



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : WA/8/2024

SHRI LIJAMO ODYUO AND 123 ORS
STAFF NURSE, DISTRICT HOSPITAL, WOKHA 13-5 2: WEKHROTSO-U
PURO
STAFF NURSE
DISTRICT HOSPITAL
PHEK 11-7

3: MHIESINO TERHUJAH
STAFF NURSE
NAGA HOSPITAL AUTHORITY
KOHIMA 23-19

4: SHRI KETOUVINUO SACHU
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO 12-8

5: LATONGRENLA
STAFF NURSE
DISTRICT HOSPITAL
MOKOKCHUNG 14-13

6: ZULULEMBA AO
STAFF NURSE
NAGA HOSPITAL AUTHORITY
KOHIMA 23-20

7: MESATSONO K. MEYASE
STAFF NURSE
DISTRICT HOSPITAL
MON 13-3

8: MEDONGUNUO
STAFF NURSE

DISTRICT HOSPITAL
ZUNHEBOTO 12-9

9: WAPANGNARO OZUKUM
STAFF NURSE
DISTRICT HOSPITAL
MOKOKCHUNG 14-14

10: CHINGKHUIMEI
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO 12-10

11: L. ZANBENI LOTH
STAFF NURSE
DISTRICT HOSPITAL
LONGLENT EV-6

12: LHINGEILHAI HANGSING
STAFF NURSE
DISTRICT HOSPITAL
PEREN 6-5

13: VIKHALI PIENYU
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO 12-11

14: T. SELILA SANGTAM
STAFF NURSE
PRIMARY HEALTH CENTRE
ANGANGBA

15: ALINARO
STAFF NURSE
NAGA HOSPITAL AUTHORITY
TKOHIMA 23-21

16: LIMASANGLA
STAFF NURSE
DISTRICT HOSPITAL

TUENSANG 26-9

17: K. THUNGCHANO EZUNG
STAFF NURSE
DISTRICT HOSPITAL
WOKHA 13-7

18: LOTHUNGBEBENI NGULLIE
STAFF NURSE
DISTRICT HOSPITAL
WOKHA 13-8

19: VIZOLENUO VALEO
STAFF NURSE
DISTRICT HOSPITAL
MOKOKCHUNG

20: RUKHIETUONUO
STAFF NURSE
DISTRICT HOSPITAL
MON 13-4

21: ELUNGSILE ROZOING
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-10

22: DUSAHULE TUNYI
STAFF NURSE
DISTRICT HOSPITAL
PHEK 11-8

23: RUKUWEU
STAFF NURSE
COMMUNITY HEALTH CENTRE
MELURI

24: CHONGBOI HANGSING
STAFF NURSE
DISTRICT HOSPITAL
MON 13-6

25: RUOKUOVONUO CHADI
STAFF NURSE
DISTRICT HOSPITAL
WOKHA 13-9

26: LONGMENSANGLA CHANG
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-11

27: T. ANUNGLA LONGCHAR
STAFF NURSE

DISTRICT HOSPITAL
MON 13-7

28: SHRI ZUBANO EZUNG
STAFF NURSE
DISTRICT HOSPITAL
WOKHA 13-10

29: ILAMLUELE
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-13

30: LOTHUNGLO OVUNG
STAFF NURSE
DISTRICT HOSPITAL
MOJN 13-8

31: NITOLI SHEQI
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO 12-12

32: SMTI. ABENI ODTUO
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-14

33: LIJAMA ODYUO
STAFF NURSE
PRIMARY HEALTH CENTRE MUNYAKSHU

34: ZOSALU
STAFF NURSE
DISTRICT HOSPITAL
PHEK 11-9

35: PELENEINUO SOUKHRIE
STAFF NURSE
NHAK
23-22

36: NGULO-O KRONU
STAFF NURSE
DISTRICT HOSPITAL
PHEK 11-10

37: METSEIKHONO MOR

STAFF NURSE
DISTRICT HOSPITAL
MON 13-9

38: KETSHUNGUNUO WHUORIE
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-15

