section 3 of the Ad Hoc Rules issued by the first respondent in G.O.Ms.No. 861 Health and Family welfare Department dated 24.11.1994.

(In W.P.(MD).Nos.20470 to 20476 of 2015)

For Petitioners : Mr.H.Mohammed Imran,
For M/s.Ajmal Associates.

For R-1, R-3
and R-4 : Mr.N.Muthu Vijayan,
Special Government Pleader.

For R-2 : Mr.J.Anand Kumar,
Standing Counsel.



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For R-1, R-3
and R-4 : Mr.N.Muthu Vijayan,
Special Government Pleader.

For R-2 : Mr.J.Anand Kumar,
Standing Counsel.

COMMON ORDER

The issues to be decided in all these writ petitions are similar. The relief sought for are also one and the same. Thus, all the writ petitions are taken together for hearing and a common order is passed.

2. These Writ Petitions are filed challenging the Notification No.11 of 2015 dated 31.07.2015 and consequently direct the respondents to consider the petitioners for promotion to the post of Maternal and Child Health Officer (Public Health Nurse) in conformity with Section 3 of the Adhoc Rules issued by the first respondent in G.O.Ms.No.861 Health and Family welfare Department dated 24.11.1994.



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3. The petitioners are admittedly working as “Sector Health Nurse” otherwise called as “Community Health Nurse”. The petitioners are eligible to be promoted as Maternal and Child Health Officer (Public Health Nurse) except the 22 months of diploma course in Public Health Nursing course. The contention of the petitioners is that the respondents are denying to impart training to the said diploma course. But the contention of the respondents is that 22 months diploma in Public Health Nursing course cannot be conducted, since the Indian Nursing Council, New Delhi has declined to conduct such Nursing courses for the persons who are already in service, hence the petitioners are not eligible, since they did not possess the requisite qualification prescribed for the said post.

4. The further contention of the petitioners is that the respondents ought to have provided training to the eligible candidates or they have alternative course that can be conducted by the State of Tamil Nadu. Moreover, the petitioners were posted in the said post as in-charge and the petitioner has rendered the service for the past 6 years. By this time the petitioners have acquired training by serving for past 6 years and the respondents ought to have considered the petitioners for promotion. The respondents instead of promoting



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the petitioners, selecting the candidates through direct recruitment by issuing the impugned notification.

5. The respondents relied on the appointment procedure stated in G.O.Ms.No.861 Health and Family Welfare Department dated 24.11.1994, wherein, it has been stated as under:

3. Appointment: Appointment to the post shall be mad as follows:-

(i) by recruitment by transfer from among the holders of the post of Sector Health Nurse and Community Health Nurse in the Tamil Nadu Public Health Subordinate Service; or

(ii) by recruitment by transfer from among the holders of the post of Head Nurse in the Tamil Nadu Medical Subordinate Service, if no suitable candidates are available by the above method; or

(iii) by recruitment by transfer from among the holders of Nurse in the Tamil Nadu Medical Subordinate Service, if no suitable candidates are available by the above two methods; or

(iv) by direct recruitment, if no suitable candidates are available by the above three methods.

6. In the above said Government Order, it has been clearly stated that the first priority is to be given to the eligible candidates by way of recruitment by transfer from Sector Health Nurse. If such candidates are not available, then the persons who are holding the post of Head Nurse can be considered. The



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petitioners herein are holding the post of Head Nurse. Thus, they fall under the clause (ii) of the aforesaid G.O. The contention of the respondents is that even though they fall under Head Nurse, the qualification prescribed for the promotion and the method of appointment is stated as follows:

Method of Appointment	Qualification
(1)	(2)
<u>(1) By recruitment by transfer</u> (i) From the among the holders of the post of Sector Health Nurse and Community Health Nurse in the Tamil Nadu Public Health Subordinates Service.	(i) Must have undergone 22 months Diploma Course in Public Health Nursing and declared to have passed the examination at the end of the course and diploma awarded by the Director of Public Health and Preventive Medicine, Chairman, Board of Examinations, and (ii) A Certificate of registration in section I-A or I-B of the Register of Nurses under the Tamil Nadu Nurses and Midwives Act, 1926 (Tamil Nadu Act III of 1926); and (iii) A Certificate of registration in section I-C of the Register of Midwives under the Tamil Nadu Nurses and Midwives Act, 1926 (Tamil Nadu Act III of 1926).

