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W.P.No.27466 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.27466 of 2024

and

W.M.P.Nos.29972 & 29973 of 2024

Dr.G.Chandramohan,
Senior Consultant and Professor of Nephrology,
Tamilnadu Government Multi Super
Speciality Hospital,
Chennai.

.. Petitioner

Vs.

1.State of Tamilnadu,
The Additional Chief Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Secretariat,
Chennai.

2.Directorate of Medical Education and Research,
Medical Department, DMS Campus,
Teynampet, Chennai – 600 006.

3.The Director,
Tamilnadu Government Multi Super Speciality Hospital,
Chennai.

.. Respondents

Prayer: 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 1st respondent in her proceedings Letter (D) No.895 dated



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19.08.2024 which was communicated by the 2nd respondent by letter dated 20.08.2024 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the respondents to permit the petitioner to retire on Voluntary Retirement from Government Service.

For Petitioner : Mrs.N.Kavitha Rameshwar
For Respondents : Mr.J.Ravindarn
Additional Advocate General
Assisted by
Mrs.M.Sneha
Special Counsel

ORDER

This writ petition has been filed challenging the impugned letter of the 1st respondent dated 19.08.2024 which was communicated by the 2nd respondent through letter dated 20.08.2024 and for a consequential direction to the respondents to permit the petitioner to take voluntary retirement from Government service.

2. When the matter was taken up for hearing on 18.09.2024, this Court passed the following order:

*“Mrs.M.Sneha, learned Special Counsel,
takes notice for respondents.*

2. This writ petition has been filed



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challenging the proceedings of the first respondent dated 19.08.2024, which was communicated to the petitioner by second respondent by letter dated 20.08.2024 and for a consequential direction to respondents to permit the petitioner to retire on Voluntary Retirement Scheme.

3. Heard Mrs.N.Kavitha Rameshwar, learned counsel for petitioner and Mrs.M.Sneha, learned Special Counsel appearing for respondents.

4. The main ground urged by learned counsel for petitioner is that the impugned order has failed to consider that in the year 2009, there were only four seats in the course of DM (Super Speciality) in Nephrology. This strength has subsequently increased to 10 seats in 2010 and 23 seats in 2023, in Government Medical Colleges. According to the petitioner, there are as many as 14 posts of Professor, 17 posts of Associate Professor and 61 posts of Assistant Professor/Senior Resident apart from one post of Director in the department of Nephrology. Therefore, it was contended that the super speciality cannot now be considered to be rare and it cannot be brought under the scarce category. In view of the same, learned counsel submitted that there is no reason to reject the claim made by the petitioner seeking for Voluntary Retirement without taking into consideration the present scenario. That apart, it was further contended that the scarce category is now taken into consideration only in cases not permitting the doctors falling under this category from leaving the Government service and taking up employment abroad. Learned counsel submitted that this is specifically dealt with in G.O.(D) No.1265,



dated 18.11.2004 and it will not apply to the case of the petitioner. The case of the petitioner will squarely fall within the requirement of a voluntary retirement for which FR 56(3)(f) alone must be fulfilled.

5. Considering the limited ground raised by learned counsel for petitioner, learned Special Counsel appearing on behalf of respondents shall take written instructions in this regard.

Post this writ petition at the end of the motion list on 30.09.2024.”

3.The facts of this case and the issue involved in the present case has been captured in the above order.

4.A counter affidavit has been filed by the respondents. The respondents have taken the following stand in the counter affidavit:

“11) It is submitted that day by day the number of patients attending OP & IP Departments with various kidney issues are increasing significantly. The number of patients who require Peritoneal Dialysis and Haemo Dialysis are also increasing everyday simultaneously. The existing posts of Senior Resident, Assistant Professor, Associate Professor and Professor sanctioned to the Department of Nephrology in various Government Medical College and Hospitals



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are not sufficient to meet out the patient's strength in order to provide better treatment to the poor patients who visit the Government hospitals with various kidney issues. At present around 9 posts of Assistant Professor, Associate Professor and Professor are vacant in various Government Medical College and Hospitals. The petitioner is presently working as Senior Consultant / Professor and also Head of the Department in Nephrology attached to Tamil Nadu Government Multi Speciality Hospital, Chennai which is one of the key post. In average around 2000 patients are providing Haemo Dialysis every month in the Tamil Nadu Government Multi Super Speciality Hospital, Chennai. If the request of the petitioner to permit him to retire voluntarily from Government service is considered, the patients care services of the said hospital will get affected.”

