



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

WRIT PETITION NO. 12683 OF 2023

C/W

WRIT PETITION NO. 12691 OF 2023 (S-RES)

IN W.P.No. 12683/2023:

BETWEEN:

1. B.J.RANI,
W/O RANGANATHA.C.,
AGED AOBUT 42 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF
CARDIOVASCULAR SCIENCES
AND RESEARCH BENGALURU
R/AT No.489/A, NISCHITA NILAYA,
2ND MAIN ROAD, NEAR 17TH CROSS,
VISHWAPRIYA LAYOUT,
BENGALURU SOUTH-560 068.
2. SRI. AYUB KHAN.S.G.,
S/O GHOUSE KHAN, AGED 39 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF
CARIOVASCULAR SCIENCES AND
RESEARCH BENGALURU
R/AT No.570, BAZAAR STREET,
KENGARI, BENGALURU-560 060.
3. SMT. SHOBHA.K.R.,
W/O RAMAPPA.K., AGED 43 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARIOVASCULAR
SCIENCES AND RESEARCH BENGALURU.





R/AT No.9/A, PAPAIAH GARDEN
9TH CROSS, 4TH MAIN, BSK 3RD STAGE,
BENGALURU-560 085.

4. SRI. PRAKASH.G.C.,
S/O CHIKKANNA.G.,
AGED 43 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF
CARIOVASCULAR SCIENCES AND
RESEARCH BENGALURU.
R/AT PURLE HALLY, CHANNAMANGATI HALLY POST,
CHALLAKERE TALUK,
CHITRADURGA DISTRICT.
5. SRI. LOKESH.S.B.,
S/O LATE BASAVARAJU.S.,
AGED 38 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARIOVASCULAR SCIENCES
AND RESEARCH BENGALURU
R/AT No.2706, ASHOKA ROAD,
WEST CROSS 23, LASHKAR MOHALLA
MYSURU-570 001.
6. SRI. PUSHPALATHA.P.
W/O RAMESH.R.
AGED 43 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARIOVASCULAR SCIENCES
AND RESEARCH BENGALURU,
R/AT No.57/3, MANJUNATHA NAGAR,
2ND FLOOR, 2ND CROSS, ARAKERE MICOLAYOUT,
BANNERGHATTA ROAD, BENGALURU-560 078.
7. SMT. REVATHI B.S,
W/O ANILKUMAR H.K.,
AGED 45 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARIOVASCULAR SCIENCES
AND RESEARCH BENGALURU,
R/AT No.128, VIDYANAGAR,



HETHUR POST-573 123.
SAKALESHPURA TALUK HASSAN DISTRICT.

8. SRI. THEERTHA.D.,
W/O DIVAKRA MURTHY,
AGED 40 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARIOVASCULAR SCIENCES
AND RESEARCH BENGALURU
R/AT No.497, 1ST FLOOR, 2ND MAIN,
3RD CROSS, SANJEEVINI CIRCLE,
LOKANAYAKA NAGAR, HEBBAL MAIN ROAD,
DEVARAJA MOHALLA, MYSURU-570 016.
9. SUNITHA.B.G.,
W/O B.K.PRAKASH,
AGED 41 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARIOVASCULAR SCIENCES
AND RESEARCH BENGALURU.
R/AT No. BLOCK B1-504,
BDA JNANABHARATHI ENCLAVE,
VALAGERAHALLI, KENGERI,
SAHYDRI COMPLEX,
BENGALURU SOUTH-560 059.
10. CHANDRASHEKAR.H.N.,
S/O H.K.NAGARAJA,
AGED 41 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARIOVASCULAR SCIENCES
AND RESEARCH BENGALURU.
R/AT No.2, OLD No.14, SHAMBAJOSHI ROAD,
13TH CROSS, BENDRE NAGAR,
KADIRENAHALLI, BSK 2ND STAGE
BENGALURU-560 070.

...PETITIONERS

(BY SRI. RANGANATHA.S. JOIS., ADVOCATE)



AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF MEDICAL EDUCATION,
GOVERNMENT OF KARNATAKA,
M.S.BUILDING, BENGALURU-560 001.
2. THE DIRECTOR,
JAYADEV INSTITUTE OF CARDIOVASCULAR SCIENCES
AND RESEARCH, BANNERGHATTA ROAD,
BENGALURU-560 078.

...RESPONDENTS

(BY SRI. V.G.BHANU PRAKASH, ADDL. ADVOCATE GENERAL
ALONG WITH., SMT.V.HEMALATHA, AGA FOR R-1;
SRI. D.L.JAGADEESH, SENIOR COUNSEL FOR
SMT. RAKSHITHA.D.J., ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL
FOR THE RECORD RELATING TO IMPUGNED ENDORSEMENT
BEARING No SJICR/EST(3)/83/2023-24 DATED 02/06/2023
PASSED BY THE R-2 VIDE ANNEXURE-G PERUSE AND QUASH
THE SAID IMPUGNED ENDORSEMENT AS ARBITRARY, ILLEGAL
AND VIOLATIVE OF ARTICLE 14 AND 16(1) OF THE
CONSTITUTION OF INDIA, AS ALSO THE DECISION OF THE
HON'BLE APEX COURT IN UMADEVIS CASE AND ETC.

IN W.P.No. 12691/2023:

BETWEEN:

1. SRI. AYUB KHAN.S.G.,
S/O GHOUSE KHAN, AGED 39 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARDIOVASCULAR SCIENCES
AND RESEARCH BENGALURU.
R/AT No.570, BAZAAR STREET, KENGERI,
BENGALURU-560 060.