Wherein, the petitioners are having only the qualification prescribed in (ii) and (iii). Now, the Institute which ought to conduct diploma course stated that they are not in a position to conduct diploma course. When the institute is



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not in a position to conduct a course for in-service candidate, that cannot be a reason to deprive the promotional opportunity to the petitioners.

7. Moreover, if the Government impart training to the in-service candidates, then the government need not go for fresh recruitment and this would be advantageous to the government in terms of financial commitment. The government could pay the promoted post salary to in-service candidates and need not incur fresh commitment to the freshly recruiting candidate. This would be saving the government exchequer from fresh commitment as salary.

8. Promotion may not be fundamental right but it is certainly a right to the employees. Then the government ought to take policy decision to grant promotion to the in-service candidates.

9. As rightly pointed out by the Learned Counsel for the petitioners that the petitioners are already appointed in the said post as “in-charge” and they are rendering service in the promoted post for the past 6 years and has gained the training in the said post. Therefore, the government ought to take into account



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the service of 6 years and promote the petitioners in the said post. Or alternatively the government may consider for granting relaxation to the petitioners as one time measure to the in-service candidate.

10. For the reasons stated supra, therefore, this Court is of the considered opinion that the in-service / in-house candidates shall be promoted to the said post of Maternal and Child Health Officer (Public Health Nurse) by taking into their in-charge service of six years in the promoted post. Wherever the petitioners have not completed six years training, the respondents shall promote them by granting one time relaxation to the in-service / in-house candidates.

11. As far as the Writ Petitions in W.P.(MD).Nos.20470 to 20476 of 2016 are concerned, at the time of admission of the Writ Petitions, there was an interim order keeping 7 posts as vacant. There are 7 writ petitioners. Therefore, this Court directs the respondents to appoint the petitioners in the said 7 posts. The petitioners are eligible for all monetary benefits and service benefits from the date of promotion order. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.



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12. As far as the writ petitioners in W.P.(MD)Nos.10102 and 10103 of 2016 are concerned, this Court has granted interim stay to keep one post vacant. However, the respondents submitted that prior to the interim order, all the candidates were appointed in the existing vacancies. Therefore, the third respondent is directed to promote the petitioners in W.P.(MD)Nos.10102 and 10103 of 2016 in the future vacancies.

13. The Learned Special Government Pleader has raised an apprehension that this would open the flood gate and prayed that this order would be cited as precedent. This Court is of the considered opinion that this Court has held that the in-service candidates should be given preference than the fresh candidates and also held that the respondents shall grant one time relaxation to the in-service candidates. Therefore, the Government shall take appropriate decision either to impart training or grant relaxation to the in-service, so that the flood gate would be opened. Hence, this court is not inclined to entertain the apprehension of the respondents



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14. With the above direction, the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

15.02.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Health & Family Welfare Department,
Secretariat,
Chennai – 9.
- 2.The Secretary,
The Tamil Nadu Public Service Commission,
O/o.the Tamil Nadu Public Service Commission Office,
Chennai – 3.
- 3.The Director of Public Health & Preventive Medicine,
O/o. the Directorate of Public Health & Preventive Medicine,
Chennai – 6.
- 4.The Deputy Director of Health Services,
O/o. the Deputy Directorate of Health Services,
Gandhiji Road,
Thanjavur,
Thanjavur District.



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S.SRIMATHY, J.

Nsr

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