39: ROUKWE-U KAPFO
STAFF NURSE
DISTRICT HOSPITAL
PHEK 11-11

40: W. EASTER HUMTSOE
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO

41: MARINA MAGH
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO EV-1

42: VILIHO SUMI
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO EV-2

43: HATNEIHOI LIMSONG
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-16

44: SEKHOTALU KEZO
STAFF NURSE
COMMUNITY HEALTH CENTRE
MELURI 5-3

45: VISU LEAH
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO EV-3

46: L. MOUN
STAFF NURSE
COMMUNITY HEALTH CENTRE
NOKLAK 6-4

47: MOTILE KATH
STAFF NURSE
DISTRICT HOSPITAL
WOKHA 13-12

48: KEVOHONO HIBO
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-17

49: VILASENO SUOKHRIE
STAFF NURSE
NHAK
23-23

50: NEILAZE-U
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-18

51: KEVISENU TETSO
STAFF NURSE
DISTRICT HOSPITAL
KIPHIRE 7-5

52: NANCY M HUMTSOE
STAFF NURSE
DISTRICT HOSPITAL
MON 13-11

53: IMLIYANGLA
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-19

54: ESHOMO TSANGLAO
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-20

55: HOVIPELI TARA
STAFF NURSE
DISTRICT HOSPITAL
DIMAPUR

56: SHRI. H THANGPONG KHIAMNIUNGAN
STAFF NURSE

DISTRICT HOSPITAL
TUENSANG 26-21

57: VESETALU TUNYI
STAFF NURSE
COMMUNITY HEALTH CENTRE
MELURI 5-4

58: N MHABENI EZUNG
STAFF NURSE
DISTRICT HOSPITAL
MON 13-12

59: JOSEPHINE A TUNGEOE
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO EV-4