2. SRI.LOKESH.S.B.,
S/O LATE BASAVARAJU.S.,
AGED 38 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARDIOVASCULAR SCIENCES
AND RESEARCH BENGALURU
R/AT No.2706, ASHOKA ROAD,
WEST CROSS 23, LASHKAR MOHALLA,
MYSURU-570 001.
3. SRI.THEERTHA.D,
W/O DIVAKAR MURTHY,
AGED 40 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARDIOVASCULAR SCIENCES
AND RESEARCH BENGALURU,
R/AT No.497, 1ST FLOOR, 2ND MAIN,
3RD CROSS, SANJEEVINI CIRCLE
LOKANAYAKA NAGAR, HEBBAL MAIN ROAD,
DEVARAJA MOHALLA, MYSURU-570 016.
4. SRI. CHANDRASHEKAR.H.N.,
S/O H.K.NAGARAJA, AGED 41 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARDIOVASCULAR SCIENCES
AND RESEARCH BENGALURU.
R/AT No.2, OLD No.14, SHAMBAJOSHI ROAD,
13TH CROSS, BENDRE NAGAR,
KADIRENAHALLI, BSK 2ND STAGE,
BENGALURU-560 070.
5. PRAKASH.G.C.,
S/O CHIKKANNA.G.,
AGED 43 YEARS,
WORKING AS STAFF NURSE,
JAYADEV INSTITUTE OF CARDIOVASCULAR SCIENCES
AND RESEARCH BENGALURU.
R/AT PURLE HALLY, CHANNAMANGATI HALLY POST,
CHALLAKERE TALUK,
CHITRADURGA DISTRICT.

...PETITIONERS

(BY SRI. RANGANATHA.S. JOIS, ADVOCATE)



AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF MEDICAL EDUCATION,
GOVERNMENT OF KARNATAKA,
M.S.BUILDING, BENGALURU-560 001.
2. THE DIRECTOR OF MEDICAL EDUCATION DEPARTMENT
BENGALURU MEDICAL RESEARCH INSTITUTE,
1ST FLOOR, KOTE VENKATESHWAR TEMPLE,
OPP. BUILDING, BENGALURU-560 002.
3. THE DIRECTOR,
JAYADEV INSTITUTE OF CARDIOVASCULAR SCIENCES
AND RESEARCH, BANNERGHATTA ROAD,
BENGALURU-560 078.

...RESPONDENTS

(BY SRI. V.G.BHANU PRAKASH, ADDL. ADVOCATE GENERAL
ALONG WITH SMT. V.HEMALATHA, AGA FOR R-1;
R-2 IS SERVED;
SRI. D.L.JAGADEESH, SENIOR COUNSEL FOR
SMT. D.J.RAKSHITHA, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL
FOR THE RECORDS, RELATING TO THE IMPUGNED ORDER OF
TRANSFER BEARING No.SJICR/PER/073/2023-24 AND
No.SJICR/PER/074/2023-24 BOTH ORDER DATED 8.6.2023
PASSED BY THE R-3, VIDE ANNEXURE-G AND H, PERUSE AND
QUASH THE ORDERS OF TRANSFER, AS ILLEGAL ARBITRARY
AND VIOLATIVE OF ARTICLE 14 AND 16(1) CONSTITUTION OF
INDIA AND PENAL IN NATURE AND MALAFIDE, IN SO FAR AS
PETITIONERS ARE CONCERNED & ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 26.06.2024, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE
FOLLOWING:



CORAM: **HON'BLE MR. JUSTICE N S SANJAY GOWDA**

CAV ORDER

(PER: THE HON'BLE MR. JUSTICE N. S. SANJAY GOWDA)

1. Ten Staff Nurses (Stipendiary) working in Sri Jayadeva Institute of Cardiovascular Sciences and Research (referred to as "**the Institute**") – contending that they were appointed between 2004 and 2007 and have been working ever since – are before this Court challenging the endorsement issued by the Institute denying their request for regularization.

2. The details of initial appointment of the petitioners as Staff Nurses (Stipendiary), which are not in dispute, are as follows:

Sl. No.	Name	Date of Joining
1.	Ayub Khan S. G.	15.02.2005
2.	Rani B. J.	02.02.2006
3.	Shobha K. R.	02.02.2006
4.	Revathi B. S.	06.02.2006
5.	Sunitha B. G.	06.02.2006



6.	Pushpalatha P	12.06.2006
7.	Theertha D	28.07.2006
8.	Chandrashekar H.N	09.10.2006
9.	Prakash G.C	30.11.2006
10.	Lokesh S.B	24.05.2007

3. The Official Memorandum ("**OM**") referred to in the affidavit dated 25.10.2023 of the Under Secretary to Government, Medical Education indicates that an office advertisement had been issued on 21.10.2004 calling for applications for filling up the posts of Staff Nurses (Stipendiary). In fact, this advertisement was published in the Deccan Herald Newspaper on 21.10.2004 and the same is also produced as Annexure-R1 to said affidavit. The advertisement, insofar as it relates to Staff Nurses (Stipendiary), reads as follows:

*"There are 80 posts of **Staff Nurse (Stipendiary)** are vacant. Those who are registered Nurse with certificate of Nursing, recognized by the Nursing Council qualification and are interested to work on consolidate pay of Rs.3,000-00 P.M. at Sri Jayadeva Institute of Cardiology, Bannerghatta*



Road, Bangalore, may appear for an interview on 26-10-2004 at 11.30 AM in the Director's Chamber along with their testimonials at their own cost."

