



W.P.(MD).No.3166 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 06.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.3166 of 2016
and
W.M.P.(MD).No.2771 of 2016**

M.Irudayaraj

... Petitioner

Vs.

- 1.The Director,
Health and Rural Welfare Service,
Chennai – 600 006.
- 2.The Joint Director,
Health and Rural Welfare Service,
Government Hospital,
Tenkasi.
- 3.The Medical Officer,
Government Hospital,
Kadayanallur,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the second respondent in Na.Ka.No.1748/Nee2/2014 dated 21.03.2014 and consequential impugned order of the third respondent in Na.Ka.No.194/Nee1/2014 dated 11.04.2014



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and to quash the same and direct the respondents to pay a sum of Rs.89,331/- recovered from the petitioner as excess salary and direct the respondents to disburse the terminal benefits with all other attendant benefits by treating the petitioner post of Nursing Assistant Grade-II as promotional post, within the time limit fixed by this Court.

For Petitioner : Mr.C.Saravana Kumar

For Respondents : Mr.M.Lingadurai,
Special Government Pleader.

ORDER

This Writ Petition is filed challenging the impugned order dated 21.03.2014 and consequential impugned order dated 11.04.2014 and direct the respondents to pay a sum of Rs.89,331/- recovered from the petitioner as excess salary and direct the respondents to disburse the terminal benefits with all other attendant benefits by treating the petitioner post of Nursing Assistant Grade-II as promotional post.

2. The petitioner joined as a Hospital Worker in Government Hospital, Kadayannallur on 16.04.1975. The petitioner was given training for the post Nursing Assistant for a period of one year by following G.O.Ms.No.2994 (Health and Family Welfare Department) dated 22.11.1976. Subsequently, the



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petitioner was promoted as Nursing Assistant on 12.02.2008 through proceedings in Na.Ka.No.9602/Nee3/2007 dated 12.02.2008. While he was working as Nursing Assistant, the salary increment as well as Selection Grade increment was given to the petitioner. The age of superannuation for Nursing Assistant is 58 years. At the verge of retirement, the second respondent through impugned order dated 21.03.2014 held that the Nursing Assistant post is only a transferable post and directed the third respondent to correct the increments given to the petitioner from 01.04.2008 that is the date on which the petitioner was promoted to the post of Nursing Assistant Grade-II. The above said impugned order was passed by the third respondent by following an order passed by the first respondent dated 06.03.2014. But the said proceedings was passed against one S.Mahalingam. Thereafter, the third respondent passed the consequential order of recovery through his impugned proceedings dated 11.04.2014 and directed the petitioner to pay a sum of Rs.89,331/- as excess salary, which was given to the petitioner after promoting him as a Nursing Assistant. Due to compulsion from Superiors who informed if the petitioner is fighting for the same the petitioner would not be allowed to retire and terminal benefits would not be paid in time, the petitioner paid the same on 10.04.2014 to the third respondent. Thereafter, the petitioner was permitted to retire on



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31.05.2014 at the age of 58 years as a Nursing Assistant Grade-II. After retirement, the retirement benefit was calculated by taking into account of the pay of Hospital Worker post and not the pay of the salary applicable to the Nursing Assistant Grade-II post. After retirement, the petitioner came to understand that the respondents declared the promotional post as transferable post only pursuant to G.O.Ms.No.325 (Health and Family Welfare (F2) Department) dated 20.11.2012. As per the said Government Order, the post of Nursing Assistant was directed to be filled from the post of Hospital Worker, provided the Hospital Worker undergone special training and the age of retirement was fixed as 60 years. The said Government Order has no retrospective effect and the same is not applicable to the petitioner. The petitioner was given Nursing Assistant post pursuant to G.O.Ms.No.2994 (Health and Family Welfare Department) dated 22.11.1976. Further, if the said Government Order G.O.Ms.No.325 is applied to the petitioner's case, then he is entitled to work upto 60 years, whereas the petitioner was considered as superannuated on completion of 58 years. Hence, at no stretch of imagination, G.O.Ms.No.325 dated 20.11.2012 is not applicable to the petitioner. The respondents without taking into consideration of the said Government Order, have not granted increment as well as the promotion, whereby, the petitioner



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was not allowed to work until 60 years. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have filed a counter stating that the petitioner joined the service on 16.04.1975 and subsequently promoted as Nursing Assistant on 12.02.2008. The Special Grade salary of the Health Worker post is lower than the entry level salary of the promoted post. The scale of pay in Special Grade Health Worker is 2750-70-3800-75-4400 and that of entry level salary in the promoted post of Nursing Assistant Grade-II is 2650-65-3300-70-4000. Hence, the petitioner opted to receive the Special Grade salary which he was received in the earlier post in the promotional post and the same was allowed by notionally fixing an increment of Rs.75/- and the petitioner was permitted to receive the newly fixed salary by an order dated 19.08.2008, which is not permissible and it is unsustainable in the eye of law. The petitioner has to opt either for promotion or to receive higher salary in the lower post and he cannot receive the same simultaneously and it is contrary to the pay structure and if the same is allowed, the Government would be put to severe financial crisis. Therefore, the respondents prayed to dismiss this Writ Petition.



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4. Heard Mr.C.Saravana Kumar, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader for the respondents.

5. After considering the rival submissions of the parties, this Court is of the considered opinion that the claim of the petitioner is to grant promotion, so that his retirement age would be fixed as 60 years. The respondents after granting promotion in the year 2008 based on G.O.Ms.No.325 has curtailed the petitioner's promotional benefits and also declined the promotion and retired the petitioner at the age of 58 years itself. If the said promotion is not granted, atleast the respondents ought to have granted Special Grade in the lower post. But the respondents claim that to be excess and is seeking to recover the same. The issue raised by the respondents can be sorted by invoking Rule 22(b) of Fundamental Rules. Since the respondents have declined the promotion, whereby, the petitioner was allowed to retire as Hospital Worker at the age of 58 years itself, the respondents cannot decline both the Special Grade in the post of Hospital Worker, simultaneously decline the promotion as well. Therefore, serious prejudice is caused to the petitioner. Hence, the impugned order is quashed. Therefore, the respondents are directed to apply Rule 22(b) of the Fundamental Rules and re-fix the petitioner's salary in accordance to the



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said Fundamental Rules. The petitioner was promoted and granted the salary.

Therefore, the amount to the tune of Rs.89,331/- shall not be recovered. If it is recovered, then the same shall be disbursed to the petitioner. However, for re-fixation, the respondents shall invoke Rule 22(b) of the Fundamental Rules. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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S.SRIMATHY, J.

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