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W.P.No.4875 of 2021 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.4875 of 2021, 17081, 7932, 7935, 8221, 7926 of 2017 and
W.P.No.33477 of 2018 and
W.M.P.Nos.8976, 8684, 8685, 10230, 8977,
8674, 18561, 18563, 18562, 8675, 8676 & 8681 of 2017,
5481 of 2021 and 38846 of 2018

W.P.No.4875 of 2021

Dr.G.Josephine R.Little Flower

... Petitioner

Vs.

1.State of Tamil Nadu

Rep by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.

2.The Tamil Nadu Nurses and Midwives Council,
Jayaprakash Narayanan Maligai,
56, Santhome High Road,
Mylapore, Chennai - 14.

Respondents

...

(R2 impleaded vide order dated 18.11.2021 made in
W.M.P.No.7934 of 2021 in W.P.No.4875 of 2021)

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent



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vide in his proceedings Letter (D) No.242/Z1/2017 dated 15.02.2021 and to quash the same as being illegal and unsustainable in law more particularly paragraph No.6 of the Letter.

For Petitioner : Mr.R.Viduthalai, Senior Counsel for
Mr.S.C.Herold Singh
For Respondents : Mr.P.Kumaresan, Addl. Advocate General,
assisted by Mr.S.Arumugam, GA for R1
Mr.K.S.Viswanathan, Senior Counsel for
Mr.S.Sivakumar for R2

COMMON ORDER

The details of the prayers made in the Writ Petitions have been given in the following table:

<i>Sl.Nos</i>	<i>Writ petition Nos.</i>	<i>Petitioner</i>	<i>Prayer</i>
1.	4875 of 2021	Dr.G.Josephine R.Little Flower	Writ of Certiorari to call for the records of the respondent vide proceedings Letter (D) No.242/Z1/2017 dated 15.02.2021 and quash the same as illegal and unsustainable in law.
2.	33477 of 2018	Dr.G.Josephine R.Little Flower	Writ of Certiorari to call for the records of the first respondent in issuing a charge memo to the petitioner in proceedings No.197/NC/2017 dated 22.11.2018 and the consequential enquiry notice of the first respondent in RC No.197/NC/2018 dated



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<i>Sl.Nos</i>	<i>Writ petition Nos.</i>	<i>Petitioner</i>	<i>Prayer</i>
			22.11.2018 and to quash the same as illegal and unsustainable in law.
3.	7932 of 2017	Dr.G.Josephine R.Little Flower	Writ of Mandamus forbearing the respondents from disturbing the petitioner from discharging the petitioner's official duties as Registrar, Tamil Nadu Nurses and Midwives council.
4.	8221 of 2017	Dr.G.Josephine R.Little Flower	Writ of Certiorarified Mandamus calling for the proceedings of the third respondent in resolution No.40 of the 197 th Ordinary General Body Meeting dated 21.03.2017 and consequential proceedings of the third respondent in proceedings in No.197/NC/2017 dated 21.03.2017 and quash the same as illegal, incompetent and <i>ultravires</i> and consequently forbear the respondents from disturbing the petitioner from discharging her official duty as the Registrar, Tamil Nadu Nurses and Midwives Council.
5.	17081 of 2017	Dr.G.Josephine R.Little Flower	Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings No.197/NC/2017 dated 21.03.2017 promoting / appointing the second respondent as the Registrar of the Council and to quash the same as illegal and unsustainable in law and for a



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<i>Sl.Nos</i>	<i>Writ petition Nos.</i>	<i>Petitioner</i>	<i>Prayer</i>
			consequential direction to the first respondent to give effect to the proceedings dated 30.03.2017 by permitting the petitioner to discharge her functions as the Registrar of the Council.
6.	7926 of 2017	Dr.S.Ani Grace Kalaimathi	Writ of Certiorarified Mandamus to quash the impugned order issued by the third respondent dated 25.03.2017 quash the same consequentially direct the respondents 1 to 3 to allow the petitioner to function as permanent Registrar of Tamil Nadu Nurses and Midwives council as per the resolution No.41 dated 21.03.2017.
7.	7935 of 2017	Beaula Indrani	Writ of Certiorari calling for the entire records relating to the impugned order passed by the third respondent dated 25.03.2017 quash the same keeping the order passed against Dr.G.Josephine R.Little Flower dated 21.03.2017 in abeyance.