4. The OM also shows that the petitioners were being paid a stipend of Rs.3,000/- per month and if their services were unsatisfactory, they would be terminated. One of the terms of appointment was that the appointees were to execute an agreement to the effect that they would serve for a period of two years, failing which action would be taken as per the Rules of the Institute.

5. The relevant clause in this regard reads as follows:

"He/She has to execute an agreement bond in Stamp Paper worth of Rs.100-00 to serve the Institute for a period of **TWO** years failing which action will be taken as per rules of the Institute"

6. Thus, the OM under which they were appointed does stipulate that the tenure of appointment was two years and the fact that they were to give an undertaking that they would serve the Institute for at least two years does



indicate that their appointment would be for a definite period of two years.

7. It is the case of the petitioners that pursuant to their appointment, though their initial appointment was stated to be for a limited time, they have in fact been discharging their work as Staff Nurses (Stipendiary) for the past two decades and they therefore contend that they are entitled to be treated as regular employees and all the benefits that are available to a 'Regular Staff Nurse' should also be provided to them.

8. It is their contention that they cannot be Staff Nurses (Stipendiary) perpetually, especially when they have admittedly been discharging the same work that the 'Regular Staff Nurses' were discharging. It is contended that when the same work has been extracted from them as 'Regular Staff Nurses', the payment of a lesser salary and denial of the benefits that are given to such 'Regular Staff Nurses' amounts to a breach of the accepted constitutional principle of "***equal pay for equal work***".



9. The petitioners also contend that the Institute has regularized the services of similarly situated Staff Nurses (Stipendiary) on completion of five years of their service, and this was following a decision taken by the Finance Committee which was also approved by the Governing Council. They have produced this OM as well as the decision of the Governing Council issued in this regard.

10. It is also stated by them that even according to the stand taken by the Institute, approvals have been accorded by the State Government from time to time for appointing Staff Nurses (Stipendiary) and approval is also granted for payment of their salaries from time to time and it is thus clear that the petitioners were indeed appointed to a sanctioned post and that they have worked against said sanctioned post for nearly two decades.

11. The respondent-Institute, though does not dispute the fact that the petitioners have been working as Staff Nurses (Stipendiary) from the date of their appointment i.e., 2004 to 2007, it contends that their appointments



were contractual and renewable every six months with a day's break upon the satisfactory completion of work by the petitioners and subject to the discretion of the Institute. It is also contended that the subject posts are temporary in nature.

12. It is contended that since the petitioners have not been appointed against any sanctioned post, they cannot seek regularization of their appointments. It, however, admits that the Government did pass orders from time to time sanctioning the requisite number of posts of Staff Nurses (Stipendiary) to be appointed on contract basis.

13. The Institute, in its endorsement, also says that the Cadre and Recruitment Rules ("**the C & R Rules**") do not provide for regularization as there were no permanent posts called "*Staff Nurses (Stipendiary)*", and since there were no permanent posts of Staff Nurses (Stipendiary), there cannot be any regularization as well. It is also contended that the appointment of the petitioners was solely on contract basis for a stipulated period and the



permission granted was only for their appointment on contract basis and, therefore, they cannot be regularized.

14. It is further contended that their initial appointment was not pursuant to a public notification calling for appointments to sanctioned permanent posts and since they had not worked against any sanctioned permanent post, they cannot claim regularization in light of the judgment rendered by the Constitutional Bench in ***Umadevi (3)***¹.

15. Having heard the learned counsel for the petitioner, the learned Senior Counsel for the Institute and the learned Additional Advocate General, the sole issue that would arise for consideration in these petitions is:

Whether the appointments of the petitioners herein were regular and in accordance with the Bye-laws as well as the C&R Rules of the Institute, and whether they are entitled to be regularized after having worked for two decades?

¹State of Karnataka v. Umadevi, (2006) 4 SCC 1.



16. At the outset, a brief overview of the Institute and its legal status would be necessary.

17. The Institute is a 'society' registered under the provisions of Karnataka Societies Registration Act, 1960. The preamble to the Memorandum of Association ("**MOA**") of the Institute shows that late Sri. Channabasappa (the donor of the Cardiology Institute) and the Government realized that there was a need for a fully functional Cardiac Centre in the State and had thus started the Institute in 1972. It is stated therein that it was the intention of the Government that the Institute should be a separate and independent Institute and accordingly issued a Government Order dated 27.09.1972 for creation of a "*SEPARATE INDEPENDENT INSTITUTE OF CARDIOLOGY*".

18. It is stated that the progress of the Institute was apparent, but the rate of progress was inadequate. It is also indicated that the budget allotted to the Institute was about Rs.18 lakhs and that when the Institute was fully developed, it would have a recurring expenditure of Rs.17



lakhs every year and this burden would be too much for the State Government alone to bear and it would thus be essential to secure assistance from International Agencies, the Central Government, and other Scientific and Philanthropic Organizations. It was further stated that it would be easier to get financial assistance if the Institute was made autonomous.

19. The preamble to the MOA thus indicates that the Institute was started at the instance of late Sri. Channabasappa and the Government, and that its ultimate objective was to create an autonomous institution to treat the increasing number of cardiac patients in the State.

