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W.P.No.7834 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .01.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.7834 of 2017

1. M.Anbarasu
2. Reeba Irene Jeya Grace
3. B.Rejolin Mascarenhas

... Petitioners

Vs.

1. Tamilnadu Generation and Distribution Corporation
Ltd.,
rep. By its Secretary
10th Floor, 144, Anna Salai,
Chennai – 2
2. The Chairman and Managing Director,
Tamilnadu Generation and Distribution Corporation
Ltd., 10th Floor, 144, Annasalai,
Chennai – 2
3. The Chief Engineer (Personnel)
Tamilnadu Generation and Distribution
Corporation Ltd.,
8th Floor, 144, Annasalai,
Chennai - 2

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for an issuance of a Writ of Mandamus directing the respondents to revise the petitioner's salary with scale of pay as Rs.9300-34800+4450 on parity with the similarly placed staff nurses working under the State Government within



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the time period stipulated by this Court.

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For Petitioner : Mr. K. Thilageswaran

For Respondents : Mr.K.Rajkumar
Standing Counsel for TANGEDCO

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus directing the respondents to revise the petitioner's salary with scale of pay as Rs.9300-34800+4450 on parity with the similarly placed staff nurses working under the State Government within the time period stipulated by this Court.

2. The brief facts of the case, as averred by the petitioners, is as follows:-

(i) The petitioners herein were working as staff nurse in the respondent – Corporation without any promotion for the past several years. The post of staff nurse comes under medical service and comprises of the nature of work of Doctor, Nurse, Pharmacist and Assistant as a whole. The nature of work of the staff nurse of Tamilnadu Generation and Distribution Corporation Limited and the staff nurse employed under the State Government is one and the same.

(ii) After implementation of the Sixth Pay commission, the staff nurses under the state government are provided with scale of pay of



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Rs.9300-34800+4200/-, whereas, presently our scale of pay is Rs.5400-20200+2800/-. It is against the principle of equal pay for equal work enshrined in Article 14 of the Indian Constitution. Though the uniform salary provided to the staff nurses in the State Government has been adopted by the respondent – corporation, the scale of pay of the staff nurses in accordance with G.O.Ms.No.395 Finance Department dated 14.10.2010 has not been adopted so far in the petitioners' cases.

(iii) Though the petitioners are repeatedly seeking for revision of pay on parity with the staff nurses employed under the State Government till date, their request has not been considered. Further, there are lots of avenues of promotion to them, whereas, the petitioners have worked without any promotion and retired in the very same post as staff nurse without any promotion. Therefore, the petitioners have submitted a detailed representation dated 08.02.2017 to the respondents to revise the salary with scale of pay as Rs.9300/- - 34800+4450 on parity with the similarly placed staff nurses working under the state government. But till date, the same has not been considered, hence this petition.

3. The learned counsel for the petitioners would submit that the respondents ought to have considered the representation of the petitioners dated 08.02.2017, however, the same has not been done. Further, the



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respondents ought to have considered that the staff nurse employed under the State Government is getting higher pay than the petitioner working as staff nurse in the respondent – corporation. After the implementation of the sixth pay commission, the staff nurses under the state government are provided with scale of pay of Rs.9300-34800+4200, whereas, the petitioners provided with the scale of pay of Rs.5400-20200+2800, which is against the principle of equal pay for equal work enshrined in Article 14 and Article 39(d) of the Indian Constitution.

4. Lastly, the learned counsel for the petitioners relies on the Judgment of **Hon'ble Supreme Court reported in AIR 2016 SC 5176 [State of Punjab Vs. Jagjit Singh]** and the order passed by this Court in **W.P.No.2715 of 2015 [Tamilnadu Electricity Board Accounts and Executive Staff Union, Chennai Vs. The Presiding Officer, Chennai and Tamilnadu Electricity Board, Chennai]** to support his contention.