2. Dr.G.Josephine R.Little Flower was appointed as the Deputy Registrar of the Tamil Nadu Nurses and Midwives Council, Chennai on 23.06.2003. On 15.12.2004, she was promoted as Registrar for the Tamil



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Nadu Nurses and Midwives Council (hereinafter referred as Council for easy reference). After having served for seven years, she joined as Nursing Advisor in the Ministry of Health and Family Welfare, Government of India. Though Dr.G.Josephine R.Little Flower claims that her above assignment with the Government of India is on deputation basis from the Council, that was denied by the respondents. By considering her appointment with the Council on contractual basis and also taking into account of the new assignment with the Government of India, the Council has passed a resolution on 21.03.2017 stating that the service of Dr.G.Josephine R.Little Flower has been ceased with effect from 21.03.2017. On the same Council meeting, another resolution has been passed to appoint Dr.S.Anigrace Kalaimathi as the new Registrar for the Council.

2.1. However the Director of Medical and Rural Health Services who is also the President of the Council has given a letter to Dr.G.Josephine R.Little Flower stating that the Council meeting held on 21.03.2017 was kept in abeyance. He had also issued a letter on 28.03.2017 by relieving Dr.S.Anigrace Kalaimathi who was appointed as a new Registrar and reverted her to the post of Deputy Registrar by allowing Dr.G.Josephine



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R.Little Flower to assume the charge of Registrar with effect from 30.03.2017. The above primordial facts would only convey that there was no cordial relationship between the Council members and the President. Each time when the Council passed a resolution, the President tried to stultify the same by assuming the super power on him. So all these Writ Petitions have culminated from and out of those actions and counter actions between the above two parties.

2.2. It is not out of the place to mention that one Varaki has filed a Public Interest Litigation in W.P.No.9609 of 2017 alleging certain irregularities against the Registrar and requested penal action against her. As per the directions issued by the Court in the Public Interest Litigation, an order has also been passed on 15.02.2021 stating that her services in the Council has been ceased with effect from 21.03.2017. It is further mentioned in the order that action has been taken pursuant to the Council meeting held on 21.03.2017.

2.3. Dr.G.Josephine R.Little Flower has filed various Writ Petitions as shown in the above table challenging all those resolutions and questioning the authority of the Council and with various prayers. Among



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various submissions made by the Government and private respondents, one of the primary point revolves around is about the maintainability of the Writ Petitions filed by Dr. G. Josephine R.Little Flower. It is submitted by the respondents that the Council cannot be considered as State and hence Dr.G.Josephine R.Little Flower cannot invoke the Writ Jurisdiction to challenge any actions of the Council.

3. Mr.R.Viduthalai, the learned Senior Counsel for Dr.G.Josephine R.Little Flower submitted that the Council has been created by a statutory body and therefore it is amenable to writ jurisdiction; the President of the Council has sent an e-mail to all the members for convening a budget meeting on 21.03.2017 and in the said meeting a resolution has been passed terminating the service of Dr.G.Josephine R.Little Flower as Registrar; the termination order has been passed in respect of a person deputed from the parent department; such action cannot be taken unless she was repatriated from the other department; in the agenda of the meeting, the above said subject did not find place; having realized the mistake, the President had chosen to pass an order on 25.03.2017 and kept



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the employee and even before that, the punishment of removal was imposed; if the disciplinary authority disagrees with the Enquiry Officer's finding, the copy of the descending note should be furnished to the delinquent before taking a decision on it; but the same was not furnished to her and hence the punishment of removal itself is illegal; there cannot be any retrospective order of termination or dismissal after Dr.G.Josephine R.Little Flower had been repatriated to the parent department and assumed charge on 30.03.2017; the order of removal of service of Dr.G.Josephine Little Flower is illegal and hence it should be set aside.

