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W.A.(MD).No.118 of 2011 and W.P.(MD).No.1194 of 2011 & W.P.No.5880 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

W.A.(MD).No.118 of 2011
and
W.P.(MD).No.1194 of 2011 and W.P.No.5880 of 2010
and
M.P.Nos.1, 3, 4 of 2010, 1 of 2011, M.P.(MD).Nos., 1, 1, 2, 2,
2, 3, 4 & 5 of 2011

W.A.(MD).No.118 of 2011

Private Studied Nurses Association,
Represented by its President,
S.Senthilnathan.

.. Appellant/3rd Party

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai – 9.

2.The Director of Medical Services,
Teynampet,
Chennai – 18.

3.The Registrar,
The Tamil Nadu Nurses and Midwives Council,
Chennai – 4.

.. Respondents/Respondents



W.A.(MD).No.118 of 2011 and W.P.(MD).No.1194 of 2011 & W.P.No.5880 of 2010

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to allow the Writ Appeal and set aside the order dated 25.10.2010 passed by the learned Judge in W.P.(MD).No.12971 of 2009 and on the file of this Court.

For Appellant : Mr.N.G.R.Prasad

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

W.P.(MD).No.1194 of 2011

Adilakshmi

.. Petitioner

Vs.

1.The State Government of Tamil Nadu,
Represented by its Secretary,
(Health and Family Welfare Department),
Fort St.George,
Chennai - 9.

2.Director of Medical Education,
Represented by its Director,
Kilpauk,
Chennai - 10.

3.Director of Medical and Rural
Health Services, DMS Campus,
Represented by its Director,
Teynampet,
Chennai.

4.Director of Public Health and
Preventive Medicine,
Represented by its Director,
DMS Campus, Teynampet,
Chennai.



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5. Tamil Nadu Nursing Council,
Represented by its Registrar,
Santhome Church,
Jayaprakash Narayanan Maligai,
Mylapore, Chennai.

6. Indian Nursing Council,
Represented by its Secretary,
Kotla Road,
Combined Council Building,
Temple Land,
New Delhi.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Declaration, declaring the Rules in Appendix VIII part I and in particular Rules 5 and 16 of Madras Medical Code for Training and Recruitment of Nurses in Government Hospitals in the State of Tamil Nadu and Consequential Rules 11 of Tamil Nadu State and Subordinate Service Rules (Part I and II) as far as appointment and training of nurses, petitioner is concerned as ultra vires Articles 14 and 16 of the Constitution of India null and void and unconstitutional.

For Petitioner : Mr.Anwar Sameem
for Mr.I.Irulappan

For R-1 to R-4 : Mr.D.Sadiq Raja
Additional Government Pleader

For R-5 & R-6 : No appearance

W.P.No.5880 of 2010

Tamil Nadu Recognized Private Nursing
Schools and Colleges Association,
Represented by its President,
R. Vivekanandan.

.. Petitioner



W.A.(MD).No.118 of 2011 and W.P.(MD).No.1194 of 2011 & W.P.No.5880 of 2010

Vs.

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- 1.The State Government of Tamil Nadu,
Represented by its Secretary,
(Health and Family Welfare Department),
Fort St.George,
Chennai – 600 009.
- 2.Director of Medical Education,
Represented by its Director,
Kilpauk,
Chennai - 10.
- 3.Director of Medical and Rural
Health Services, DMS Campus,
Represented by its Director,
Teynampet, Chennai.
- 4.Director of Public Health and
Preventive Medicine,
Represented by its Director,
DMS Campus, Teynampet,
Chennai.
- 5.Tamil Nadu Nursing Council,
Represented by its Registrar,
Santhome Church,
Jayaprakash Narayanan Maligai,
Mylapore, Chennai.
- 6.Indian Nursing Council,
Represented by its Secretary,
Kotla Road,
Combined Council Building,
Temple Land,
New Delhi.
- 7.D.Paramasivam



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8.V.Shanmugam

9.P.Indumathi

10.G.Devika

11.M.Ronald Regan

12.M.Musafer Kani

13.M.Alagar Raja

.. Respondents

(R-7 to R-13 impleaded vide Court order dated 01.12.2010 in M.P.No.2 of 2010 in W.P.No.5880 of 2010)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Declaration, declaring the Rules in Appendix VIII part I and in particular Rules 5 and 16 of Madras Medical Code for Training and Recruitment of Nurses in Government Hospitals in the State of Tamil Nadu and Consequential Rule 11 of Tamil Nadu State and Subordinate Service Rules (Part I and II) as far as appointment and training of nurses in Government Hospital and Health Center in the State of Tamil Nadu is concerned as ultra vires Articles 14 and 16 of the Constitution of India and unconstitutional.

For Petitioner : Mr.Anwar Sameem

For R-1 to R-4 : Mr.D.Sadiq Raja
Additional Government Pleader

For R-5 & R-6 : No appearance



W.A.(MD).No.118 of 2011 and W.P.(MD).No.1194 of 2011 & W.P.No.5880 of 2010

COMMON JUDGMENT

DR.G.JAYACHANDRAN,J.

and

C.KUMARAPPAN,J.

The Writ Petition in W.P.(MD).No.1194 of 2011 was filed by one Adilakshmi, seeking a Writ of Declaration to declare the Rules in Appendix VIII part I and in particular, Rules 5 and 16 of Madras Medical Code for Training and Recruitment of Nurses in Government Hospitals in the State of Tamil Nadu and Consequential Rule 11 of Tamil Nadu State and Subordinate Service Rules (Part I and II) as far as appointment and training of nurses is concerned as ultra vires to Articles 14 and 16 of the Constitution of India.