20. The MOA under which the Institute was registered under the Karnataka Societies Registration Act, 1960 also reiterates the same. The 24th object in the MOA, which would be relevant for this case, reads as follows:

“24. To appoint and hire services or to discharge/terminate the services of the personnel and to pay them salaries, wages, gratuities,



provident fund and other allowances or remunerations in accordance with the rules and regulations of the Institute and Bye-laws of the Institute framed by the Governing Council from time to time.”

21. It is, therefore, clear that the Institute was empowered to appoint and hire the services of personnel and pay them the salaries and other allowances in accordance with the Rules and Regulations of the Institute and the Bye-laws framed by the Governing Council.

22. In the year 1983, “*Sri Jayadeva Institute of Cardiology Rules and Regulations, 1983*” were framed (**“the Rules and Regulations”**).

23. Rule 5 of the Rules and Regulations provides for composition of the Governing Council in whom the administration of the Institute is vested.

24. As per this Rule 5, the Hon’ble Chief Minister of the State is the Chairman of the Governing Council while the Minister for Health and Family Welfare is the Co-Chair.



25. The Secretaries of the Health and Family Welfare Department, Finance Department, Planning Department, the Director of Medical Education, the Director of Health and Family Welfare Services are the members of the Governing Council.

26. The Vice Chancellor of the Bengaluru University and two faculty Members are also made members of the Governing Council. One representative of Jayadeva Trust is also a member, while the Director of the Institute is its member Secretary.

27. It is thus clear from this that the governance and administration of the Institute is essentially by a Governing Council headed by the Chief Minister and Government Officials and the Institute is, in reality, a State and even if not the State, it is definitely, an instrumentality of the State.

28. Rule 10 of the Rules and Regulations provides for powers and functions of the Governing Council. Rule 10



(4)(g)² specifically enables the Governing Council to create posts and make appointments thereto, in accordance with the provisions of Rules 18 and 19.

29. Rule 18³ of the Rules and Regulations deals with the appointment of Members of Medical Administrative and Scientific Staff, while Rule 19⁴ provides for appointment of other officers and employees.

30. Rule 18(1) of the Rules and Regulations states that the appointment of Medical Superintendent, Chief

²10(4)(g) to create posts and to make appointments thereto in accordance with the provisions of Rule 18 and 19.

³**18. APPOINTMENT OF MEMBERS OF MEDICAL ADMINISTRATIVE & SCIENTIFIC STAFF:**

- 1) The appointment of Medical Superintendent, Chief Administrative Officer, Professors, Assistant Professors, Physicians and Assistant Surgeons shall be done by the Governing Council on the recommendation of the Selection Committee constituted by the Governing Council.
- 2) The appointment of Residents, Research Assistants, and such other staff shall be done by the Director on the recommendations of Selection Committee constituted by the Governing Council.
- 3) At least 1/3 of the medical staff of the Institute at all times shall consist of deputationist from Government of Karnataka. However, such deputationists shall not be entitled to deputation allowance or special pay on account of such deputation.

⁴**19. APPOINTMENT OF OTHER OFFICERS AND EMPLOYEES:** The appointment of other Administrative Officer, Ministerial Nursing, Para-Medical, Ward Attendants and such other staff shall be done by the Director on the recommendations of the Selection Committee constituted by him and approved by the Governing Council.



Administrative Officer, Professors, Assistant Professors, Physicians and Assistant Surgeons i.e., Doctors should be made by the Governing Council on the recommendation of the Selection Committee constituted by the Governing Council.

31. In respect of Residents, Research Assistants and other staff, it is stated that it shall be done by the Director of the Institute on the recommendations of the Selection Committee constituted by the Governing Council. Therefore, in order to appoint staff other than those indicated in Rule 18(1), the same would have to be made by the Director on the basis of the recommendations made by the Selection Committee constituted by the Governing Council.

32. Rule 19 of the Rules and Regulations clearly states that appointments of Administrative Officer, Ministerial Nursing, Para-Medical, Ward Attendants and such other staff should be done by the Director on the basis of the



recommendations of the Selection Committee constituted by him and approved by the Governing Council.

33. Therefore, in respect of the Ministerial Nursing and other staff with which we are concerned in this petition, the appointments can be termed to be valid only if they are done by the Director on the recommendations of the Selection Committee constituted by him.

34. Rule 20⁵ of the Rules and Regulations states that the terms of service, salary, age of superannuation, conduct and disciplinary rules in respect of persons appointed under Rules 15, 18 and 19 shall be governed by such Bye-laws framed by the Governing Council. It is, however, clarified that in respect of appointments made by the Government, Rule 20 will have no application.

⁵**20. PROVISIONS REGARDING SERVICE CONDITIONS:**

The terms of service, salary, age of superannuation, conduct and disciplinary rules and such other related service matters in respect of persons appointed under rule 15, 18 & 19 except the appointments made by the Government and conditions laid down therein shall be governed by such bye-laws framed by the Governing Council (As per Annexure-II of C & R rules & other service rules).



35. The Governing Council in exercise of powers conferred under Rule 10(3) of the Rules and Regulations has also framed the Bye-laws of the Institute.

36. Bye-law No.5(1) & (2)⁶ provides for permanent and temporary posts. It states that the posts created by the Governing Council would be either permanent or temporary as the Governing Council may specify from time to time. It also states that renewal of temporary posts may be determined by the Governing Council from time to time on the recommendation of the Director of the Institute.