3.3. In support of his above contention, the learned Senior Counsel for Dr.G.Josephine R.Little Flower relied on the following judgments:

- i) *Managing Director, ECIL, Hyderabad and others reported in (1993) 4 SCC 727)*
- ii) *Punjab National Bank and others Vs. K.K.Verma reported in (2010) 13 SCC 494*
- iii) *S.P.Malhotra Vs. Punjab National Bank and others reported in (2013) 7 SCC 251*
- iv) *Punjab National Bank and others Vs. Kunj Behari Misra reported in (19998) 7 SCC 84*
- v) *K.Jayaprakash Vs. Government of Tamil*



*Nadu, Rep. by its Principal Secretary to Government
(W.A.No.1674/2017 dated 03.01.2023 of this court.*

4. Mr.K.S.Viswanathan, learned Senior Counsel appearing for the Council submitted that the Writ Petition is not maintainable; since Dr.G.Josephine R.Little Flower has not held any civil post and the post of Registrar is purely contractual in nature, she cannot claim continuity of service or reinstatement.

4.1. The learned Senior counsel drew the attention of this Court to G.O.No.196, Public Health, dated 21.01.1929 wherein, it is stated that Registrar includes any person duly authorized to act on behalf of the Council. There shall be a Registrar of the Council for performing the functions assigned to the Registrar by the rules and the by-laws, made under the Madras Nurses and Midwives Act. The first appointment of the Registrar shall be made by the President and the subsequent appointment by the Council. Every person so appointed shall be removable at the pleasure of the Council. According to him, there is no need for even an order for removal because it was only a contractual service.



WEB COPY 4.2. In support of his contention, the learned Senior Counsel relied on the following Judgments :

- i. *A.P.John Paulraj Vs. Central Borad of Secondary Education (1990 SCC Online Mad 644).*
- ii. *Hiran Mayee Bhattacharyya Vs. Secretary, S.M.School for girls and ors ((2002) 10 SCC 293)*
- iii. *Ramakrishna Mission and anr. Vrs. Kago Kunya and Ors (2019) 18 SCC 303).*
- iv. *R.Jayaprakash Vrs. the Board of Directors and anr. (W.P.No.3185 of 2021).*

5. It is submitted by the learned Additional Advocate General that the Council though constituted through a statute, its functions for the Council alone are statutory and so far the appointments of the staff of the Council is concerned, it is only a contractual engagement. Further the functions performed by the Council will not come under the purview of public functions and hence it does not have the character of sovereign functions.



5.1. The learned Additional Advocate General further submitted that

Dr.G.Josephine R.Little Flower was relieved from her post as Nursing Advisor, Government of India on 28.03.2017. The communication dated 21.03.2017 was sent by the President of the Council to Dr.G.Josephine R.Little Flower. Therefore, she cannot claim that she was not aware of the order dated 21.03.2017. Further, the Director of Medical and Rural Health Services have no power to keep the decision of the Council in abeyance.

6. As per the rules of Madras Nurses and Midwives Act, there shall be a Registrar for the Council to perform the functions assigned to him/her by the Rules and by-laws. It further states that the first appointment of the Registrar would be made by the President and subsequent appointments can be made by the Council itself and every person so appointed shall be removable at the pleasure of the Council. The Council can take decisions by passing resolutions. The functions of the Council are being carried out with the authority derived from the approval given by the Council. The Act would also state about those persons who should be included in the Council for which the Director of Medical and Rural Health Services shall be a person. The terms of the members of the Council shall not exceed three



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years.

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7. The object of the Council as it appears from its provisions and more particularly Section 10 is to regulate the appointments of Nurse, Midwife, Health Visitor or Auxiliary Nurse - Midwife in any Hospital, Dispensary etc. It would prescribe that none of the functions can be done without the approval of the Government. It would also regulate the Registration of Nurses, Midwives, Health Visitors etc., and it prohibits unauthorised conferment of degree or diploma license or certificate etc. for nursing and allied courses.

8. Though the functions of the Council appears to be statutory and covered under the public functions, the employment of staff to the Council are not done through any Government Orders. The Council is authorised to have such number of staffs as prescribed in the Act and the Executive Committee of the Council shall select and recommend suitable candidates for the post of Registrar and the Registrar shall be in service at the pleasure of the Council. The other staff are appointed by the President and the Vice President of the Council, but subject to the approval of the Council. The



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cadre strength of the Council's staff shall also be decided by the Council depending on the resource position and work requirements. Contingent staff and any special post can also be appointed by the President and Vice-President to carry out any additional or urgent work subject to the approval of the Council at the next meeting.