60: TOSHIMENLA
STAFF NURSE
DISTRICT HOSPITAL
MON 13-13

61: MARY DIMNGEL
STAFF NURSE
DISTRICT HOSPITAL
PEREN 6-6

62: HOTONI SHEQI
STAFF NURSE
DISTRICT HOSPITAL
ZUNHEBOTO

63: KITOLI T. ASUMI
COMMUNITY HEALTH CENTRE
AGHUNATO

64: LUCY C EZUNG
STAFF NURSE
DISTRICT HOSPITAL
KIPHIRE 7-6

65: RUUSENO VAKHA
STAFF NURSE
COMMUNITY HEALTH CENTRE
TOBU

66: SUNGJEMKALA PONGEN

STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-23

67: ARHONI LOTH
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-23

68: ATHUNGBENI NGULIE
STAFF NURSE
COMMUNITY HEALTH CENTRE
TOBU 7-4 MON

69: ALEMZUNGLA ATOK
STAFF NURSE
BORA NAMSANG
PMC 15

70: KEVILEVONUO
STAFF NURSE
DISTRICT HOSPITAL
LONGLENG 7-5

71: AGNES R. ODYUO
STAFF NURSE
DISTRICT HOSPITAL
KIPHIRE 7-7

72: IMTIRENLA PONGEN
STAFF NURSE
TB MOKOKCHUNG

73: KHRIELABEIU TSEIKHA
STAFF NURSE
DISTRICT HOSPITAL
KIPHIRE

74: NEISEVONUO PUCHO
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-24

75: SOYINBENI N LOTH
STAFF NURSE
COMMUNITY HEALTH CENTRE
PUNGRO 6-3

76: ONENCHILA JAMIR
STAFF NURSE
COMMUNITY HEALTH CENTRE
PUNGRO 6-4

77: KHRIEBENUO RUPREU
STAFF NURSE
DISTRICT HOSPITAL
DIMAPUR

78: KEKUGULOU THERIE
STAFF NURSE
DISTRICT HOSPITAL
DIMAPUR

79: VEZHODULU SWUEHO
STAFF NURSE
NHAK

80: T. SORILA YIMCHUNGER
STAFF NURSE
PRIMARY HEALTH CENTRE
CHESSORE 34

81: KUVENULU TUNYI
STAFF NURSE
DISTRICT HOSPITAL
WOKHA 13-13

82: CHITSOLU
STAFF NURSE
DISTRICT HOSPITAL
KIPHIRE

83: K SHANGNYA KONYAK
STAFF NURSE
COMMUNITY HEALTH CENTRE
TOBU 7-5

84: TSHEKU RHAKHO
STAFF NURSE
COMMUNITY HEALTH CENTRE
CHAZOUBA

85: NIAMKOI
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-25

86: T. YANTSA
STAFF NURSE
PRIMARY HEALTH CENTRE
WEZIHO 31

87: KAMJILA YIMCHUNGER
STAFF NURSE
PRIMARY HEALTH CENTRE
AMAHATOR

88: M. HANDIJUNGLA PHOM
STAFF NURSE
DISTRICT HOSPITAL
LONGLENG 7-6

89: MODOZHURO
STAFF NURSE
COMMUNITY HEALTH CENTRE
MELURI 5-5

90: Y. TSUPANTHONG
STAFF NURSE
PRIMARY HEALTH CENTRE
KIUSAM

91: RANGZEULE
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG 26-26

92: I. SUNGMO CHANG
STAFF NURSE
PMC
NONGCHUNG 46

93: LEMTHRILA L MONGZAR
STAFF NURSE
PRIMARY HEALTH CENTRE
CHIMONGER 35

94: IMSULEMLA CHANG
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG

95: RACHEL SANGTAM
STAFF NURSE

DISTRICT HOSPITAL
TUENSANG

96: HELONI
STAFF NURSE
COMMUNITY HEALTH CENTRE
TOBU 7-6

97: C THANGLILA SANGTAM
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG

98: THONDYNALU
STAFF NURSE
COMMUNITY HEALTH CENTRE
NOKLAK 6-6

99: L. MOINYU KONYAK
STAFF NURSE
CHANGLANGSHU
PMC
23

100: P. CHAM KHIAMNIUNGAN
STAFF NURSE
PRIMARY HEALTH CENTRE
PATSHO 49

101: LEING
STAFF NURSE
PMC
THONOKNYU EV-16

102: K. JUNGLEKHEM
STAFF NURSE
LIKHIMRO PMC 7

103: RELILA TONGPI
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG EV-12

104: A. LEYE MONYU
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG EV-12

105: LITHRELA
STAFF NURSE
PMC
PUNGRO 6-5

106: RHORA KATIRY
STAFF NURSE
CMC
CHIEF MEDICAL OFFICER
PHEK

107: KEYILUNGRILE
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG EV-13

108: NKWEDAGWAMLE
STAFF NURSE
CMC
TOBU 7-7

109: NGEPSEI KONYAK
STAFF NURSE
PMC
ANGPHANG EV-18

110: KHIUWANGLIU ABONAMI
STAFF NURSE
PMC LONGCHEM

111: CHONGSOP LAM
STAFF NURSE
PMC
NOKHU 48

112: MONGLEMLA T. CHANG
STAFF NURSE
DISTRICT HOSPITAL
TUENSANG

113: WANBO KONYAK
STAFF NURSE
DISTRICT HOSPITAL
MON

114: AB LUNGSUILIU
STAFF NURSE
DISTRICT HOSPITAL

TUENSANG

115: S. NUNGSANGNUNGLA
STAFF NURSE
DISTRICT HOSPITAL
MOKOKCHUNG

116: CHRISTINA LISTSASE
STAFF NURSE
DISTRICT HOSPITAL
MOKOKCHUNG

117: S. TOIZE PHOM
STAFF NURSE
YONGYAH PMC 14

118: KALIKA SUMI
STAFF NURSE
CHC
PUNGRO N6-6

119: ANDOK H. PHOM
STAFF NURSE
SAKSHI PHC 16

120: AKATOLI Z SUMI
STAFF NURSE
DISTRICT HOSPITAL
KIPHIRE

121: SHUNGMEI JEMPHANG
STAFF NURSE
DISTRICT HOSPITAL
LONGLENG 7-7

122: H. CHUTHAI PHOM
STAFF NURSE
DISTRICT HOSPITAL
LONGLENG

123: BONYANG PHOM
STAFF NURSE
ZLO LONGLENG EV-8

124: JEPITOLI G. CHISHI
STAFF NURSE
SITIMI PHC

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND
2:THE COMMISSIONER AND SECRETARY
P AND AR DEPT
NAGALAND KOHIMA

3:THE SECRETARY
DEPT. OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

4:THE PRINCIPAL DIRECTOR
DEPT. OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIM

Advocate for the Petitioner : Z. ZHIMOMI

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 06.03.2024

(K.R. Surana, J)

Heard Ms. Z. Zhimomi, learned counsel for the appellants as well as Mr. V. Zhimomi, learned Govt. Advocate appearing for respondent nos.1 and 2, and Mr. N. Mozhui, learned standing counsel for respondent nos.3 and 4.

2. By filing this intra-court appeal, the appellants have assailed the judgment and order dated 13.02.2024, passed by the learned Single Judge in WP(C) 293/2022. The challenge is, amongst others, on the ground that vide advertisement dated 16.07.2020, a recruitment process on regular basis was initiated by the Directorate

of Health and Family Welfare, Nagaland for filling up posts of 110 Staff Nurse in various health units pursuant, and the appellants had participated and selected in the said selection process, but contrary to the terms and conditions of the advertisement, the appointment orders of the appellants were issued for "temporary appointment" instead of "regular appointment". The case of the appellants is that the learned Single Judge, by relying on the corrigendum dated 17.07.2020, failed to appreciate that the said corrigendum, amending the condition of appointment, was not uploaded in the public domain and not brought to the notice of the appellants, dismissed the writ petition.