37. Bye-law No.11 deals with the qualifications for appointment. It stipulates that age, experience and other qualifications for appointment to all posts in the Institute

⁶5. Permanent & Temporary Posts:

1. The posts created by the Governing Council in accordance with clause 3 of Sub clause (2) of the Memorandum of Association and Rule 10 sub-rule (4) (g), Rule 18 & 19 of Rules and regulations of the Institute may be either permanent or temporary as the Governing Council may specify from time to time.
2. Renewal of temporary posts may be determined by the Governing Council from time to time on the recommendations of the Director.



shall be as prescribed under the C&R Rules i.e., as per Annexure-I.

38. Bye-law No.12 provides for constitution of the Selection Committee for appointments in respect of Ministerial posts. The Selection Committee comprises the Director, a nominee of the Secretary to the Government, Health and Family Welfare Department, a nominee of the Director of Medical Education, Medical Superintendent of the Institute.

39. Bye-law No.12(2)⁷ categorically states posts may filled by invitation/promotion/open advertisement or through deputation from the State Government as may be deemed fit by the appointing authorities. Thus, the Bye-laws do provide for filling up of posts by issuance of open advertisement.

⁷**12(2)** The posts may be filled by invitation/promotion/open advertisement or deputation from State Government as may be deemed fit by the appointing authority.



40. Bye-law No.14⁸ categorically states that appointments to posts can be made in addition to the sanctioned cadre. It starts with a non-obstante clause and states that the Governing Council could make appointments to posts other than those in the sanctioned cadre on such terms and conditions as it may decide in each case. It is, therefore, clear that the power to appoint to posts in addition to sanctioned cadre is also provided for in the Bye-laws.

41. The Pay and Recruitment Rules (“**the P & R Rules**”) are specified in Annexure-I to the C&R Rules, and the Rules relating to conditions of service and miscellaneous provisions are specified in Annexure-II to the C&R Rules.

⁸**14. APPOINTMENTS TO POSTS IN ADDITION TO SANCTIONED CADRE:**

Notwithstanding anything contained in these Bylaws:

- 1) The Governing Council may make appointments to posts other than those in sanctioned cadre on such terms and conditions as it may decide in each case.
- 2) Specialists and scholars may be invited by the Director to participate in the work of the Institute for specific period of such honoraria as may be fixed by the Governing Council.



42. Annexure-I, which deals with the P&R Rules, provides for formation of the Selection Committee under Rule 6 and this provides for the Selection Committee comprising the Director, Medical Superintendent, and Administrative Officer in respect of Group-B, C and D posts as per Schedule-I appended to the P&R Rules.

43. Rule 7⁹ of the P&R Rules states that the posts in the Institute could be filled up by invitation/promotion/open advertisement or by deputation from the State Government and this is *in pari materia* with Bye Law 12 (2) of the Bye Laws.

⁹ 7.The posts in the Institute may be filled by invitation/promotion/open advertisement or by deputation from State Government as may be deemed fit by the appointing authority in the interest of the Institute service.



44. Rule 10(1) and (2)¹⁰ of the P&R Rules states that the posts created by the Governing Council in accordance with the Rules and Regulations of the Institute may either be permanent or temporary, as may be specified by the Governing Council from time to time, and the renewal of such posts could be determined from time to time on the recommendations of the Director.

45. It is, therefore, clear that the P&R Rules provide for filling up of posts by issuance of open advertisement and the posts that have been created by the Governing Council could either be permanent or temporary and if it is

¹⁰**10. PERMANENT AND TEMPORARY POST:**

1. The posts created by the Governing Council in accordance with Clause 92) Sub-Clause (27) of the Memorandum of Association and Rule 10 Sub-Rule (4) (g), Rule 18 and 19 of Rules and regulations of the Institute, may be either permanent or temporary as the Governing Council may specify from time to time.

2. Renewal of temporary posts may be determined by the Governing Council from time to time on the recommendations of the Director.



temporary, the Governing Council has the power to renew the same.

46. Thus, the MOA clearly provides for appointing personnel and also payment of their salaries. The Rules and Regulations of the Institute framed, as provided under the MOA, provide for appointment of various staff (including Nurses) and it declares that their terms of service are to be regulated by the Bye-laws framed by the Governing Council.

47. Bye-law No.5 (1) & (2), in turn, provides for appointment of both permanent as well as temporary posts, and Bye-law No.12(2) also states that appointments are to be done through the Selection Committee, and the posts can be filled up either by invitation/promotion/open advertisement or by deputation from the State Government.

48. A cumulative reading of the MOA, the Rules and Regulations, and the Bye-laws, leaves no room for doubt



that the Institute has been empowered to appoint personnel both on permanent and temporary basis. The Governing Council is specifically given the power to also renew the temporary posts from time to time. It is, therefore, clear that the power to appoint the personnel to the Institute either on permanent or temporary basis vests with the Governing Council.

49. The C&R Rules which have been framed are in consonance with the Rules and the Bye-laws framed. Annexure-I to the C&R Rules i.e., the P&R Rules are almost a verbatim repetition of the Bye-laws, reiterating that the posts can be created by the Governing Council and may either be permanent or temporary. The P&R Rules also reiterate that the renewal of the temporary posts would also be determined by the Governing Council from time to time. The P&R Rules also make it clear (Rule 13) that appointments can be made to posts in addition to the sanctioned cadre.



50. In light of the above legal position relating to the appointment of personnel by the Institute, it will now have to be ascertained whether the appointments made of the petitioners herein were in accordance with the Bye-laws, the Rules and Regulations, and the C&R Rules of the Institute.