5. Resiting the same, the learned standing counsel appearing on behalf of the respondents submits that the TANGEDCO Nurses are working in Head quarters dispensary, Thermal Stations and Hydro stations. The nature of the work of the staff nurse and their timings is similar to that the employees in administrative works. The total sanctioned post of staff



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nurse in TANGEDCO is 16, at present, 13 staff nurses are utilized and 3 of them are vacant. Further, the staff nurses working in TANGEDCO could be able to attend the patients with normal disease minor ailments, attending to first aid with the available equipments in the dispensary and if the patients required any critical or emergency treatment, they are being referred to the nearby government hospitals and the same has to be taken care by the nurses, who are working in Government Hospital. The working condition of nurses in government hospitals are arduous in nature, the duties and responsibilities of staff nurse is that they should take care of every patients in their ward and give medicine time to time and attend hundreds of patients every day and to attend emergency works. Further, they are taking care of inpatient and outpatients who attended the government hospitals and they would attend shift duties in routine manner, therefore, the staffs working in TANGEDCO have no locus standi to claim the benefits on par with the Government staff nurse. That apart, if the request of the petitioners herein is considered, the effect has to be given to other 45 categories and it is not possible to revise the pay scale of all the categories.

6. The learned standing counsel for the respondents has produced a statement for memorandum of settlement under Section 12(3) of Industrial Dispute Act, 1947 on the Revision of wages to the employees with effect



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from 01.12.2015 to 22.02.2018, wherein it is mentioned that “ *As agreed in 2015 wage revision, clause related the pay parity on par with Government has not been taken into consideration till date due to heavy financial constraints in TANGEDCO. Further, it is also submitted that if the request for revision of pay scale is considered for staff nurse from Rs.5,400/- - Rs.20,200/- + 2,800 G.P. To Rs.9,300/- Rs.34,800/- +4450 G.P., on par with government scale, the entire group of 46 categories numbering about 17,000 employees will have to be revised which leads to heavy financial commitment to the management. Moreover, the responsibilities of staff nurse working in Government Hospitals and TANGEDCO dispensary is entirely different, hence the request of the petitioners praying to revise their salary in the scale of pay of Rs.9300-34800-4450 G.P.on par with state government is not feasible of compliance.*”

7. The learned standing counsel for the respondents in support of his contention relied on the Judgment of the Tripura High Court (Agartala) in the case of [Mr.Prafulla Shil Vs. The State of Tripura and Others] reported in 2021 (4) SLR 93 (Tri.), wherein it is held that “*the duties and responsibilities performed by the petitioners as Jr.Surveyor / Jr.Operators are similar and identital to that of Junior Draftsman / Jr.Surveyor or that of Overseer (Garden) / Jr.Overseer/ Jr.Overseer (Garden) having the benefit*



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of higher pay scale. The petitioners have failed to establish their functionalities and activities are equal to those of Jr.Surveyors / Jr.Draftsman” thereby dismissed the said petition. Therefore, applying the said principles, the learned standing counsel for the respondents pleaded to dismiss the present petition also.

8. A rejoinder affidavit has been filed by the learned counsel for the petitioners to the counter affidavit filed by the respondents wherein it is specifically stated that the qualification for the staff nurses in the Government Hospitals and TANGEDCO are one and the recruitments are also being made in the public notification. Further, the staff nurses in the Government Hospital are having an opportunity for promotion to several grades and the scale of pay would be considerably increased, whereas, the staff nurses in TANGEDCO though they are having equal qualification as that of government staff nurses, they are being fixed with less pay of scale and without any assistance they have to attend nearly 80 to 100 patients per day.

9. In reply to the rejoinder affidavit filed by the petitioners, the learned standing counsel appearing on behalf of the respondents has also filed a counter to rejoinder filed by the respondents and produced the comparison of duties and responsibilities of staff nurses working in government side and



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TANGEDCO. The duties of staff nurses working in TANGEDCO includes, Monitoring BP and Temperature, administering injections to the patients, ECG for patients, to attend the patients in case of emergency high rise building (EB Campus) and in case of critical condition shift the patient to the nearby government hospital, to look after the out patients, laboratory and physiotherapy services, preparing indent for procurement of medicine, equipments for laboratory and dressing materials and maintaining stock register. On the other hand, the duties of the staff nurses at Government includes, General care of the patient (8 jobs in number), Technical nursing care (10 jobs in number) Ancillary and clerical (9 Jobs in number), thereby pleaded to dismiss the petition.