5.Heard the learned counsel for the petitioner and the learned Additional Advocate General assisted by the learned Special Counsel for the respondents.

6.The short issue that arises for consideration in the present writ petition is as to whether the impugned letter of the 1st respondent dated 19.08.2024 rejecting the request submitted by the petitioner to go on voluntary retirement, requires the interference of this Court.



7.The specific ground that has been raised by the petitioner is that he has submitted a request for voluntary retirement from service only due to his family circumstances. In paragraph No.6 of the affidavit filed in support of the writ petition, the petitioner has stated as follows:

“6.I submit that apart from having aged parents, I have a dependent brother who is mentally retarded and is completely dependent on others for his day-to-day life and personal maintenance, and who is presently 41 years of biological age.”

8.The learned counsel for the petitioner submitted that the petitioner is placed in a very piquant situation where he has to take care of his aged parents and also the dependent brother who is mentally retarded. The learned counsel submitted that the case in hand is not the one where the petitioner is attempting to move out of the Government service and seek for greener pastures. The learned counsel submitted that it is a genuine case where the petitioner has to necessarily take care of his family and therefore, the petitioner had sought for voluntary retirement.

9.The learned Additional Advocate General appearing on behalf of



the respondents submitted that the number of patients who are suffering from kidney diseases has increased significantly and therefore, the Nephrology Department definitely requires the services of the petitioner, who is experienced. The learned Additional Advocate General further submitted that the number of patients who are undergoing dialysis have increased significantly and there are no sufficient Doctors to take care of the inflow of patients in various Government Hospitals. Therefore, it was contended that if the petitioner is permitted to go on a voluntary retirement, it will cause huge administrative problems to handle the Nephrology Department. That apart, it will also set a precedent wherein others will also start putting in their letters seeing for voluntary retirement and in which event the Medical services in Tamil Nadu will suffer. Therefore, the learned Additional Advocate General contended that the request made by the petitioner cannot be considered and that there is no ground to interfere with the impugned letter issued by the 1st respondent.

10. In the considered view of this Court, it is not necessary for this Court to really enter into the scope of the relevant rules and give any interpretation as to whether the post held by the petitioner can be



considered to be a scarce post. This Court wants to deal with this writ petition more on humanitarian grounds. If this Court interprets the relevant rules and passes any order, it will set a precedent and it may give rise to future litigations on the same ground.

11.The petitioner has requested for voluntary retirement due to his family situation which has been explained *supra*. This is not a case where the petitioner is trying to move out of the Government job and make money elsewhere. This is one of those cases where the petitioner wants to genuinely take care of his family and his aged parents and brother are totally dependent on the petitioner. Therefore, this Court is inclined to consider this ground and grant the relief sought for by the petitioner.

12.This order is passed in exercise of the extraordinary jurisdiction conferred on this Court under Article 226 of the Constitution of India. While exercising this jurisdiction, this Court in a given case should also try to render substantial justice on the peculiar facts of that case. The case in hand is one such case where the relief should be granted on humanitarian grounds.



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13.In the light of the above discussion, the impugned letter of the 1st respondent dated 19.08.2024 is quashed and there shall be a direction to the respondents to permit the petitioner to go on voluntary retirement from Government service. It is made sufficiently clear that this order cannot be taken as a precedent in any other case and this order has been passed on the peculiar / extraordinary facts of the present case.

14.In the result, this Writ Petition is allowed with the above directions. Consequently, the connected Miscellaneous Petitions are closed. No costs.

29.10.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

To

1.State of Tamilnadu,

The Additional Chief Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Secretariat, Chennai.

2.Director of Medical Education and Research,
Medical Department, DMS Campus,
Teynampet, Chennai – 600 006.



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3. The Director,
Tamilnadu Government Multi Super Speciality Hospital, Chennai.

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N.ANAND VENKATESH, J.

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