



W.P.(MD)No.8859 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.8859 of 2024

M.Kalyani

... Petitioner

Vs.

The Director,
Director of Medical and Rural Health Service,
Chennai-06.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent to consider and promote the petitioner to the post of Nursing Superintendent Grade-II without reference to the criminal case pending in P.R.C.No.19 of 2023 before the learned Judicial Magistrate, Palani with all service and monetary benefits by considering the representation dated 16.03.2004.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.S.Shanmugavel
Additional Government Pleader



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ORDER

By consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. Mr.S.Shanmugavel, learned Additional Government Pleader takes notice for the respondent.

3. The petitioner has filed this Writ Petition seeking to consider and promote the petitioner to the post of Nursing Superintendent Grade-II without reference to the criminal case pending in P.R.C.No.19 of 2023 before the learned Judicial Magistrate, Palani, with all service and monetary benefits by considering her representation dated 16.03.2004.

4. The petitioner, who had participated in the counselling for promotion to the post of Nursing Superintendent Grade-II, has not issued with any promotion order. When the petitioner approached the Department, she came to know that no order has been passed, since the criminal case has been pending against her in Crime No.52 of 2020 for the alleged charges under Sections 417, 376 and 506 (i) IPC and after investigation was completed, charge



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sheet has also been filed in P.R.C.No.19 of 2023 before the learned Judicial Magistrate, Palani

5. The learned counsel appearing for the petitioner would submit that the petitioner has got only 2 ½ years of pending service and P.R.C.No.19 of 2023 was pending for more than one year and hence, her promotion may be considered. It is further submitted that the case has been registered in view of the love affair between the petitioner's son and another girl and therefore, there is no heinousness attached to the offence, for which, the petitioner has been charged.

6. The learned Additional Government Pleader appearing for the respondent would submit that the charges against the petitioner and her son are grave in nature.

7. Reliance was placed by the learned counsel for the petitioner in the Judgment of the Supreme Court in the case of *State of Punjab and others Vs. Chaman Lal Goyal* reported in (1995) 2 Supreme Court Cases 570, wherein, it is held that the promotion cannot be denied due to the delay in the criminal proceedings. The petitioner, who knows very well that P.R.C.No.19 of



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2023 is pending for a long time, could have approached the appropriate jurisdiction seeking for a direction for earlier disposal of the pending criminal case.

8. Had the promotion of the petitioner fell due before the criminal case came into existence? It could have been altogether different affair. But, it seems that the criminal case was registered prior to participation of the petitioner in the counselling for promotion. The relevant portion in the above said Judgment is extracted hereunder.

“12. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit



for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the Rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.”

9. It appears from the proceedings of the respondent dated 08.04.2024 that the promotion order granted to the petitioner was subsequently cancelled and it was deferred in view of the criminal case pending against the petitioner and the petitioner has got just 2 ½ years of pending service and no disciplinary action has been initiated in view of the pending criminal case and



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also taking into consideration of the inordinate delay in causing completing criminal case trial, I feel the respondent shall consider to re-issue the order of promotion subject to such conditions.

10. With the above observation and direction, the Writ Petition stands **disposed of**. No costs.

10.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG
To
The Director,
Director of Medical and Rural Health Service,
Chennai-06.



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R.N.MANJULA, J.

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