Case of the appellants in the writ petition:

3. The case projected by the appellants was that they were serving as Staff Nurse at various District Hospitals, Community Health Centers, and Primary Health Centers in the State of Nagaland Under National Health Mission and moreover, they had also rendered service during the very difficult Covid-19 pandemic period. It was projected that during the said Covid-19 pandemic period, pursuant to approval of the Cabinet, the Directorate of Health and Family Welfare, Govt. of Nagaland had issued an advertisement dated 16.07.2020 for filling up 110 newly created posts on regular basis. The said advertisement was published in local daily newspapers on 17.07.2020.

4. The said advertisement was assailed by the Unemployed Trained Nurses Association by filling WP(C) 93/2020, contending that the advertised posts should be filled up by the then existing *queue system*. By judgment and order dated 19.08.2020,

the said W.P.(C) 93/2020 was disposed of by upholding the notification dated 05.07.2020 and advertisement dated 16.07.2020 and the State respondents were directed to extend the age relaxation to all trained nurses upto 45 years and moreover, time for submission of application was extended till 04.00 PM of 31.08.2020.

5. Thereafter, vide undated "addendum dated __.11.2020", the Principal Director, Health and Family Welfare notified filling up of 19 additional posts of Staff Nurse taking the total posts advertised to 129 posts. The petitioners along with others had applied for the said post and they were shortlisted for viva voce interview, which was conducted through Zoom meeting with effect from 04.12.2020. The respondent authorities vide Notification dated 15.12.2020 appointed 129 Staff Nurse against the new post creation/ retirement/expiry vacancies without any advertisement through *queue system* despite the said *queue system* being deprecated by this Court in judgment dated 19.08.2020, in WP(C) No. 93/2020, wherein it was had held that the practice of *queue system* was in violation of Article 14 and 16 of the Constitution of India.

6. Pursuant to the interview held on 19.12.2020, the respondent authorities had selected 129 successful candidates which included the appellants and they were appointed by a common order dated 15.04.2021. It was projected that the appellants were shocked and surprised to see that the terms and conditions of their appointment was contrary to the advertisement dated 16.07.2020, which contained that the posts advertised were to be filled up on regular basis and not a temporary engagement. However, it was projected that due to the prevailing Covid-19 situation, the

petitioners having no alternative joined their respective posting place in terms of their appointment.

7. On 04.10.2021, the Principal Director, Health & Family Welfare, Nagaland had sent the proposal to the Principal Secretary to the Govt. of Nagaland, Health & Family Welfare Department for conducting Special Recruitment Drive for the post of Staff Nurse through the Nagaland Public Service Commission (hereinafter referred to as 'NPSC' for brevity) as a one-time special dispensation for relaxation of the laid down rules and procedures for recruitment in view of the prevailing Covid-19 pandemic. The appellants formed a group under the name and style of "Department Recruited Aggrieved Nurses 2021" and submitted a representation on 04.11.2021 to the Commissioner and Secretary to the Govt. of Nagaland, questioning the terms and conditions of their appointment, and for regularization of Staff Nurses appointed pursuant to advertisement dated 16.07.2020, but no action was taken. Nonetheless, the respondents, vide common order dated 12.04.2020, extended their service for a period of another one year with effect from 16.04.2022 or till recruitment is done through NPSC whichever is earlier.

8. It was projected that thereafter, it came to the knowledge of the appellants that in a Cabinet Meeting held on 25.05.2022, approval was given for the relaxation of recruitment rules for special recruitment of Health Care Workers and accordingly, the Principal Secretary to the Govt. of Nagaland, Health & Family Welfare Department was asked to take necessary action. It was projected that the representation of the appellants against the said action was not responded to and the Health & Family Welfare Department had issued Notification dated 02.11.2022 for filling up

129 posts of Staff Nurse through a NPSC special recruitment drive.