9. The Registrar's services are utilised at the pleasure of the Council. The services of the other employees can be terminated by the Council /President/Vice President as the case may be, if his / her work and conduct are not found satisfactory after giving reasonable opportunity to the incumbent for defence. So the service contract between the Council and the employees at any stage does not involve the approval of the Government or the recruitment through Government Agents. So the conditions of service of the employees can also be regulated through self-regulating mechanism of the Council. The functions of the Council as against its employees is for the convenient functioning of the Council. As the termination is at the will of the Council and not by the Government, it cannot be strictly said that the functions of the Council as against its employees are sovereign functions or



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a public function. The engagement of the employees are like a private contract between the employees and the Council.

10. Even though there are rules governing the conditions of service, the functions of the Council as an employer cannot be construed as a public function within the ambit of Article 226 of the Constitution of India. However, the above position shall not leave an inference that all those functions carried out by the Council are private functions and not public duty.

11. The service of the Registrar cannot be equated with the other employees for whom an opportunity needs to be given before terminating their services. So far as the Registrar is concerned, once the pleasure is lost, her services will be terminated. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court held in the case of ***Ramakrishna Mission and Another Vs. Kago Kunya and Others, reported in (2019) 16 SCC 303***. In the said judgment, the Hon'ble Supreme Court has referred several of its earlier judgments in order to clarify the services which would come under the ambit of public duty. ***Ramakrishna mission*** deals with the



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case involving a hospital which was subjected to the regulations of the

Clinical Establishments (Registration and Regulation Act 2010). The

question arose before the Court was whether the regulation of hospitals or

nursing homes by law would render the hospital a statutory body. It is held

that a body subjected to the regulations of a statute cannot be construed as a

body created under the statute and the individuals or organisations

subjected to statutory requirements by itself cannot be conclusive of

whether the said individuals or organisation discharges a public function.

12. A reference was made to VST Industries Limited Vs. Workers' Union, in which, the Division Bench of the Hon'ble Supreme Court has held that a mere violation of conditions of service will not provide a valid basis for the exercise of the Writ jurisdiction under Article 226 in a situation where the activity does not have the features of public duty. In the said judgment, a reference note was made from a book '*Judicial Review of Administrative Action*' authored by *De Smith Woolf and Jowell*. The said commentary has jotted down certain decisions to find out whether certain functions are public functions or not. The above reference is reproduced



hereunder:

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“7. In de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law e.g. the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest... After detailed discussion, the learned authors have summarised the position with the following propositions:

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a ‘public’ or a ‘private’ body.

(2) The principles of judicial review prima facie govern the activities of bodies performing public functions.” (2001) 1 SCC 298 “



(3) *...In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:*

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.”

13. In *Binny Ltd. Vs. V.Sadasivan*, the Court has observed that it is difficult to draw a line between public functions and private functions when it has been discharged by a purely private authority. It is stated that the body is performing a public function when it seeks to achieve some



collective benefit for the public or a section of the public and it is accepted by the public or that section of the public as having authority to do so. Thus the Court has concluded as under:

“29. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If a private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action...There cannot be any general definition of public authority or public action. The facts of each case decide the point.”

14. The above distinction clarifies that the public duty is not only related to the nature of the body as public but it predominantly depends



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upon the nature of the duty whether it is public or private. The duty performed by the private body which has a public impact, then the aggrieved can invoke public law remedy by way of filing a Writ Petition. So far as the public body is concerned, it is immaterial whether the functions of public body is done due to the power drawn from a statute or otherwise or in other words, the constitution of public body itself is for rendering certain public functions and hence it is not necessary that the said public body should derive its power through any statute or from any statutory authority. All that the Court has said is that it depends upon the facts of each and every case.

15. Now coming back to the facts involved in this case, the nature of employment between the Council and the employees are private in nature and the service of its employees can be dispensed if their service is no more required without getting any approval from the Government. In Ramakrishna Mission's case, the Supreme Court has held that the contract of pure private nature cannot be subjected to Writ jurisdiction just because they are structured by statutory provisions. However, an exception is carved out from the above general statement in respect of contract of



service governed or regulated by the statutory provision. The relevant part of the judgment is extracted hereunder:

"34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in [K K Saksena](#) (supra) this Court held that when an employee is a workman governed by the [Industrial Disputes Act, 1947](#), it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

35. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. [The Act](#), inter alia, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act



does not govern contracts of service entered into by the Hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved.