2. Prior to the said Writ Petition, W.P.(MD).No.12971 of 2009 was preferred by three individuals to declare the method of selection to the post of Nurses in the Government Hospitals in Tamil Nadu as per the Tamil Nadu Medical Subordinate Service Rules as unconstitutional. The Writ Petition in W.P.(MD).No.12971 of 2009 filed by the three individuals came to be dismissed by the learned Single Judge of this Court on 25.10.2010, holding that the challenge made to the Government Rules is misconceived. Being



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aggrieved, the Association as a third party preferred a Writ Appeal in W.A.(MD).No.118 of 2011.

3. On 31.03.2011, the Writ Petition filed by Adilakshmi, i.e., W.P.(MD).No.1194 of 2011 and the Writ Appeal in W.A.(MD).No.118 of 2011 filed by the Association as third party challenging the dismissal order passed in W.P.(MD).No.12971 of 2009, were taken up together for consideration and disposed of by the Division Bench of this Court with the following observations:

“16. As far as Nursing Council Act, which came into force from the year 1947, at the relevant point of time, there might have been scarcity of nurses and because of that, the Government might have started giving stipend and other benefits and also assurance to take them in Government Service on their executing a bond to serve in Government Hospitals for a period of three years. But the position is totally different now. Learned Senior Counsel for the petitioners submitted that even stipend is given only to limited students and not to everybody. Under such circumstances, when there is no prohibition under the rules, we are not able to accept the contention of the respondents that admission to the course in the Government Institutions itself is an appointment and therefore the claim of the



students of private institutions can totally be ignored and excluded. Apart from this, as rightly pointed out by the learned Senior Counsel appearing for the petitioners, it is a clear institutional preference given to the students of the Government Institutions. Till the completion of the course, one has to be treated as a student and after completion of the course, in the second stage, basing on the qualifications secured and after the process of selection basing on the performance in the selection alone, a claim of the candidate can be considered for appointment and not basing on the admission to the course itself. When this procedure is not followed in all other courses, including MBBS course, we are unable to understand why this total exclusion in the case of students of private Nursing Institutions.

17. Therefore, the respondents are directed to consider the case of the students who have come out successfully in the Nursing Course from private institutions, along with the students of the Government Institutions, for appointment to the post of Nurses in Government Hospitals in future vacancies. The order of the learned Single Judge passed in W.P.No.12971/2010, dated 25.10.2010, for the reasons discussed above, is set aside. Since there is no bar in the rule with regard to the Appointment, as far as the challenge with regard to the rule is concerned, we are not inclined to grant such relief.



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18. In the result, both the writ appeal and the writ petition are disposed of. No costs. miscellaneous petitions are closed.”

4. This order was again subjected to review by the Division Bench of this Court at the instance of the five individuals. In the Review Applications, having found that the dispute being the priority given to the Nurses educated and trained under the Government institutions and the Nurses educated and trained under private institutions, qua the Service Rule has been decided without giving opportunity to the representatives of the private institutions and therefore, the matter has to be considered afresh after affording opportunity to the candidates, who undergone the training through Government institutions and for the said purpose, the Division Bench directed the parties to take effective steps by way of publication to serve on the persons who have undergone training through Government institutions. This order came to be passed in the light of the High Court Rules then prevailing regarding the filing of Writ Petitions under Rule 2A.

5. Being aggrieved by the order passed by the Division Bench in the Review Applications, the Private Studies Nurses Association preferred appeal before the Hon'ble Supreme Court, but later, has withdrawn the



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same. Thus, the issue to consider the Writ Appeal in W.A.(MD).No.118 of 2011 along with W.P.(MD).No.1194 of 2011 got alive and pending consideration till date.

6. When the matter was taken up for final disposal, the learned counsels appearing for the appellant in W.A.(MD).No.118 of 2011 and the petitioners in W.P.(MD).No.1194 of 2011 and W.P.No.5880 of 2010 submitted that pending disposal of the matter, the Government had issued G.O.(Ms)No.29, Health and Family Welfare (C1) Department dated 18.01.2012, wherein, reference was made to the orders passed in W.A.(MD).No.118 of 2011, W.P.No.5880 of 2010, Review Application (MD).Nos.37, 79 and 31 of 2011 and the order of the Hon'ble Supreme Court in SLP (Civil) CC Nos.19282 to 19284 of 2011 dated 17.11.2011. The Government has passed an order to the effect that in future, all vacant posts of Nurses in all Government medical institutions shall be filled up from among the trained Nurses both in the Government institutions and Government approved private nursing institutions by conducting an examination by Medical Services Recruitment Board constituted under G.O.(Ms).No.1, Health and Family Welfare (C2) Department dated 02.01.2012 duly following the rule of reservation and orders accordingly.



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7. In the light of the above G.O.(Ms)No.29 dated 18.01.2012, the learned counsels appearing for the appellant in W.A.(MD).No.118 of 2011 and the petitioners in W.P.(MD).No.1194 of 2011 and W.P.No.5880 of 2010 submitted that the matter has become infructuous and nothing survives in the Writ Appeal and Writ Petitions.

8. In view of the above submission, the Writ Appeal and the Writ Petitions are dismissed as infructuous. If any of the parties are aggrieved by the terms of G.O.(Ms).No.29 dated 18.01.2012 or implementation of the said G.O., it is a different cause of action and it may not be looked into in this matter by this Court. Hence, the parties are at liberty to work out their remedy in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(G.J.,J.) (C.K.,J.)
12.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm



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To

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1. The Secretary,
State Government of Tamil Nadu,
(Health and Family Welfare Department),
Fort St. George,
Chennai – 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai - 10.
3. The Director of Medical and Rural
Health Services, DMS Campus,
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The Tamil Nadu Nurses and Midwives Council,
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DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

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