9. Thus, being aggrieved, the appellants had filed W.P.(C) 293/2022 before this Court.

Stand of the respondents:

10. The respondent nos. 3 and 4 took a stand that the Cabinet in its meeting held on 11.06.2020, had decided that 143 posts of Staff Nurse should be created and deployed in all the district hospitals in the backdrop of Covid-19 pandemic and the severe shortage of doctors and nurses. Thereafter, the Cabinet in its meeting held on 23.06.22020, approved creation of 78 additional posts of Staff Nurse in Primary Health Centers and it was also directed that the department should clearly indicate that the appointments will be temporary and regular recruitment shall be conducted through special NPSC recruitment drive. Further, the Cabinet decided that for the post of Staff Nurse and as per the recommendation of the Manpower Rationalization Committee, the Department should fill up 50% of the post of Staff Nurse from the *queue* of former Nursing Diploma/Graduates and the remaining 50% should be filled up through direct recruitment and open competition. The Cabinet also observed that with a view to give equal opportunity to all and to promote merit, the *queue system* of recruitment of Staff Nurse will be discontinued in due course. Therefore, out of the total 221 posts of Staff Nurse created, 50% of the post i.e., 110 posts was advertised to be filled up through Department Recruitment Board. However, the Principal Director, Directorate of Health & Family Welfare, contrary to the Cabinet decision and due to the oversight, mentioned that the

recruitment against the newly created post will be on regular basis in the advertisement dated 16.07.2020. Realizing this mistake, a Corrigendum was immediately issued on 17.07.2020 to the effect that the appointment would be “temporary”.

11. It was projected that by notification dated 05.07.2020, the guidelines for recruitment and service condition of the nurses, amongst others, was framed by the Health and Family Welfare Department, Nagaland wherein it was clearly provided that the appointments will be temporary/fixed and that regular recruitment shall be conducted through special NPSC recruitment drive for all the posts coming under the purview of NPSC. Further, Clause 5 of the said notification clearly provided that 50% of the post of Staff Nurse will be filled up from *queue* of Former Nursing Diploma/ Graduates as per the recommendation of the Manpower Rationalization Committee. In view of the decision of the Cabinet in its meeting held on 23.06.2020, the advertisement dated 16.07.2020 cannot be the basis for the appellants to claim regular appointment.

Submissions of the learned counsel for the appellants:

12. The learned counsel for the appellants has submitted that the advertisement dated 16.07.2020, which was published on 17.07.2020 in the local newspapers clearly provided that the recruitment was to be done on “regular basis” through Department Recruitment Board. It was submitted that in the first time in the history of the State of Nagaland, a transparent recruitment process was initiated because previously the Staff Nurses were being recruited under *queue system* in accordance with their seriatim in

the list/ register of trained nurses. It was also submitted that the appointment through *queue system* was held to be bad in law and contrary to constitutional scheme vide judgment and order of this Court dated 24.08.2020, in WP(C) 93/2020.

13. It was submitted that in the proceedings of WP(C) 93/2020, the respondent authorities had not produced the said corrigendum no. DHFW/Covid-19/2019-2020/5052-55 dated 17.07.2020, issued by the Principal Director, Directorate of Health & Family Welfare, Nagaland. It was submitted that by the said corrigendum, the words "regular appointment" was to be read as "temporary appointment". It was strenuously submitted that the said corrigendum was never put up on the official website of the Directorate of Health & Family Welfare till date.

14. It was also submitted that the appellants were working in various healthcare institutions under the Govt. of Nagaland under various schemes of National Health Mission and at the relevant time, Covid-19 pandemic had gripped the State of Nagaland. Hence, the appointment orders were served on the appellants at various remote locations of the State mostly through Whatsapp mode and due to Covid-19 pandemic, the appellants could not challenge their appointment orders to assail the clause of temporary appointment contained therein. Nonetheless, it is submitted that any recruitment that was done contrary to the employment advertisement was bad in law.

15. It may be mentioned that before the learned Single Judge, the learned counsel for the appellants had cited the following cases, viz., (1) *K. Manjusree v. State of Andhra Pradesh & Anr.*,

(2008) 3 SCC 512, (2) Ramesh Kumar v. High Court of Delhi & Anr. (2010) 3 SCC 104, (3) Asangla T. Aier v. Thungdeno Mozhui & Ors., (2021) 3 GLR 238, (4) Madan Mohan Sharma & Anr. V. State of Rajasthan & Ors., (2008) 3 SCC 724, (5) Tej Prakash Pathak & Ors. V. Rajasthan High Court & Ors., (2013) 4 SCC 540, and (6) Somesh Thapliyal & Anr. V. Vice Chancellor, H.N.B. Gharwal University & Anr., (2021) 10 SCC 116.

16. It was also submitted that by changing the terms and conditions of the employment advertisement, the rules of the game was altered. It was further submitted that as the appellants had successfully competed in the recruitment process initiated by the Directorate of Health & Family Welfare through the Departmental Recruitment Board, the respondent authorities cannot subject the appellants to another recruitment process under the NPSC.

