



W.P.No.9815 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

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THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

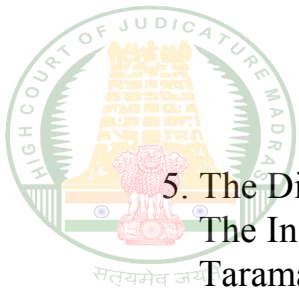
W.P.No.9815 of 2024
and WMP.No.10842 of 2024

1. P.Thenmozhi
2. R.Saraswathi
3. B.Selvarani
4. J.Nirmala
5. E.R.Radhai Vetrichelvi
6. A.Rejina Selvarani
7. R.Savithri
8. P.Vasanthi
9. S.Selvi
10. G.Jothilakshmi

... Petitioners

-Vs-

1. State of Tamil Nadu
rep.by its Principal Secretary to Government
Health and Family Welfare Department
Secretariat, Chennai 600 009.
2. The Director of Medical Education
Chennai 600 010.
3. The Director of Medical and Rural
Health Services
Chennai 600 006.
4. The Dean
Government Erode Medical College,
and Hospital at Perundurai
Erode District 638 052.



5. The Director
The Institute of Road Transport
Taramani, Chennai.

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6. M.Uma

7. M.Malliga

8. P.Manimekala

9. C.Sudha

10. J.Santhi

11. E.Tharani

12. M.Veeralakshmi

13. K.Mahalakshmi

14. K.Vijayalakshmi

15. G.Jayashree

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration declaring that the act of respondent No.3 of posting respondents 6 to 15 as Nursing Superintendent Grade II in respondent No.4 – Hospital would be violative of Articles 14 and 16 of the Constitution of India and directing the respondent No.3 to treat the petitioners as promoted to the post of Nursing Superintendent Grade II with effect from the dates respondents 6 to 15 were posted in respondent No.4 – Hospital with all consequential service benefits.



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For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.M.Bindran

Addl.Government Pleader for R1 to R5

Mr.C.K.M.Appaji

for R6 to R13 & R15

No appearance for R14

ORDER

This Writ Petition has been filed praying for issuance of a Writ of Declaration declaring that the act of respondent No.3 of posting respondents 6 to 15 as Nursing Superintendent Grade II in respondent No.4 – Hospital would be violative of Articles 14 and 16 of the Constitution of India and directing the respondent No.3 to treat the petitioners as promoted to the post of Nursing Superintendent Grade II with effect from the dates respondents 6 to 15 were posted in respondent No.4 – Hospital with all consequential service benefits.

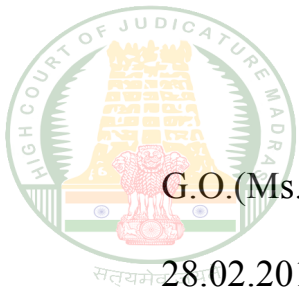
2. The case of the petitioners are that they are working as Staff Nurse (Special Grade) in respondent No.4-Hospital. All the petitioners have completed more than 30 years of service as Staff Nurse in respondent No.4-Hospital. The petitioners along with 31 others had earlier filed W.P.No.4814 of 2024 for issuance of writ of mandamus forbearing respondents 1 and 2 herein from filling in the then existing vacant posts of Nursing Superintendent Grade



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I and Nursing Superintendent Grade II in respondent No.4 Hospital. The said writ petition is pending before this Court. This writ petition challenges the act of respondent No.3 of posting respondents 6 to 15 as Nursing Superintendents Grade II in respondent No.4-Hospital. The respondent No.5 The Institute of Road Transport, which was formed by the Transport Department of Government of Tamil Nadu and which was running respondent No.4-Hospital, is “state” within the meaning of Article 12 of the Constitution of India, as held by a Division Bench of this Court vide its order dated 09.11.2006 in W.A.No.271 of 1996 and batch. The conditions of service of the petitioners were governed by the General Rules, Special Rules and Leave Rules framed by respondent No.5-The Institute of Road Transport. In other words, the seniority of the employees like the petitioners and their promotion from a lower post to a higher post were effected as per the said Rules.