51. As already stated above, Bye-law No.12(2) clearly states that posts may be filled up by invitation/promotion/open advertisement or by deputation from the State Government. The paper publication, which is produced along with the affidavit of the Under Secretary, itself, clearly indicates that an open advertisement was issued calling for appointments of 36 Duty Medical Officers and also 80 posts of Staff Nurses (Stipendiary). It may be pertinent to notice here that the advertisement states that these 80 posts of Staff Nurses (Stipendiary) were vacant and those who were interested to work on a consolidated pay of Rs.3,000/- per month at the Institute may appear for an interview on 26.10.2004 in



the Director's Chamber along with their testimonials and at their own cost.

52. If a post is filled up by calling for applications by way of an open advertisement published in a newspaper and the candidates are appointed by the Director, it cannot be said that the appointments are irregular and it would, in fact, be perfectly valid and legal appointments. The fact that the Rules and Regulations, the Bye-laws, the C&R Rules and the P&R Rules of the Institute provide for appointment of both temporary and permanent posts would also clearly establish that the appointments of Staff Nurses (Stipendiary) were not irregular and were, in fact, regular appointments to posts which were created by the Institute. It will therefore have to be held that all the posts to which the petitioners were appointed were sanctioned posts.

53. It must be borne in mind that a post which is created in accordance with the Rules and with the approval of the competent authority will be a sanctioned post and this is



simply because there is a clear and distinct approval for the appointment of a person to that post and, consequently, for the payment of his salary.

54. The clear statement in the open advertisement published in the newspaper that there were 80 posts of Staff Nurses (Stipendiary) which were vacant would also conclusively establish that the posts to which the petitioners had applied were indeed sanctioned posts.

55. In light of the above, the contention advanced by the Learned AAG that the petitioners had not fairly competed in the rigorous recruitment process as was conducted for the appointment of Permanent Staff Nurses, and that since the petitioners, during their recruitment by way of a walk-in interview, had neither undergone the same process nor had they been subjected to competition at the same level as faced by the other applicants for the posts of Permanent Staff Nurses, the petitioners herein would not have the right to seek regularization cannot be accepted.



56. It is to be stated here that the Institute chose to appoint the petitioners by means of issuing an open advertisement for a walk-in interview. It should also be noticed that the appointment even to temporary posts was by a Selection Committee and the appointments were made only after the approval of the Director. Hence, this argument cannot be accepted, more so when it is admitted that the Staff Nurses (Stipendiary) are being made to discharge the same work as Regular Staff nurses.

57. During the course of arguments, it was also stated that the Institute had resolved to increase the pay of the petitioners and the other Staff Nurses (Stipendiary) and this would assuage their grievances to a very large extent. In my view, this attempt, though intended to improve the lot of the petitioners and other similarly placed nurses, would nevertheless, if accepted, only permit the perpetuation of an illegality and the continued exploitation of the petitioners and other Staff Nurses (Stipendiary).



58. If the petitioners have been made to discharge the very same work that the regular and permanent staff nurses have been discharging from the past 20 years and more, they would have to be necessarily be paid the same wages. This offer of increasing their pay would, therefore, be only a ruse to continue their exploitation and cannot be accepted.

59. The OM issued while appointing the 1st petitioner indicates that she was appointed *provisionally* for a period of two years. The OM does not indicate that her appointment would end on the expiry of two years. The OM further indicates that the 1st petitioner was to execute an agreement bond undertaking to serve the Institute for a period of two years. Clause (4) in the OM states that if her services were found unsatisfactory within said period of two years, she would be terminated.

60. It is not in dispute that after this initial period of two years was over, not only the 1st petitioner but the services of the other petitioners have been extended with an



artificial break of a day or two. The certificate issued by the Institute in favour of the 2nd petitioner also indicates that she has been working from 2005.

61. As already stated above, even the Institute admits that the petitioners have been working ever since their initial appointments, which were for either two years or 11 months or 6 months, and as of now, all of them have rendered more than 20 years of service.

62. The fact that these posts to which the petitioners were appointed had the sanction of the Government is clear from the statement of objection filed by the Institute and also by the affidavit filed by the Under Secretary to the Government.

63. In the affidavit dated 04.10.2023 of the Under Secretary, it has been stated that there were 225 sanctioned posts of Staff Nurses (permanent). It is also stated in paragraph 6 that appointment of Staff Nurses on contract basis were regularly approved right from 2000 till



2023 and as on the date of filing of the affidavit, there were a total of 898 sanctioned Staff Nurse posts for appointment on contract basis. If, the State Government had sanctioned these posts, even on contractual basis, it cannot be permitted to be urged that the posts to which the petitioners were appointed not sanctioned posts. It must also be borne in mind that the fact remains that work has been extracted from the petitioners continuously from the date of their initial appointments between 2004 and 2007, even though it is stated that their appointments were contractual and were temporary.

64. If a person is initially appointed for a contractually defined term and is thereafter continued for more than two decades, by renewing the contracts regularly, it would be impossible to treat these posts as temporary posts. A temporary post would be a post which would have a limited tenure, given the fact that temporary posts are created only because the work discharged by the person



holding the temporary post is a work which is temporary and is not perennial in nature.

65. It is to be kept in mind that a person would normally be able to work in his chosen avocation for a period ranging from twenty to thirty years, depending on the age at which he becomes eligible to work. If a person is called upon to render services to an employer for more than two decades, by no stretch of the imagination, can it be stated that the work he discharged for two decades was a temporary work or was only a temporary post.

