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W.P.Nos.576 of 2023 & 24237 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

W.P.Nos.576 of 2023 & 24237 of 2012

AND

W.M.P.Nos.525, 526 & 527 of 2023

A.Fareetha Banu

.. Petitioner in both WPs

Vs

1.State of Tamil Nadu
Rep. by Principal Secretary
Health & Family Department
Fort St. George
Chennai 600 009

2.The Deputy Director of Medical Education
Kilpauk
Chennai 600 010

.. Respondents in WP.576/23

1.The Principal Secretary to Government
Health & Family Welfare Department
Fort St. George, Chennai 600 009

2.The Director of Medical and Rural Health Services (ESI)
Teynampet, Chennai 600 006



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3.The Director of Medical Education
Kilpauk, Chennai 600 010

4.The Superintendent
Government RSRM lying in Hospital
Royapuram, Chennai 600 013

.. Respondents in WP.24237/12

W.P.No.576 of 2023 : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the 2nd respondent in Ref.No.43945/N2/2022 dated 13.06.2022 and quash the same insofar the name of the petitioner is not included in the panel for promotion to the post of Nursing Tutor Grade-I and consequently direct the 2nd respondent to refix the seniority of the petitioner in the post of Nursing Tutor Grade-II in the panel of 2004-2005 after S.Rajamani (S.No.7509) and before D.Maheswari (S.No.7609) and promote the petitioner with all consequential benefits.

W.P.No.24237 of 2012 : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to include the petitioner's name for the panel issued in the year 2005-2006.

For Petitioner in W.P.576/23	: Ms.T.Srivadivu for Mr.E.Balamurugan
For Petitioner in W.P.24237/12	: Mr.S.Ilamvaludhi
For Respondents in both W.P.s	: Mr.M.Bindran Additional Government Pleader



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COMMON ORDER

WEB COPY W.P.No.24237 of 2012 has been filed by the petitioner for a direction to the respondents to include her name in the panel issued in the year 2005-2006 and W.P.No.576 of 2023 has been filed challenging the panel prepared for promotion to the post of Nursing Tutor Grade-I by the 2nd respondent through proceedings dated 13.06.2022 and for a consequential direction to the 2nd respondent to refix the seniority of the petitioner in the post of Nursing Tutor Grade-II and also include her name in the present panel and promote her with all consequential benefits.

2. The case of the petitioner is that she joined as a Staff Nurse on 06.01.1993. Due to family problems, she was not able to regularly attend the hospital. Therefore, disciplinary proceedings were initiated against the petitioner for unauthorised absence. Initially, the 2nd respondent imposed a punishment of removal from service through proceedings dated 27.05.1996. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent. The 1st respondent, through proceedings dated 28.08.1997, modified the punishment and imposed the punishment of stoppage of



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increment for two years with cumulative effect. The 2nd respondent, through proceedings dated 25.01.2006, prepared a temporary panel for promotion of Staff Nurses to the post of Nursing Tutor Grade-II. The name of the petitioner was not included in this list, on the ground that there is pendency of disciplinary proceedings. Yet another panel was prepared on 06.07.2006 and even in this panel, the name of the petitioner did not find place.

3. Ultimately, through proceedings dated 26.07.2006, an order was passed by the Director of Medical and Health Services, publishing the final list of Staff Nurses, whose names were included in the temporary panel for the year 2004-2005. The name of the petitioner was not added in this panel. However, in the annexure, the name of the petitioner was shown in Sl.No.12 and the reason assigned for not including the name of the petitioner is stated as – pendency of disciplinary action.

4. The petitioner was ultimately promoted to the post of Nursing Tutor Grade-II, by including her name in the panel for the year 2007-2008. The petitioner was insisting for placing her name in the year 2004-2005



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panel. Further grievance of the petitioner is that most of her juniors had overtaken her and their names were found above the name of the petitioner in the seniority list.

5. The further case of the petitioner is that the 2nd respondent has now issued the proceedings dated 13.06.2022, by preparing the panel for promotion to the post of Nursing Tutor Grade-I for the year 2022-2023. In this panel, the name of the petitioner was not included. It is under these circumstances, the writ petition came to be filed before this Court questioning the impugned proceedings of the 2nd respondent dated 13.06.2022 and for other consequential reliefs.