10. Heard the submissions of learned counsel on either side and perused the pleadings, counter affidavit and rejoinder filed on either side.

11. It is relevant to point out that the nature of the work discharged by the staff nurse and their timings is similar to that of the staffs working in the administrative side and the staff working in TANGEDCO could be able to attend the patients with normal disease minor ailments, attending to first aid with the available equipments in the dispensary and if the patients required any critical or emergency treatment, the patients are being referred to the



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nearby government hospitals to avoid casualty, whereas, the working condition of the nurses in Government hospitals is not similar to that of staff nurse at TANGEDCO and the same is round the clock turn duty and that mere nomenclature of the post as 'staff nurse' is not the basis to claim parity of pay.

12. As far as the promotional opportunities for staff nurse in TANGEDCO is concerned, the orders have been issued sanctioning the selection grade to the staff nurse on completion of 9 years of service in the same post with two increments benefits and on completion of 20 years of service, they have been allowed with special grade with the benefit of additional two increments, hence the comparison is legally impermissible.

13. Now the point arises for consideration before this Court is whether staff nurses in TANGEDCO are entitled to pay parity with Government Staff Nurses according to the principle of 'Equal Pay for Equal Work'?

14. The principle of Equal Pay for Equal Work applies when both the reference post (the post having higher remuneration) and the subject post



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(the post having lower remuneration) share the same nature of duties. By

G.O (Ms.) No. 232, Health and Family Welfare (EAP II-1) Department dated 13.06.2018, (hereinafter referred to as GO 232) the Government enhanced salary of staff nurses from Rs. 7,700/- to Rs. 14,000/- per month with an annual increment of Rs. 500/- from 1.4.2018. The Paragraph No.1 of the G.O refers to G.O (Ms) No. 123, Health and Family Welfare (EAP II-1) Department, dated 09.05.2014 which allows the State Health Society to implement the “Rashtriya Bal Swasthya Karyakram” (RBSK) to provide screening and early intervention to children. This allowed the staff nurses to assist with the implementation of the scheme. Subsequently, paragraph no.3 of GO 232 states “Considering the need for nursing care, which is essential to deliver proper medical care, the Director of Medical & Rural Health Services has proposed that the salary of Staff Nurses may be revised...” It is clear that revision of pay was intended for persons in the cadre of staff nurses, who are engaged in providing medical care in the nature of treatment to the general public and not to specific employees of any government department.

15. Accordingly, the “Health and Family Welfare Department Policy Note 2023 – 2024” (hereinafter Policy Note) addresses various trainings that have been given to Staff Nurses to engage them in specific schemes to



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address the medical needs of the general public. Staff nurses employed by the State Government, thus, have a wide range of duties that are more onerous and varied from those of staff nurses employed in TANGEDCO. The following Government Orders make it evident that a higher degree of responsibility is imposed on Government Staff Nurses. The action that has been taken corresponding to each of these G.Os is provided in the Policy Note.

(i) G.O. (Ms.) No. 342, Health and Family Welfare (EAP II/2) Department, dated:14.12.2012. This G.O addresses the employment of staff nurses for reducing the Infant Mortality Rate (IMR) and Maternity Mortality Ratio (MMR). Paragraph 1 of the order states “To achieve the goals early, contractual Staff Nurses are posted under various programmes of Reproductive and Child Health (RCH), such as 24x7 days delivery services in Primary Health Care Centres (PHCs), Neonatal Intensive Care Units (NICUs), Mobile Medical Units (MMUs), Sick Neonatal Care Units (SNCUs), Post-partum Conusellors in Public Health Institutions for providing quality care to pregnant women and newborn.” (emphasis supplied). Paragraph 5.21 of page 98 of the Policy Note records that the State provides Basic Emergency Obstetric Care (BEmOC) in all PHCs “by ensuring the presence of 24x7 staff nurses” who are trained in maternal and child care. The G.O then provides for allocation of working hours and



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corresponding pay between nurses on duty so that the continuity of services is not disturbed when another nurse is on leave.