66. In fact, in the affidavit of the Under Secretary dated 26.10.2023, it is also admitted that there were 1002 employees of different cadres working on contract basis in all the branches of the Institute. It is also stated that the Government by its Order dated 04.06.2019 had given a *post facto* approval for said 1002 posts and it was also followed by two more Government Orders dated 19.02.2021 and 01.10.2021, through which approval was



granted for the creation and filling up of 95 posts of Staff Nurses (Stipendiary) on contract basis.

67. Thus, the affidavit would clearly establish that the Institute has a cadre of Staff Nurses (Stipendiary) which contains posts that are 898 in number, as against the regular posts of 225 Staff Nurses. In other words, the contractual Staff Nurses (Stipendiary) outnumber the Regular Staff Nurses by a ratio of 1:3. This would clearly lead to an inference that the Institute is completely dependent — not on the strength of the Regular Staff Nurses but only on the Staff Nurses who are working on Stipendiary basis.

68. The fact that the petitioners, though appointed as Staff Nurses (Stipendiary), are discharging the same work as that of a permanent Staff Nurse is also admitted by the Institute. The petitioners have produced the statement of objections filed by the State in W.P.No.18961/2022 *vide* Annexure-E which was verified by an affidavit of the Chief



Administrative Officer of the Institute. In the statement of objections, it is stated as follows:

"4. It is respectfully submitted that the 565 posts of Stipendiary Staff Nurses are sanctioned to be filled on contract basis. The duties and responsibilities of the Permanent Staff Nurses as well as Stipendiary Staff Nurses are one and the same in this institute. Institute does not allocate a separate work to contract employee."

(emphasis supplied)

69. If a Staff Nurse (Stipendiary) is discharging the same work as that of Permanent Staff Nurse and if it is admitted that the Institute does not allocate separate work to contract employees, it is absolutely clear that Staff Nurses (Stipendiary), though discharge the same work as Regular Staff Nurses, are in fact being paid far lesser than the Regular Permanent Staff Nurses, thus violating the constitutional principle of "equal pay for equal work" embodied in Articles 14 and 16 of the Constitution of India.



70. A premium institute which has been established to take care of the problems related to the heart and nurse diseased hearts to good health is, however, acting in a very unhealthy manner and is indicating its heart is not in the right place when it comes to treating its employees. The institute, which is undoubtedly an instrumentality of the State, is required to be a model employer. The Institute which is governed by the Governing Council headed by the Hon'ble Chief Minister and co-chaired by the Minister of Health, is required to ensure that Staff Nurses (Stipendiary) are treated fairly and are not exploited.

71. It is no doubt true that the Bye-laws as well as the Rules and Regulations of the Institute do provide for appointment of temporary posts, but a post cannot, by any stretch of the imagination, be considered as temporary if it lasts for more 20-30 years, and if this entire working period of 20-30 years is treated as being temporary, that would be a travesty of the fundamental



rights guaranteed under Articles 14, 16, 19 and 21 of the Constitution.

72. It is also necessary that the argument of the Institute that there is no provision in the C&R Rules or the Bye-laws of the Institute which provide for absorption of the Staff Nurses (Stipendiary) is rejected for said reasons.

73. The petitioners contend that the Institute is selective in the matter of regularization. They also state that the Governing Council in its meeting held on 14.11.2005 had unanimously resolved to regularize the services of a handful Staff Nurses (Stipendiary) who were working on contract basis, by relaxing the C&R Rules.

74. As per the directions of this Court, the proceedings of the meeting of the Governing Council held on 14.11.2005 were produced by the Institute. Subject No.14 of said proceedings reads as follows:

"SUBJECT No.14:Regularization of Stipendiary Nurses, who are working in this Institute for three or more years:



The Governing council after detailed discussion, decided to regularize the services of those stipendiary nurses who have put in totally 5 years and above satisfactory service at SJIC as decided by the Finance Committee in its meeting held on 2-12-2000 and approved by the Governing Council in its meeting held on 25-07-2001. The Stipendiary Nurses with 3 years and above service shall be regularized only on their completion of 5 years satisfactory service at this Institute. The requirements of the roster system will be strictly complied with at the time of regularization of the stipendiary nurses.”

(emphasis supplied)

75. From the above, it can be gathered that the Institute had earlier, by itself, resolved to regularize those Staff Nurses (Stipendiary) who had put in a total of five years of service and who had rendered satisfactory service to the Institute. In fact, the resolution also records that this act of regularization was approved not only by the Finance Committee in its meeting held on 02.12.2000 and but also by the Governing Council on 25.07.2001.



76. The resolution clearly states that the Staff Nurses (Stipendiary) who had rendered service for 3 years would be regularized on completion of 5 years of satisfactory service at the Institute. If the Institute had itself resolved to regularize all the Staff Nurses (Stipendiary) who had put in 5 years of satisfactory service, the argument of the Institute that there is no provision for regularization of Staff Nurses (Stipendiary) deserves to be trashed.

77. I am thus of the opinion that the Staff Nurses (Stipendiary) who have discharged the same work will have to be treated alike. If one set of Staff Nurses (Stipendiary) are regularized and the other set are not regularized, despite the resolutions of the Governing Council dated 25.07.2001 and 14.11.2005, there cannot be a greater example of blatant discrimination than this.

78. The endorsement issued by the Institute refusing regularization of the petitioners has basically put forth the reason that since there are no sanctioned posts, regularization would amount to a contravention of the



judgment of the Constitutional Bench of the Apex Court in ***Umadevi's*** case.