36. For the above reasons, we are of the view that the Division Bench of the High Court was not justified in coming to the conclusion that the appellants are amenable to the writ jurisdiction under [Article 226](#) of the Constitution as an authority within the meaning of the Article.

37. For the reasons that we have adduced above, we hold that neither the Ramakrishna Mission, nor the hospital would constitute an authority within the meaning of [Article 226](#) of the Constitution."

16. It has been made clear in the above case that even though the clinical establishments have required to satisfy certain conditions for registration under the Regulation Act in force, the act has got nothing to do with the contract of service entered into by the hospital with its employees.



WEB COPY 17. But the facts of the case in hand is different because the employees are not employed by those bodies whose authenticity has to be governed by the Council. But it is about the employees employed by the Council to aid the functions performed by the Council. Though it appears by virtue of the assistance rendered by the employees of the Council to execute the public functions of the Council, they have to be treated as public servants, the situation needs further analysis.

18. There is a difference between the functions rendered by the employees in order to execute the public duties of the Council and the employment contract between the Council and the employees. In this regard, it is worthwhile to appreciate whether the employees of the Council are getting the salary from the public exchequer. The staff strength and condition of service are under the statute, however by giving leverage to the Council to increase or decrease the cadre strength depending on its resource position. Since the leverage has been in view of its financial position, it goes without saying that the council meets out the salary and other monetary commitment in respect of its staff only from its own funds and not by



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getting any financial aid from the government.

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19. The statute prescribes the qualification, eligible age, scale of pay and the desirable experience etc., of each post that can be filled up by the Council. So the authority given to the Council to decide the cadre strength either to sustain or dispense with the services of any its employees depending on its cadre would show the autonomy given to the council in the matter of employment without depending on the Government's approval. So with the above employment position of the staff in the council, it can only be concluded that though the services rendered by the staff is public in nature, they do not hold any public employment.

20. So far as the post of Registrar is concerned, the act itself would thoroughly makes a distinction by prescribing that the post of Registrar is completely at the pleasure of the Council. Such kind of appointments would completely fall under the doctrine of pleasure and in such case there cannot be any question of violation of principles of natural justice, in the event of terminating the services of a Registrar at the discretion of the Council. So there cannot be any demand for opportunity to defend before



getting an order of termination. ***In Krishna Vs. State of Maharashtra***

reported in 2001 (1) SCR 504, the above legal position has been held as

below:

"Once doctrine of pleasure is applicable neither the principle of natural justice would step in nor any question of giving opportunity before removal would arise. It is significant when stigma is cast then SUB-SECTION (3) of [Section 10](#) specially provides for giving an opportunity to such incumbent before passing an order of removal under [Section 10](#), while there is no such corresponding sub-section under [Section 6](#). Thus intent of legislature is very clear which reinforces the inference which we have drawn that doctrine of pleasure is implicit under [Section 6](#). In [Om Narain Agarwal and Ors. v. Nagpur Palika, Shahjahanpur and Ors.](#), [1993] 2 SCC 242, this Court was considering the provisions of [Section 9](#) of the U.P. Municipalities Act, 1916 as introduced by U.P. Act 19 Of 1990, which made provision for the nomination of two women members by the State Government, and fourth proviso provides that the nomination of such two members is at the pleasure of the State Government This Court held:



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"The initial nomination of the two women members itself depend on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority to any residents of the Municipal Board behind them as may be present in the case of an elected member.....But so far as the nominated members are concerned, the legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the legislature had no such power to legislate the fourth proviso. The attack is based on [Articles 14](#) and [15](#) of the Constitution.

In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to [Section 9](#) of the Act puts any stigma on the performance or



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character of the nominated members. It is done purely on political considerations."

21. While applying the above position to the facts involved in this case, now it has to be seen whether Dr.G.Josephine R.Little Flower's engagement with the Central Government is on deputation or at the closure of her engagement with the Council. The notification dated 04.10.2012 issued by the Government of India states that on recommendation of UPSC, the President was pleased to appoint Dr.G.Josephine R.Little Flower as a Nursing advisor in the Nursing Division under the Ministry of Health and Family Welfare on deputation basis in the Forenoon on 03.10.2012. However, it is not known whether Dr.G.Josephine R.Little Flower had applied to the said post with the knowledge of the Council and whether the Council was pleased to depute her to render the service with the Central Government. No relieving order was issued by the Council to Dr.G.Josephine R.Little Flower before she proceeded to accept her new appointment as the Nursing Advisor in the Central Government. In such case, it is not out of place to presume that Dr.G.Josephine R.Little Flower herself had relinquished her service to the Council and proceeded to join



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the Central Government assignment.