17. It was submitted that a special recruitment drive is being envisaged for filling up the newly created post of Staff Nurse and it is envisaged that weightage would be given up to (1) 25% of the total marks depending on the marks obtained by the candidate in qualifying degree of the University/Medical College, (2) 25% if total marks on account of work experience, depending on the length of service rendered by the contractual employees of the State Govt. such as NHM, NSACS, NHAK, BSL, Lab etc., (3) bonus points upto 25% of the total marks depending on the length of Covid duties rendered in the Govt. or private Covid facilities for at least 100 days in accordance with condition contained vide Govt. letter dated 22.05.2021, and (4) further providing that the total weightage on account of serial no. (2) 3 and 4 shall not exceed a total of 50% of

the total marks. However, it was submitted that it is absurd that such a weightage of marks of upto 100% can stand the scrutiny of Article 14 and 16 of the Constitution of India. Hence, it was submitted that the recruitment process which was mooted through the NPSC was a mere eye wash for the appellants and this was a case where though the appellants had appeared for "regular service", they were duped by the respondent authorities by giving them "temporary appointment".

18. It has been submitted that vide corrigendum, the amendment of the condition of appointment on "regular basis" as indicated in advertisement dated 16.07.2020 to that of "temporary appointment" amounted to the rules of the game being changed after the game had started. It is also projected that the said corrigendum was never brought to the notice of the appellants, who had resigned from their existing engagement elsewhere and in the process of serving the State for several years, they have crossed their normal age of recruitment and as the State has envisaging recruitment of 129 nos. of Staff Nurse through Nagaland Public Service Commission (NPSC for short), the career and livelihood of the appellants and their respective families are at stake.

19. It is submitted that the learned Single Judge had not appreciated the facts on the legal issues arising in the connected writ petition in its correct perspectives and therefore, the said judgment was liable to be set aside and quashed by allowing the writ petition. Moreso, the petitioners have either crossed their upper age limit for Govt. service and some are likely to cross the upper age limit.

Submissions of the learned Govt. Advocate for respondent nos.1 and 2 and learned standing counsel for respondent nos.3 and 4:

20. The learned standing counsel for the respondent nos.3 and 4 had submitted that a Cabinet meeting was held on 11.06.2020 and in the memorandum dated 12.06.2020, issued by the Additional Secretary to the Govt. of Nagaland, Cabinet Secretariat (Cabinet Cell), an extract of the minutes of the Cabinet meeting held on 11.06.2020 was provided, which, amongst others, approved the creation of 143 (one hundred forty three) posts of Staff Nurse to be deployed in all District Hospital. Pursuant to the said Cabinet decision, the Commissioner & Secretary to the Govt. of Nagaland, Health & Family Welfare Department issued a notification dated 26.12.2020, *inter alia*, creating 143 posts of Staff Nurse to be deployed at all 11 districts. This was followed by a notification no. HFW(A)COVID-19/Appt-13/17/2020 dated 05.07.2020, issued by the Commissioner & Secretary to the Govt. of Nagaland, Health & Family Welfare Department, by which basic guidelines for recruitment and service conditions of nurses and paramedical staff and others was notified, which envisaged appointment to be temporary/fixed and regular recruitment shall be conducted through a special NPSC recruitment drive for all post coming under the purview of NPSC.

21. It was submitted that in the Cabinet meeting held on 26.12.2020 in respect of which memorandum dated 25.06.2020 was issued by the Additional Secretary to the Govt. of Nagaland, Cabinet Secretariat (Cabinet Cell), it was envisaged that all the newly created posts should be filled up by the Health & Family Welfare Department within a month's time with proper advertisement and

the departments was directed to clearly indicate that these appointments would be temporary and regular appointment shall be conducted through NPSC recruitment drive.

22. It was submitted that an inadvertent mistake was committed by the Principal Director, Directorate of Health & Family Welfare Department, Nagaland in issuing advertisement dated 16.07.2022 for "regular appointment" instead of "temporary appointment". The said "regular appointment" was contrary to the Cabinet decision contained in the Memorandum dated 25.06.2020. Hence, the Principal Director, Directorate of Health & Family Welfare Department, Nagaland, i.e. the same authority, who had issued the said advertisement dated 16.07.2020, issued the corrigendum dated 17.07.2020, to correct his mistake. Accordingly, the appointment orders issued to the appellants were in respect of "temporary appointment" in terms of the Memorandum dated 25.06.2020 and corrigendum dated 17.07.2020.