3. The petitioners inter se seniority in the cadre of Staff Nurses was fixed as per the said Rules. The petitioners were granted Selection Grade and Special Grade as per the said Rules. The respondent No.4 (earlier known as The Institute of Road Transport – Perundurai Medical College and Hospital, Erode District) was taken over by respondent No.1 State of Tamil Nadu vide G.O.(Ms) No.308, Transport (B1) Department, dated 24.10.2018 and vide



G.O.(Ms.) No.57, Health and Family Welfare (MCA2) Department dated 28.02.2019. Pursuant to G.O.(Ms.)No.70, Health and Family Welfare (E2)

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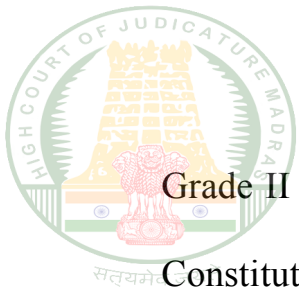
Department dated 26.02.2020, the petitioners and other employees of respondent No.3 Hospital were absorbed as Government servants. After absorbing the petitioners as Government servants, they were not merged with the seniority unit of the Staff Nurses working in Government hospitals. The conditions of service of the petitioners have not been altered after their absorption. The Staff Nurses working in Government Hospitals are being considered for promotion to the post of Nursing Superintendent Grade II and that those working as Nursing Superintendent Grade II are being considered for promotion to the post of Nursing Superintendent Grade I.

4. In respondent No.4 Hospital, the Staff Nurses were being considered for promotion to the post of Nursing Supervisor (which post is equivalent to the post of Nursing Superintendent Grade II) and those working as Nursing Supervisor were being considered for promotion to the post of Nursing Superintendent (which post is equivalent to the post of Nursing Superintendent Gr.I). Since the seniority unit of the Staff Nurses working in respondent No.4 Hospital is entirely different from the seniority unit of the Staff Nurses working in Government Hospitals, the post of Nursing Supervisor



(Nursing Superintendent Gr.II) whenever arising would be filled in only by promoting the senior most Staff Nurse working in respondent No.4 Hospital as per the aforesaid Rules governing the conditions of service of the Staff Nurses.

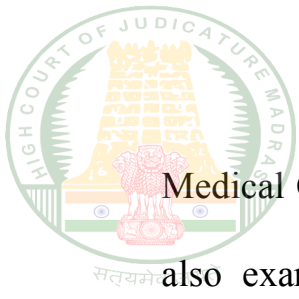
5. All the petitioners are eligible to be considered for promotion to the post of Nursing Superintendent Grade II. As per the Rules governing the conditions of our service as Staff Nurses in respondent No.4 Hospital, the posts of Nursing Superintendent Grade II arising prior to the issuance of the said G.O.(Ms.)No.70 dated 26.02.2020 or after the issuance of the said G.O. should be filled in only by appointing the petitioners as Nursing Superintendent Grade II. By ignoring the Rules in respect of promotion of the Staff Nurses working in respondent No.4 Hospital as Nursing Superintendents Grade II in respondent No.4 Hospital, respondent No.3, they posted respondent No.6 as Nursing Superintendent Grade II in respondent No.4 Hospital in June 2021. It is also learnt that respondent No.3 vide an order dated 28.02.2024 posted respondents 7 to 15 as Nursing Superintendents Grade II in respondent No.4 Hospital. Respondents 7 to 15 joined respondent No.4 Hospital as Nursing Superintendents Grade II in March 2024. The act of respondent No.3 of posting respondents 6 to 15 as Nursing Superintendents Grade II by ignoring the claim of the petitioners to the said ten posts of Nursing Superintendent



Grade II in respondent No.4 Hospital is violative of Articles 14 and 16 of the Constitution of India. Hence the writ petition.

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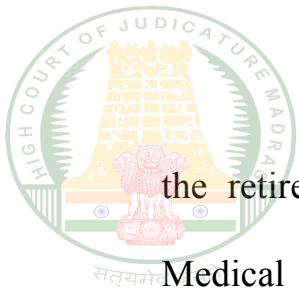
6. The learned Additional Government Pleader submitted that there is a Government Order in G.O.(Ms).No.81 being passed by the Health and Family Welfare (B2) Department dated 14.03.2024 wherein a direction was issued that the IRT – Perundurai Medical College Hospital and School of Nursing run by the institute of Road Transport to be handed over to Health and Family Welfare Department, Government of Tamil Nadu from the academic year 2019-2020, as per G.O.Ms.No.308, Transport (B1) Department, dated 24.10.2018. As per G.O.Ms.No.70, Health and Family Welfare (E2) Department, dated 26.02.2020 orders were issued for creating 945 posts of various categories (454 on permanent basis, 174 posts on outsourcing basis and absorption of 317 posts). Out of the absorbed 317 posts, 87 Medical Officers have been there and the date of joining of those Medical Officers varies and it falls between 1989-2017. 317 candidates have been absorbed in the same posts, which were held by them before absorption. The Director of Medical and Rural Health Services, Chennai letter Ref No.55278/E6/3/2020, dated 14.07.2022 and 20.09.2022 has sought clarification in allotting Civil Medical List (CML) seniority to the Medical Officers absorbed from IRT



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Medical College to Government Erode Medical College. The Government had also examined the proposal of the Director of Medical and Rural Health Services, in the light of the particulars furnished by the Director of Medical Education and Research, in detail and decided to consider the Government Erode Medical College (and School of Nursing attached to Government Erode Medical College and Hospital) as a separate unit till the retirement of the last employee among the 317 candidates, after which the unit would cease to exist.