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22. Admittedly, the Council does not have any provision for deputation to foreign service. Even if it is assumed that it is the discretion of the Council to send any one on deputation, no such resolution has been passed in any of the Council's meeting in respect of Dr.G.Josephine R.Little Flower and no order has been issued to that effect.

23. The President of the Council unilaterally has written a letter to the Government to repatriate Dr.G.Josephine R.Little Flower back to the Council vide letter dated 25.03.2017. Though the letter dated 25.03.2017 is titled as the proceedings of the President, it does not have any reference about the resolution of the council passed to that effect. It is obviously because the council has not passed any resolution and the President acts on his own without waiting for the matter to be dealt by the council in a council meeting,

24. The services of Dr.G.Josephine R.Little Flower with the Central



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Government got closure with effect from 28.03.2017. Prior to that, the Council has passed resolution to dispense her service with effect from 21.03.2017. Now a question has arisen whether the services of Dr.G.Josephine R.Little Flower be terminated retrospectively even before her deputation ceased with the Central Government.

25. Had Dr.G.Josephine R.Little Flower deputed to the Central Government with any /deputation cum relieving order by the Council and only thereafter she has assumed her charge of the Central Government assignment in the capacity of Nursing Advisor, it is possible to presume that the Council has passed the resolution dated 21.03.2017 without any authority and no such retrospective resolution be passed. Now the whole issue raised in various Writ Petitions would revolve around the following two points for consideration:

- "i) Whether the dismissal order dated 21.03.2017 of Dr.G.Josephine R.Little Flower is valid in law?
- ii) If it is *void ab initio* can it be later validated by subsequent order dated 15.02.2021?

26. As stated already Dr.G.Josephine R.Little Flower was not



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relieved from the Council to go on deputation and assume her new role as Nursing Advisor in the Government of India and neither the Council has passed any resolution subsequently to get her back to the Council. All that was done in this regard is a communication established by the President of the Council unilaterally without consulting the members of the council and making them to pass a resolution in support his actions. So no validity can be attached to the letters of the President issued in the matter of Dr.G.Josephine R.Little Flower.

27. So the act of Dr.G.Josephine R.Little Flower choosing to undertake the Central Government is nothing but abandoning her services with the Council with an intention to proceed and join as Nursing Advisor, without waiting to get any approval or relieving order from the Council. When the Council did not relieve and depute her, it is not necessary for the Council to call her back unless it is a kind of a reappointment. The services rendered by Dr.G.Josephine R.Little Flower as a Nursing Advisor in the Central Government can not even be considered as a continuing service of the Council. In fact, the resolution dated 21.03.2017 for ceasing the services of Dr.G.Josephine R.Little Flower itself is superfluous because of



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the fact that Dr.G.Josephine R.Little Flower herself has abandoned her services for accepting new assignment with the Central Government. In such case, the question of terminating the services of retrospective effect itself is a superfluous one. So the resolution No.40 of the Council to terminate the services of Dr.G.Josephine R.Little Flower can just be considered as the confirmation given for the act of abandoning the service of the council done by Dr.G.Josephine R.Little Flower and so the question of retrospectivity even loses its relevance.

28. Even for any remote reasons if the resolution of the Council only confirms the termination of the service of Dr.G.Josephine R.Little Flower with the Council, it will not suffer from retrospectivity. Because the Council did not depute her services to the Central Government and hence it need not wait until she comes back in order to dispense her services.

29. If the President of the Council assumes all power upon himself and sends communications and letters to any individual and other Departments, that cannot have any validity. For the very same reason, the



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President does not have any power to question the appointment of Dr.S.Ani Grace Kalaimathi as Registrar of the Council. Because the rules of the Council would make it in an unequivocal terms that the Registrar can be appointed by the President for the first time and thereafter, the Registrars shall be appointed only by the Council on the decision and the recommendation made by the Executive Committee.