23. It was submitted that the corrigendum was necessitated in view of the Cabinet Memorandum dated 25.06.2020, by which directions was issued for recruitment on temporary basis till regular recruitment was done to special regular selection process by NPSC. Moreover, it was submitted that under entry serial no. 10 of Schedule-II of Nagaland Nursing Service Rules, 1988, the selection process for Staff Nurse was through NPSC. Hence, departmental selection was not a lawful mode of selection and appointment, but the said procedure was adopted due to unprecedented Covid-19 pandemic, which required urgent measure to be taken for providing healthcare services to the public in the State.

24. It was also submitted that vide Cabinet Memorandum dated 12.06.2020, approval was granted for creation of 143 posts of Staff Nurse and by Cabinet Memorandum dated 25.06.2020, approval was granted for creation of further 78 posts of Staff Nurse in the PHCs. Thus, 221 posts were created, but there were existing vacancies also and therefore 258 posts were available for recruitment. Therefore, 50% of the 258 posts i.e. 129 posts were envisaged to be filled up through *queue system* and 50% of the vacancies i.e. 129 posts was advertised as per Cabinet decision. It was submitted that the recruitment through *queue system* for 129 post was not interfered with vide judgment dated 20.04.2020 passed by this Court in WP(C) 93/2020 and by the said judgment, recruitment through the advertisement dated 16.07.2020 was also not interfered with by extending the date of application as referred hereinbefore.

25. It is submitted that by the aforesaid judgment dated 20.04.2020, this Court had also directed that the extension of the maximum age of eligibility to 45 years, as envisaged, should be extended to all trained nurses of Nagaland. Thereafter, by a Cabinet Memorandum dated 13.05.2022, issued by the Principal Secretary to the Govt. of Nagaland, Health & Family Welfare Department, it was decided to relax the recruitment rules, as an one-time measure, for the special NPSC recruitment drive for appointment of nurses under the Nagaland Nursing Service Rules, 1988, *inter alia*, providing weightage for (1) written examination 50%; (2) weightage for Covid-19 duty 25%; (3) weightage for work experience 10%; and (4) interview 15%, further providing for relaxation of maximum age for eligibility upto 45 years, which covered nursing staff serving

under NHM, NHACS, NHAK on contractual, temporary engagement basis and also served the healthcare system during the pandemic.

26. It was further submitted that the appellants, for the first time in this appeal have relied on communication dated 03.05.2021 by the Govt. of India, Ministry of Health & Family Welfare, NEP Section and under para-17 thereof, the Central Govt. had recommended to the State/Union Territories to consider giving preference in regular Govt. appointments of health professionals through the respective public service commission/other recruitment bodies for those health professionals under the said special scheme who complete a minimum of 100 days of Covid related duties. In the said context, it was submitted that even the Govt. of India recommendation did not do away with selection process through NPSC.

27. Accordingly, the learned counsel for respondent nos.3 and 4 has supported the impugned judgment. Moreover, the learned Govt. Advocate has also adopted the said argument.

Reasons and decision:

28. We have considered the rival submissions made at the bar and also perused the memorandum of appeal and we have also given our anxious consideration to the cases cited by the learned counsel for the appellants before the learned Single Judge.

29. It is noted that this Court by judgment and order dated 24.08.2020 in WP(C) 93/2020 did not approve of the *queue system* of recruitment of Staff Nurses by holding that the *queue system* is not only against the scheme of equality provided under Article 14 and 16 of the Constitution of India, and it was also held to

be against public interest by further observing that every eligible and interested persons should be given the opportunity to appear in the selection process and the same should be based on merit. It may be further stated that the employment/ recruitment advertisement dated 16.07.2020, published in the newspapers on 17.07.2020, was also not interfered with as the said advertisement was found to be in tune with the minutes of the Cabinet meetings held on 11.06.2020 and 23.06.2020, which further demonstrated that the same was an emergency and one-time measure to deal with the health issues of the people of the State arising out of the Covid-19 spread for which this Court expressed its disinclination to interfere with the said advertisement.

30. The learned counsel for the appellants had strenuously submitted that the appellants had no knowledge of the corrigendum dated 17.07.2020 and that the said corrigendum has not been uploaded in the website of the Directorate of Health & Family Welfare, Nagaland. However, the appellants have annexed an addendum bearing no.DHFWcoVID-19/2019-2020/5056-09 dated 19.07.2020, issued by the Principal Director, Directorate of Health & Family Welfare, Nagaland, which appears to be an advertisement, where the corrigendum dated 17.07.2020 is referred. Therefore, even assuming that the corrigendum dated 17.07.2020 was not advertised or uploaded in the website of the Health Department, but the said corrigendum existed in the records of the Directorate of Health & Family Welfare, Nagaland and reference to the said corrigendum dated 17.07.2020 is reflected in the addendum dated 19.07.2020. Therefore, the Court is unable to accept the submission made by the learned counsel for the appellants that the said

corrigendum dated 17.07.2020 is either a non-existing corrigendum or that the said corrigendum was issued in a back date so as to create a document to be filed along with the affidavit-in-opposition in connection with the writ proceedings.

