



ABSTRACT

Nursing Establishment - Appointment of Nurses in Government Medical Institutions by Nurses studied in Government and Government approved Private Nursing Institutions – Orders – Issued.

HEALTH AND FAMILY WELFARE (C1) DEPARTMENT

G.O.(Ms)No. 29

Dated: 18.01.2012
Thiruvalluvar Andu-2043,
Thai-4

Read:-

1. From Director of Medical and Rural Health Services, letter reference No.410141 / N1 / 2 / 2010, dated 14.06.2010.
2. The Hon'ble Madurai Bench of Madras High Court, Madurai order dated 31.03.2011 in W.A. (MD) No.118 of 2011.
3. The Hon'ble Madurai Bench of Madras High Court, Madurai order dated 23.06.2011 in W.P. (MD) No.5880 of 2010.
4. The Hon'ble Madurai Bench of Madras High Court, Madurai order dated 23.09.2011 in Review application (MD) Nos. 37, 79 and 31 of 2011.
5. The Hon'ble Supreme Court of India order dated 17.11.2011 in SLP (Civil) CC No.19282-19284 of 2011.

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ORDER:

At present only Nursing candidates who have studied in Government Nursing Schools / Colleges are being appointed to the post of Nurses in Government Medical Institutions. Now, more number of Private Nursing Colleges and Schools have been started with Government recognition and the Nursing Students of these Government recognised Private Institutions are also appearing for the examination conducted by the Director of Medical Education along with the students of Government institutions and Diploma certificates to both categories are awarded. However, the Nursing candidates studied in the approved Private Nursing Institutions are not given appointment in the Government Hospitals / Medical Institutions. The Government is receiving a constant stream of petitions with a request to give appointment in Government Medical institutions to the Nursing candidates who have studied in Private Nursing Schools / Colleges.

2. In the year 2005, few candidates who studied in Private Nursing Institutions, filed Writ Petition Nos. 36932 and 39236 of 2005 and W.P.M.P.Nos.39577 and 42031 of 2005, before the Hon'ble High Court of Madras to consider them for appointment as Staff Nurse in Government Hospitals and Primary Health Centres without any discrimination between candidates studied in the Government Institutions and those candidates studied in Government recognised Private Institutions. The Hon'ble High Court in its order dated: 27.04.2006 in the said Writ Petitions has ordered that the Petitioners (Private Nursing School Students) are entitled to be treated on par with the candidates who underwent Nursing course in Government Nursing schools.

3. Then the Government and students who studied in the Government Nursing Schools preferred Writ Appeals against the above order of the learned Single Judge. In the said appeals reported in (2007) 3 MLJ 967 (M.Elumalai and others Vs.M.Bhuvaneswari and others) the Division Bench of the Hon'ble High Court of Madras, allowed the Writ Appeals on 27.04.2007 and set aside the order of the learned Single Judge.

4. In W.P.(MD) No.12971 of 2009, certain Private Nurses challenged the present practice of recruiting Nurses from Government Nursing Institutions. The High Court in its order dated 25.10.2010 dismissed the above Writ Petition. The Tamil Nadu recognized Private Nursing Schools and Colleges Association has also filed a WP.(MD) No.5880/2010 before the High Court of Madras challenging the present practice of recruitment of Nurses in Government from among the candidates trained in Government Nursing Institutions alone.

5. The Private Nurses Association has filed a W.A.(MD)No.118 of 2011 and W.A.(MD) No.1194 of 2011 against the order of the single judge dated 25.10.2010 in W.P.(MD) No.12971 of 2009. In the said Writ Appeal, and Writ Petition the Hon'ble Madurai Bench of Madras High Court in its common order dated 31.03.2011, among others, has passed the following orders:-

“...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”.

6. The Hon'ble High Court in its final order dated 23.06.2011 in WP (MD) No.5880/2010 filed by the Tamil Nadu recognized Private Nursing Schools and Colleges Association has quoted the judgement pronounced in W.A.(MD) No.118 of 2011 and W.P. (MD) No.1194 of 2011 and has directed the Government 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.

7. Against the orders in W.P.(MD)No.11940/2011 and W.A.(MD) No.118 of 2011 and W.P.(MD) No.5880 of 2010, Tmt.K.Backiya Lakshmi and 4 others, the Nurses who studied in Government Medical Institutions filed Review Application Nos.37, 79 and 31 of 2011. In the Review Applications, the Madurai Bench of Madras High Court, Madurai has passed the following order on 23.09.2011:-

“... These are all the issues which ought to have been settled in the presence of both the parties. In the absence of such vital issue having been answered by the Division Bench we allow the review petitions and the judgments of the Division Bench stands set aside and the matter is again directed to be posted before the Division Bench with a direction to the respondents to take necessary steps to serve on the persons who have undergone training through Government institutions in a representative capacity by effecting publications and thereafter, the appeals as well as the writ petitions are directed to be heard in a full fledged form by the Division Bench. Accordingly, the review petitions are ordered”.

8. The Private Nurses against the order made in the above Review Applications have filed a Special Leave Petition (SLP), before Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India in SLP (Civil) CC Nos.19282-19284 of 2011, dated 17.11.2011 has passed the following orders:-

“ Taken on Board.

Permission to file the Special Leave Petitions is granted.

Issue notice.

In the meantime, the operation of the impugned judgment shall remain stayed.”

9. The Government have examined the proposal of the Director of Medical and Rural Health Services, the representations received from Nurses who studied in Private Nursing Institutions and the various court cases in detail. As per the present rule position, the Nurses trained in Government approved Nursing Institutions having the age and other qualifications prescribed in the rules are also eligible for appointment for the post of Nurses in Government Medical Institutions. Further, the present process of recruitment of Nurses trained in Government Nursing Institutions alone will run contrary to Article 16 (1) of the Constitution.

10. Hence the Government have decided 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 vide G.O.(Ms).No.1, Health and Family Welfare (C2) Department, dated 02.01.2012 duly following the rule of reservation and orders accordingly.

11. This order is issued subject to the outcome of the Special Leave Petition (Civil) CC Nos.19282-19284 of 2011, dated 17.11.2011 and if the Special Leave Petition is dismissed as withdrawn, then the decision of the Government would be subject to the final decision of the Division Bench as per the orders passed in the said Review Application.

(BY ORDER OF THE GOVERNOR)

GIRIJA VAIDYANATHAN,
PRINCIPAL SECRETARY TO GOVERNMENT

To

All Heads of Departments
All Deans/Medical Superintendent
of all Medical Colleges/Hospitals.
All Joint Director/Deputy Director under the Health and Family Welfare Department.
All District Collectors.
The Tamil Nadu Public Service Commission, Chennai-8.
The Accountant General, Chennai-18/35.
The Pay and Accounts Officer (North / East / South), Chennai-1/5/35.
The Resident Audit Officer (Sectt), Office of the Principal Accountant
General, (Tamil Nadu & Pondicherry), 2nd Floor, Namakkal
Kavignar Maligai, Secretariat, Chennai-9.
The Works Manager, Government Central Press, Chennai-79.
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All Officers, Health and Family Welfare Department, Chennai-9.
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The Private Secretary to Principal Secretary to Government,
Health and Family Welfare Department, Chennai – 9.
The National Informatics Centre, Chennai-9.
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// FORWARDED BY ORDER//

SECTION OFFICER