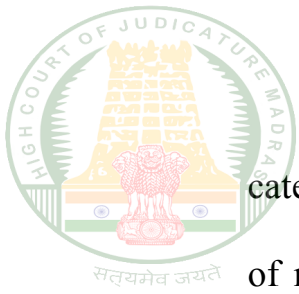
7. Maintaining Government Erode Medical College (and School of Nursing attached to Government Erode Medical College and Hospital) as a separate unit is only for the purpose of seniority and the extraordinary circumstance under which the said institution has been taken over by the Government, so as to avoid infringement of promotional prospects of the existing employees in the common pool without compromising the promotional avenues for the erstwhile IRT employees. This would serve natural justice and ideally both the parties (common pool employees and Government Erode Medical College employees) will benefit from this. The Government have taken a police decision and accordingly order that the Government Erode Medical College (and School of Nursing attached to Government Erode Medical College and Hospital) shall be a separate unit till



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the retirement of the last employee among 317 candidates, (including 87 Medical Officers) after which the unit would cease to exist. The Director of Medical Education and Research is requested to adhere to the following modalities while considering Government Erode Medical College (and School of Nursing attached to Government Erode Medical College and Hospital) as a separate unit;-

- a. Government Erode Medical College (and School of Nursing attached to Government Erode Medical College and Hospital) shall be constituted as a separate unit for the purpose of seniority for promotion to higher posts in that Institution in respect of the 317 personnel (Medical officers and other staff) absorbed from the erstwhile IRT Medical College and IRT School of Nursing.
- b. The 317 candidates absorbed in G.O.(Ms)No.70, Health and Family Welfare Department, dated 26.02.2020 would get promotion to all posts available in the Government Erode Medical College (and School of Nursing attached to Government Erode Medical College and Hospital) as per their eligibility and seniority.
- c. If a vacancy arises in the posts in Government Erode Medical College (and School of Nursing attached to Government Erode Medical College and Hospital), it would be filled up by the feeder



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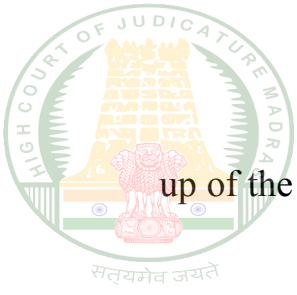
category from the candidates among these 317 at first, and in case of non availability of eligible candidates among 317 candidates, candidates from common pool will be used for filling up of the post (by deputation and diversion).

d. If it is found that no eligible candidates would be available for that vacant post among 317 candidates in future, it would be converted as common pool post.

e. Like wise, all the posts will get converted to common pool post in future due to retirement of the employees.

f. After retirement of the last employee among the 317 candidates, the unit would cease to exist.

8. In view of the above said G.O. passed by the Government, it could be seen that the petitioners herein are the employees of IRT Perundurai Medical College & Hospital which had been taken over by the Government and they have been absorbed and as per the said G.O. they have been treated as separate entity and that they are treated as a separate entity till the candidate last exist, the promotion would be filled up by the feeder category from the candidates among these 317 at first and in case of non availability of eligible candidates among 317 candidates, candidates from common pool will be used for filling



up of the post (by deputation and diversion).

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9. As there is no challenge being made against the said G.O. the respondents 6 to 15 cannot have any objection in the order being passed and the respondents do not come under separate entity and they have to be treated as a person from common pool and their absorption should be considered after filling up from these 317 persons. The respondents are directed to fix the petitioners seniority as per the said G.O. afresh and pass orders within a period of four weeks.

10. With the above observation and direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

31.01.2025

Index : Yes/No
Speaking order/Non-speaking order
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To

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rep.by its Principal Secretary to Government
Health and Family Welfare Department
Secretariat, Chennai 600 009.
2. The Director of Medical Education
Chennai 600 010.
3. The Director of Medical and Rural
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Chennai 600 006.
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