31. It is seen that the learned Single Judge had meticulously referred to the relevant contents of the Cabinet Memorandum dated 13.06.2020 and 25.06.2020 regarding creation of posts and it was held that the temporary nature of recruitment can be traced back to the decision of the Cabinet meeting held on 23.06.2020 and also the resultant basic guidelines framed and circulated through notification dated 05.07.2020. We concur with the said finding.

32. The learned Single Judge had appreciated that this Court by its judgment and order date 19.08.2020 in WP(C) 93/2020, was not inclined to interfere with the advertisement dated 16.07.2020 on the ground that the recruitment drive was done only due to the emergency situation and as an one-time measure to deal with health issues of the people of the State arising out of the Covid-19 pandemic spread and accordingly, the plea of the appellants that similarly situated persons have been appointed through *queue system* was negated as the coordinate Bench had declined to interfere with the same. We do not find any infirmity in respect of the said finding.

33. Having given our due consideration to the cases cited by the learned counsel for the appellants before the learned Single Judge, we are of the considered opinion that those cases would not apply under the facts and circumstances of the case

because this is not a case where the rules of the game was changed during the currency of the recruitment process. We concur with the finding of the learned Single Judge that in the present case no changes have been made in the rules of the game and the condition in the advertisement dated 16.07.2020 published in newspapers on 17.07.2020 for "recruitment on regular basis" was a mistake or an error as it is found contrary to the Cabinet Memorandum dated 25.06.2020, by which it is envisaged that the department should clearly indicate that these appointments would be "temporary" and the "regular recruitment" shall be conducted through NPSC recruitment drive. Therefore, the said mistake was rectified by corrigendum dated 17.07.2020.

34. Even otherwise, we do not find merit in the case of the appellants on account of the fact that under Entry-10 of Schedule-II of the Nagaland Nursing Service Rules, 1988, it is provided that recruitment of the Staff Nurse should be done by the NPSC. Therefore, as the recruitment advertisement dated 16.07.2020 is found to be contrary to the said recruitment rules, this Court is of the considered opinion that the recruitment rules i.e. Nagaland Nursing Service Rules, 1988 would prevail over the recruitment advertisement dated 16.07.2020, published in the newspapers on 17.07.2020. In this aspect, we find support from the decision of the Supreme Court of India in the case of *Malik Mazhar Sultan Vs. U.P. Public Service Commission & Ors.*, (2006) 9 SCC 507, which was followed by the Supreme Court of India in the case of *Ashish Kumar Vs. State of Uttar Pradesh & Ors.*, (2018) 3 SCC 55: (2018) 0 Supreme (SC) 91. Paragraph 22 of the case of *Ashish Kumar (supra)*, as extracted from (2018) 0 Supreme (SC) 91 is

quoted below:

22. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, appellant fulfills the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is statutory rules which take precedence. In this context, reference is made in judgment of this Court in the case of Malik Mazhar Sultan & Anr. v. U.P. Public Service Commission & Ors., [2006 \(9\) SCC 507](#). Paragraph 21 of the judgment lays down above proposition which is to the following effect:

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 01.07.2001 and 01.07.2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisements but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only of permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

35. In view of the discussions above, we find absolutely no reason to take a view different from what was held by the learned Single Judge in deciding the connected writ petition. In addition to the reasons assigned by the learned Single Judge, we also take a view that the recruitment advertisement no. DHFW-5/COVID-19/SM/ 2019-2020/5023-26 dated 16.07.2020, which was published in newspapers on 17.07.2020 was contrary to the Nagaland Nursing Service Rules, 1988 in so far as terms and conditions of "regular appointment" is concerned. Therefore, we

concur with the finding by the learned Single Judge that the corrigendum was only a rectification/correction of mistake.

36. Resultantly, we find no reasons to interfere with the impugned judgment and order dated 13.02.2024 passed by the learned Single Judge in WP(C) 293/2022. Accordingly, this appeal fails and the writ appeal stands dismissed, leaving the parties to bear their own cost.

JUDGE

JUDGE

Comparing Assistant