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Writ Petition No.17339, 17340 & 17341 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.17339, 17340 & 17341 of 2018
& WMP Nos.20600, 20601 & 20602 of 2018

R.Kasthuri

..Petitioner in all WPs

vs.

1.The State of Tamilnadu,
rep. by its Principal Secretary to Government,
Health & Family Welfare Department,
Fort St George,
Chennai-600 009

2.The Director,
Public Health & Preventive Medicine,
No.359, DMS Campus, Anna Salai,
Teynampet, Chennai-600 006

3.The Deputy Director of Health Services,
Vengikal Old Collector Building,
Ezhilnagar, No.314, Vellur Main Road,
Thiruvannamalai District.

4.The Block Medical Officer,
Government Primary Health Centre,
Vanapuram,
Thiruvannamalai District-606 753

.. Respondents in all Wps.



PRAYER in WP No.17339 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in G.O.Ms.No.5, Public Health & Family Welfare (L1) Department dated 04.01.2017 and quash the same in so far as clause(c) is concerned as under the said clause, 17 Village Health Nurses will be given increment in salary notionally from the date of joining service and monetary benefits alone will be given from the date of G.O, as per Section 28, sub-clause 2 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and consequently direct the first respondent to issue an amendment to G.O.Ms.No.5, Public Health & Family Welfare (L1) Department dated 04.01.2017 by giving both increments in salary and monetary benefits to the petitioner from the date of joining service.

PRAYER in WP No.17340 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the letter dated 16.11.2014 in ref.Na.Ka.no.4412/A5/2013 of the third respondent herein by which the orders of regularisation and declaration of probation of the petitioner was cancelled and quash the same as arbitrary and violative of Article of 14 of the Constitution of India since the impugned letter dated 16.11.2014 is contrary to G.O.Ms.No.5 dated 04.01.2017 under which the age relaxation under Rule 5(a) of the Adhoc Rules and regularization of the services of the petitioner was declared as from the date of her initial appointment on 22.12.2000 and consequently forbear the Block Medical Officer, Primary Health Centre, Thiruvannamalai, the 4th respondent herein from deducting



any amount from the retirement benefits of the petitioner, who retired as Village Health Nurse on 31.05.2018.

PRAYER in WP No.17341 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the first respondent to refund a sum of Rs.7,25,715/- paid by the petitioner on 11.05.2018 as alleged excess claim of pay and allowances from 22.12.2000 to 03.01.2017 into the Government Treasury under DO code PH 354 and date proceedings code no.021004800AD0204 under the head of Account 0210-other receipts 04-Public Health 800-Other receipts, Ad-other Public receipts.

For Petitioners(in all Wps.): Mr.R.Venkatavaradhan for
for Ms.C.Uma

For Respondents(in all Wps.): Mr.K.Tippusulthan, GA

COMMON ORDER

The present Writ Petitions have been filed by the petitioner, for the following reliefs, viz.,

i) challenging G.O.Ms.No.5, Public Health & Family Welfare (L1) Department dated 04.01.2017 and quash the same in so far as clause(c) is concerned and consequently direct the first respondent to issue an amendment to G.O.Ms.No.5, Public Health & Family Welfare (L1) Department dated 04.01.2017 by giving both increments in salary and monetary benefits to the petitioner from the date



of joining service;

ii) challenging the proceedings dated 16.11.2014 in ref.Na.Ka.no.4412/A5/2013 of the third respondent herein by which the orders of regularisation and declaration of probation of the petitioner was cancelled and consequently, to forbear the Block Medical Officer, Primary Health Centre, Thiruvannamalai, the 4th respondent herein from deducting any amount from the retirement benefits of the petitioner, who retired as Village Health Nurse on 31.05.2018; and

iii) to direct the first respondent to refund a sum of Rs.7,25,715/- paid by the petitioner on 11.05.2018 as alleged excess claim of pay and allowances from 22.12.2000 to 03.01.2017 into the Government Treasury under DO code PH 354 and date proceedings code no.021004800AD0204 under the head of Account 0210-other receipts 04-Public Health 800-Other receipts, Ad-other Public receipts.

2. The petitioner was appointed as Village Health Nurse in the Department of Public Health and Preventive Medicine. She filed a Writ Petition in WP No.17339 of 2018 against the order passed by the first respondent in G.O.Ms.No.5, Public Health & Family Welfare (L1)



Department dated 04.01.2017, specifically clause 3(c) of the Government

Order granting pay benefits to the petitioner notionally from the date of the Government Order i.e., only with effect from 04.01.2017. As consequence of the above order, the third respondent has issued proceedings in Na.Ka.No.4412/A5/2013 dated 16.11.2014, wherein, the order of relaxation and probation of the petitioner was cancelled. Consequently, the first respondent issued proceedings to recover the payments effected to the petitioner from 22.12.2000 to 03.01.2017. All these actions are under challenge in the present Writ Petitions.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and the perused the entire material available on record.

4. Admittedly, the petitioner has been appointed on 22.12.2000 beyond the permissible age of 40 years as per Rule 5(a) of the Tamil Nadu Public Health Subordinate Service Rules. Despite age not having been relaxed, the third respondent has proceeded to regularise her appointment on 22.12.2000. Thus, she has not employed in the status of regular



employment with effect from that date. The impugned proceedings issued to recover the salary paid to her on the ground that her appointment is contrary to Rule 5(a) and that relaxation has not been obtained from the competent authority and as such, the appointment cannot be attributed to the failure on the part of the petitioner and the fact that she has not been appointed on regular basis and has been continued to work, however, ordered recovery of the amounts paid to her.

5.The learned counsel for the petitioner has drawn the attention of this Court to the order dated 15.12.2021 made in WP(MD)No.19618 of 2018, wherein, an identical issue was dealt with by this Court. It is also brought to the notice of this Court that the said order was confirmed by the Division Bench of this Court vide judgment dated 31.07.2023 in WA(MD) No.1229 of 2023.

6.On a careful perusal of the same, it appears that in the identical circumstances, the case of the petitioner in WP (MD) No.19618 of 2018 was considered and the orders impugned were set aside and it was also directed to refund the amounts recovered from the petitioner therein.



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WEB COPY 7.Having regard to the order, dated 15.12.2021 in WP (MD)

No.19618 of 2018, which was confirmed vide judgment dated 31.07.2023 in WA(MD) No.1229 of 2023, the present Writ Petitions are allowed and all the impugned orders are hereby quashed and accordingly, the respondents are directed to refund the amounts recovered from the petitioner within a period of eight (8) weeks from today. Further, all the consequential monetary benefits payable to the petitioner, shall be paid to the petitioner within a period of eight (8) weeks thereafter.

No costs.

Consequently, connected miscellaneous petitions are closed.

18.11.2024

Index : Yes/No
Speaking order:Yes/No
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BATTU DEVANAND, J

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To

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rep. by its Principal Secretary to Government,
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Public Health & Preventive Medicine,
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