30. If the President of the Council does not abide the rules and pass orders on his own, that cannot have any binding effect. So Dr.S.Ani Grace Kalaimathi who was properly appointed by the Council alone can be considered as an authentic Registrar for the Council. The orders or communication issued or sent by the President in his individual or lonely council Head capacity will not have any binding effect on the Council or on any of the individuals who are governed by the Council. Since any staff of the unit of the Council can be terminated / dispensed by the Council, the services of the Registrar and can also be done and brought to an end. Hence, the resolution dated 21.03.2017 to terminate the services of Dr.G.Josephine R.Little Flower as a Registrar to the Council does not suffer



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from any legal infirmity despite its approves her termination with effect from any anterior date. As Dr.G.Josephine R.Little Flower, by her own act abandoned her engagement with the Council and proceeded to join as Nursing Advisor at the Central Government of India, the resolution terminating the services of Dr.G.Josephine R.Little Flower does not suffer from any technical difficulty.

31. In view of the above stated reasons, the subsequent impugned order dated 15.02.2021 also does not suffer from any legal infirmity. In whatever manner the matter is looked into, it gets only crystallised that Dr.G.Josephine R.Little Flower who was appointed as a Registrar can be terminated at any time at the pleasure of the Council. At the risk of repetition, it is reiterated that the President on his own interest cannot frame his own rules without abiding the rules of the Tamil Nadu Nurses and Midwives Act and pass communications to the individuals or to the Government and such communications cannot have any legal validity or authentication.

32. Consequent to the above findings, the appointment of Dr.S.Ani



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Grace Kalaimathi as the Registrar of the Council on the basis of the resolution of the Council is very much in accordance with the rules and hence it is legally valid and her services as a Registrar at the Council can be continued so long as the Council pleases.

33. After having dispensed the services of Dr.G.Josephine R.Little Flower, the Council does not have any obligation to initiate any disciplinary action and give her any opportunity to defend.

34. However, Mr. Viduthalai, the learned Senior Counsel for Dr.G.Josephine R.Little Flower submitted that if she is not given with an opportunity to disprove the allegations, her termination would cause a stigma to her.

35. In such case, Dr.G.Josephine R.Little Flower could have participated in the disciplinary proceedings, if she had an intention to get clearance from the allegations levelled against her. But she had even challenged the said proceedings and got it stalled. Even the Council itself



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can consider to issue a revised order of termination without any allegations by simply leaving the alleged irregularities as the subject matter for the pending criminal proceedings.

36. In view of the above stated reasons the batch of writ of petitions are disposed as below:

W.P.No.4875 of 2021 - This Writ Petition is disposed with the observation that the impugned communication has got no enforceability in view of the above stated reasons and hence it does not require any serious consideration.

W.P.No.8221 of 2017 - Since the Registrar's services can be dispensed at the pleasure of the Council, there is no illegality in the termination and hence this Writ Petition is dismissed.

W.P.No.33477 of 2018 – As this is consequential to the issue involved in W.P.No.8221 of 2017 and hence dismissed.

W.P.No.17081 of 2017 – As this also consequential to the result of W.P.No.8221 of 2017 and hence dismissed.

W.P.No.7932 of 2017 - Since the petitioner's termination has been upheld, she cannot be allowed to function as the Registrar of the Council and she is



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not entitled to the relief claimed in this Writ Petition and hence this Writ
Petition is dismissed.

W.P.No.7935 of 2017 - Since the appointment of Dr.S.Ani Grace Kalaimathi as the Registrar of the Council has been duly made in accordance with the rules, this Writ Petition is allowed.

W.P.No.7926 of 2017 - This Writ Petition is superfluous to the other Writ Petition filed by the Vice President in W.P.No.7935 of 2017. In view of the relief already granted in W.P.No.7935 of 2017, this Writ Petition is closed as superfluous.

Index: Yes
Speaking order
Neutral Citation : Yes
gsk

11.03.2024



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To
WEB COPY

- 1.The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.
- 2.The Tamil Nadu Nurses and Midwives Council,
Jayaprakash Narayanan Maligai,
56, Santhome High Road,
Mylapore, Chennai - 14.



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W.P.No.4875 of 2021 etc. batch

R.N.MANJULA ,J.

gsk

W.P. Nos.4875 of 2021, 17081, 7932,
7935, 8221, 7926 of 2017 and
W.P.No.33477 of 2018

11.03.2024