6. The Principal Secretary to Government has filed a counter affidavit in W.P.No.24237 of 2012. The Director of Medical Education has filed a counter affidavit in W.P.No.576 of 2023.

7. The stand that has been taken in the counter affidavit is that the petitioner was reinstated into service by the Director of Medical Education



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through proceedings dated 26.09.1997 and the petitioner joined duty on 06.12.1997, after reinstatement. The declaration of probation happened only on 15.02.2008 and the probation was declared w.e.f. 05.12.1999. It is therefore contended that the name of petitioner, cannot be considered for the panel that was prepared in 2004-2005 and 2005-2006 and it was considered only while drawing the panel for the year 2007-2008. Accordingly, the petitioner was promoted as Nursing Tutor Grade-II. The respondents have relied upon Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. By relying upon this provision, the respondents have taken a stand that the non-declaration of probation when the panel was drawn for 2004-2005, 2005-2006 and 2006-2007, did not entitle the petitioner to be included in these panels. Based on the declaration of probation on 15.02.2008, the name of the petitioner was included in the panel 2007-2008 and she was promoted. Since the petitioner does not have the sufficient seniority, her name was not included in the panel for promotion to the post of Nursing Tutor Grade-I. Accordingly, the respondents have sought for dismissal of both the writ petitions.



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8. Heard Ms.T.Srivadivu and Mr.S.Ilamvaludhi, learned counsels for the petitioner and Mr.M.Bindran, learned Additional Government Pleader appearing for the respondents.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. The short issue that arises for consideration in these writ petitions is as to whether the petitioner is entitled to be included in the 2004-2005 panel, by refixing her seniority and consequently, the petitioner has to be considered for promotion to the post of Nursing Tutor Grade-I.

11. There is no dispute with regard to the fact that disciplinary proceedings were initiated against the petitioner for unauthorised absence. Initially, the petitioner was removed from service by the 2nd respondent through proceedings dated 27.05.1996. On an appeal filed by the petitioner before the 1st respondent, the 1st respondent modified the order of the 2nd respondent and the punishment of stoppage of increment for two years



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with cumulative effect was imposed. The petitioner was reinstated into service on 06.12.1997. There is also no dispute with regard to the fact that the unauthorised absence period of the petitioner was regularised by the Government through proceedings dated 07.08.2007. Ultimately, probation was declared through proceedings dated 15.02.2008 w.e.f. 05.12.1999.

12. If the probation of the petitioner is declared as completed as on 05.12.1999, it has to be logically concluded that the petitioner would have been entitled to be added in the 2004-2005 panel, while considering the promotion to the post of Nursing Tutor Grade-II. Unfortunately, this could not happen, since the order itself was passed only in the year 2008. The consequence of such order being passed is that the deemed probation of the petitioner is complete on 05.12.1999 and therefore, the petitioner technically could have been considered for promotion, even during the first panel that was drawn in the year 2004-2005.

13. It will be very difficult to go back on time and include the name of the petitioner in the year 2004-2005 panel, since it will completely disrupt



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the entire promotions that have taken place thereafter. However, the petitioner cannot be deprived of being notionally considered to be included in the year 2004-2005 panel. Obviously, the seniority of the petitioner must be reckoned from there, even though she was ultimately promoted to the post of Nursing Tutor Grade-II only while preparing the panel for 2007-2008. This has now resulted in a cascading effect and the juniors of the petitioner have overtaken the petitioner in their seniority and as a consequence, the name of the petitioner does not find place in the panel that was prepared by the 2nd respondent, for next promotion to the post of Nursing Tutor Grade-I.

14. It is brought to the notice of this Court that the panel that was prepared by the 2nd respondent through proceedings dated 13.06.2022 has already been acted upon and the promotion has also been granted to those persons, whose names were found in the panel.

15. In the light of the above discussion, this Court holds that the name of the petitioner must be notionally deemed to have been added in the panel



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of the year 2004-2005. As a consequence, the petitioner must be considered for promotion to the post of Nursing Tutor Grade-I, by refixing her seniority.

Considering the fact that the petitioner is retiring from service next year, this process shall be completed by the respondents, within a period of three months from the date of receipt of a copy of this order.

Both the writ petitions are disposed of with the above direction.

No costs. Connected W.M.P.s are closed.

06.08.2024

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Index : Yes/No

Neutral Citation : Yes/No



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N.ANAND VENKATESH, J.

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