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(ii) G.O. (2D) No. 99, Health and Family Welfare (EAP1/1) Department, dated: 10.10.2014. This G.O provides for training of personnel to be engaged in Treatment of poisoning Intensive Medical Care and Basic Life Support under the Tamil Nadu Health Systems Project. Paragraph 2 of this G.O states that “poison treatment centers are manned by staff nurses all the 24 hours and they also need training”

(iii) G.O. (Ms.) No. 102, Health and Family Welfare (EAP II/2) Department, dated: 3.3.2016. This G.O deals with the efforts by the State to improve neonatal health by establishing Sick Neonatal Intensive Care Units (SNCUs). Paragraph 2 of the G.O states that “The Mission Director, National Health Mission has further stated that each unit is provided with 10 Staff Nurses and 3 Pediatricians to ensure 24x7 care for the neonates in the Sick Neonatal Intensive Care Units (SNCUs)” and “additional manpower in the form of staff nurses proposed to take care of the increased case load”

(iv) G.O. (Ms.) No. 127, Health and Family Welfare (EAP II-1) Department, dated: 11.04.2018. This G.O governs the recruitment of staff



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nurses and other personnel to the Reproductive Child Health (RCH) centres of excellence in Trichy and Tirunelveli Medical College Hospitals under the control of the Director of Medical Examination.

(v) G.O (Ms) No. 488, Health and Family Welfare (EAP II-2) Department, dated:17.10.2018. This G.O deals with the improvement of care for persons who are affected by accidents by increasing the number of staff nurses under the Tamil Nadu Accident and Emergency Care Initiative (TAEI). Paragraph 1 of the G.O states that “The post crash interventions include effective pre-hospital, in hospital and rehabilitation interventions such that the near death patients are revived and resuscitated in the golden hour...” One of the building blocks of TAEI is to ensure adequate Human resources in the TAEI centers such that good quality emergency care services are given to the public. The role of nurses has been acknowledged pivotal in this regard as they are the first ones to respond to the patients in the Emergency Room.” Paragraph 30.4 (I) in page 469 of the Policy Note states that 1,518 Staff Nurses have been trained in this regard.

(vi) G.O (Ms) No. 541, Health and Family Welfare (EAP II-1) Department, dated: 29.11.2019. This G.O concerns appointment of personnel in Pain and Palliative Care Units in various hospitals. Paragraph 5(ii) of the G.O allowed for the creation of posts for Staff Nurses. Paragraph



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12.19 (xiii) of the Policy Note states that 2,928 Staff Nurses have been trained in this regard.

16. It is clear from the above G.Os that the work requirements of Staff Nurses are intensive and laborious. The State Government Staff Nurses are employed in those institutions that provide 24x7 service unlike the Staff Nurses in TANGEDCO. While the treatment and care provided by the Staff Nurses in TANGEDCO is limited, Staff Nurses employed by the State Government may be engaged in a wide range of duties such as palliative care, emergency relief, maternal and child care, etc. The issue of disparity of salaries of Staff Nurses had been raised before in G.O (Ms) No. 322, Health and Family Welfare (EAPII-1) Department, dated: 17.10.2014 where the Project Director of the Tamil Nadu Health Systems Project raised the concern that if the contract pay of Staff Nurses employed under the National Rural Health Mission is increased, it “may lead to disparity among the contractual Staff Nurses working in the same institution within the same department with similar nature of duties”. Accepting the Director’s contention, the government uniformly increased the salary of Staff Nurses from Rs. 7,000/- to Rs. 7,700/- with effect from 01.04.2013. In the present case however, the “same institution, same department, similar duties” condition is not fulfilled.



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In view of the above, it is crystal clear that the demand of the Staff Nurses employed in TANGEDCO to be paid on par with Staff Nurses employed by the State Government cannot be entertained and the present Writ Petition deserves to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

.02.2024

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. Tamilnadu Generation and Distribution Corporation Ltd.,
rep. By its Secretary
10th Floor, 144, Anna Salai,
Chennai – 2
2. The Chairman and Managing Director,
Tamilnadu Generation and Distribution Corporation Ltd., 10th Floor, 144, Annasalai,
Chennai – 2
3. The Chief Engineer (Personnel)
Tamilnadu Generation and Distribution Corporation Ltd.,
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V.BHAVANI SUBBAROYAN J.

ssd



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