79. The Constitutional Bench in the aforesaid case (paragraph 53, specifically) has stated that if the initial appointment was irregular, the same could be regularized upon completion of 10 years of service. The Constitutional Bench made a clear distinction between irregular and illegal appointments before holding that an employee appointed on daily-wage basis cannot claim parity with a person who is regularly recruited.

80. As stated above, the petitioners were appointed in accordance with the Rules and Regulations, the Bye-laws, the C&R Rules and the P&R Rules of the Institute which permitted appointment not only for temporary posts, but also for posts in addition to the sanctioned posts. The said Rules permitted recruitment by way of open advertisement and, admittedly, the petitioners herein did apply pursuant to the open advertisement and only after they were found to be suitable were they appointed. There can, thus, be no



doubt that the appointment of the petitioners was in accordance with Rules framed by the Institute and for this reason, it cannot also be contended that they were even irregular, let alone, illegal appointments. They would, in fact, be perfectly valid and legal appointments. If the appointments are made in accordance with the Rules framed by the Institute and those employees have been continued in service for more than 20 years, in light of aforesaid judgment itself, they would be entitled for regularization.

81. This is because in ***Umadevi's*** case itself the Constitutional Bench has held that if a person has been irregularly appointed against a sanctioned post and has worked for more than 10 years without the intervention of any interim order of the Court, the Government should regularize his services. It is therefore clear that even on the basis of the judgment in ***Umadevi's*** case, the petitioners have a right to be regularized.



82. It is to be noticed that in these cases, the State Government has itself filed an affidavit on 26.10.2023 enclosing a letter dated 05.01.2019 sent by the Institute to the Government in which it is stated that there has been a 400% overall growth in terms of patients/procedure. It is also stated that in the Institute, there were 1002 employees working on contract basis and the proposal for creation of said posts was approved by the Finance Committee headed by the Additional Chief Secretary to the Finance Department and also ratified by the Government chaired by the Hon'ble Chief Minister from time to time from 2008.

83. The details of sanction granted to the posts of Staff Nurses (Permanent) and Staff Nurses (Stipendiary) are also set out in the affidavit dated 04.10.2023 in the following manner:



**REGARDING SANCTION OF POSTS FOR STAFF NURSES
(PERMANENT)**

Sl. No	Year	Total sanctioned posts of Nurses	No. of Staff Nurses working	Vacant	Remarks
1	2000	118	118	-	
2	2009	6	6	-	
3	2010	26	26	-	
4	2011	15	15	-	
5	2015	20	20	-	
6	2016	40	40	-	
Total		225	225		

**REGARDING SANCTION OF POSTS FOR STAFF NURSES
(STIPENDIARY)**

EXTRACT TABLE IN PARA 6 OF THE AFFIDAVIT DATED

Sl.No.	Year	Sanctioned staff nurses posts	Working	Vacant
1	2000	100	100	-
2	2006	100	100	-
3	2008	30	30	-
4	2009	70	70	-
5	2010	65	65	-
6	2011	20	20	-
7	2014	10	10	-
8	2015	50	50	-
9	2018	35	35	-
10	2020	85	85	-
11	2021	95	95	-
12	2022	105	105	-
13	2023	133	133	-
Total		898	898	-

84. If the State Government, as a matter of course, accorded sanction for the creation of posts of Staff Nurses



(Stipendiary) consistently keeping in mind the requirement of the Institute; and when the affidavit of the Under Secretary to the Government indicates that a total of 898 posts were approved to be filled up on contract basis, it becomes absolutely clear that there was sanction to create the posts of Staff Nurse (Stipendiary) all through the years and the Institute cannot now contend that there is no sanction to the posts of Staff Nurses (Stipendiary).

85. It is to be stated here that there is actually no requirement of obtaining sanction from the Government under the Bye-laws or the Rules and Regulations of the Institute. The Bye-laws and the Rules and Regulations only contemplate the approval of the Governing Council and if the Governing Council has approved the appointment, the posts automatically become sanctioned posts, with or without the approval of the State Government. It is also to be kept in mind that the Governing Council is chaired by the Hon'ble Chief Minister — the highest authority in the State and, therefore, it will have to be assumed that there



was sanction accorded for appointment of the petitioners from the date of their initial appointment and their so-called renewal with a day's break would also constitute a clear sanction to their continuance.

86. In this view of the matter, having regard to the fact that the petitioners have worked for more than 20 years, it would be just and necessary to direct the respondents to regularize the services of petitioners from the date they completed 10 years of service. The respondents shall not take into consideration the renewal break of a day or two while computing this period of 10 years.

87. Though under normal circumstances the petitioners, by virtue of this order of regularization, would be entitled to all consequential benefits including arrears of salary, having regard to the financial implications that would entail on the State Government, it would be appropriate to hold that the petitioners would be entitled for arrears of wages only from the date of filing of these petitions i.e., from 15/16.06.2023. The petitioners would, however, be



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entitled for other financial benefits, in addition to being treated as regular employees on par with the Permanent Staff Nurses with effect from the date that they completed of 10 years of their service. They shall also be granted the same benefits that are granted to Permanent Staff Nurses, both during their service and after their service.

88. These Writ Petitions are, accordingly, ***allowed***.

Sd/-
(N S SANJAY GOWDA)
JUDGE

RK/PKS/HNM/GSR
List No.: 19 SI No.: 1