

GAHC020007322022



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

Case No. : WP(C)/293/2022

LIJAMO ODYUO AND 123 ORS
STAFF NURSE, DISTRICT HOSPITAL WOKHA 13 -5

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2:THE COMMISSIONER AND SECRETARY

PERSONNEL AND ADMINISTRATION REFORMS DEPARTMENT
NAGALAND
KOHIMA

3:THE SECRETARY

DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

4:THE PRINCIPAL DIRECTOR

DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIM

Advocate for the Petitioner : Z ZHIMOMI

Advocate for the Respondent : GOVT ADV NL

::: B E F O R E:::

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Judgment : 13.02.2024

JUDGMENT & ORDER

Heard Ms. Z. Zhimomi, learned counsel for the petitioners, Mr. V. Zhimomi, learned Govt. Advocate for the respondent Nos. 1 & 2 and Mr. N. Mozhui, learned counsel for the respondent Nos. 3 & 4.

[2.] 124 writ petitioners have joined hands to file the instant writ petition claiming to have common grievance and cause of action and they have made the following prayer:-

“In the premise aforesaid, it is most respectfully pray that your Lordship will graciously be pleased to admit this petition, called for records and issue a rule calling upon the respondents to show cause(s) as to why a writ in the nature of Certiorari and/or Mandamus and/or any other appropriate writ or direction should not be granted and upon cause/causes being shown be pleased to make the rule absolute in the following terms:

Quash and set-aside:

- (a) *Impugned Corrigendum dated 17.7.2020 in respect of Clause C:“Regular appointment” converted into “Temporary appointment” confining to Staff Nurse.*

(d) Impugned Letter dated 4.10.2022 proposing Special Recruitment Drive through NPSC in respect of to 129(one hundred twenty nine)/124 posts of Staff Nurse.

(b) Impugned Notification dated 2.11.2022 in respect of SL.NO.7 confining to 129(one hundred twenty nine) posts of Staff Nurse for NPSC advertisement.

*(c) Impugned minutes of the Cabinet meeting letter dated 26.5.2022 relaxing Service Rules for special recruitment of Health workers in respect of Staff Nurse. **- AND-***

Direct the Respondents:

(1) To send 5 posts of Staff Nurse to NPSC for recruitment.

(2) To exclude the petitioners from the purview of NPSC recruitment and to consider the terms and conditions of the petitioners' service strictly as per the Advertisement dated 16.7.2022.

And in the interim, pending disposal of the writ petition, be pleased to stay impugned Clause 7, in respect 129(hundred twenty nine)/124 Staff Nurse Post for NPSC advertisement.

AND/or pass any such further order(s)/direction(s) as your Lordship may deem fit and proper in the fact and circumstances of the case."

[3.] It is the case of the petitioners that they are serving as Staff Nurse under various District Hospitals, Community Health Centers and Primary Health Centers in the State of Nagaland. In the backdrop of Covid-19 pandemic, the State

Cabinet in its meeting held on 11.06.2020 approved the proposal of the Health & Family Welfare Department to create 143 posts of Staff Nurse amongst others to be deployed in all the district hospitals. Accordingly, a formal order was issued vide Notification dated 26.06.2020. Thereafter, the State Government in the Health & Family Welfare Department created 78 additional posts of Staff Nurse amongst others in terms of the recommendation of the Cabinet vide No. CAB-2/2013 dated Kohima the 25th June, 2020 bringing the total sanctioned posts to 221 posts.

[4.] The Directorate of Health & Family Welfare, Govt. of Nagaland then issued an advertisement for filling up of 110 posts of Staff Nurse vide Advertisement dated 16.07.2020, which was also put up in the local daily on 17.07.2020. It is the case of the petitioners that as per the said advertisement, the post of Staff Nurse was to be filled up on regular basis through Department Recruitment Board in Level 8 of the Pay Matrix.

[5.] The above decision of the Government to fill up 110 posts by Department Recruitment Board was put to challenge by the Unemployed Trained Nurses Association (UTNA) through WP(C) No. 93/2020 claiming that the entire posts advertised should be filled up by *queue system*. The writ petition was disposed of vide Judgment & Order dated 19.08.2020 by upholding then Notification dated 05.07.2020 and the Advertisement dated 16.07.2020 while directing the State respondents to extend the age relaxation upto 45 years to all the trained nurses.

This Court also directed that the submission of the application should be permitted till 4 pm of 31.08.2020 instead of 25.08.2020.

[6.] Thereafter, the State respondents vide Addendum dated NIL November, 2020 (Annexure-G) notified filling up of 19 additional posts of Staff Nurse taking the total posts advertised to 129 posts. The petitioners along with others applied for the post and they were shortlisted for viva voce interview, which was conducted through Zoom meeting with effect from 04.12.2020. In the meantime, to the surprise of the petitioners, the respondents vide Notification dated 15.12.2020 appointed 129 Staff Nurse against the new post creation/retirement/expiry vacancies at Level 8 of the new Pay Matrix of ROP, 2017 through *queue system* despite the fact that this Court in WP(C) No. 93/2020 had held that the practice of *queue system* to be in violation of Article 14 and 16 of the Constitution of India. According to the petitioners, upon making enquiry, it came to light that out of the total posts created and the retirement/expiry vacancies that resulted, 50% of the posts, i.e., 129 posts were filled up as per *queue system* without advertisement. Subsequently, pursuant to the interview held on 19.12.2020, the respondents selected 129 successful candidates which included all the petitioners and appoint them vide a common order dated 15.04.2021. However, the petitioners were shocked and surprised to see that the terms and conditions of their appointment was contrary to the advertisement dated 16.07.2020 which said that the posts advertised were to be

filled up on regular basis and not a temporary engagement. However, due to the prevailing Covid-19 situation, the petitioners having no alternative joined their respective posting place in terms of their appointment.

[7.] The respondent No. 4 on 04.10.2021 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 (NPSC) as a one (1) time special dispensation for relaxation of the laid down rules and procedures for recruitment in view of the prevailing Covid-19 pandemic. The petitioners being aggrieved formed a group which was styled as Department Recruited Aggrieved Nurses '2021' and submitted a representation on 04.11.2021 to the respondent No. 2 questioning the terms and conditions of their appointment but however, no action was taken. Instead, the respondents vide common order dated 12.04.2020 extended their service for a period of another one (1) year with effect from 16.04.2022 or till recruitment is done through NPSC whichever is earlier.

[8.] Thereafter, it came to the knowledge of the petitioners that the Cabinet in its meeting held on 25.05.2022 had approved 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. Although the petitioners represented against the

action taken by the State respondents but instead of mitigating their grievance, the respondents in the Health & Family Welfare Department issued Notification dated 02.11.2022 whereby, 129 posts of Staff Nurse was to be filled up through a special recruitment drive to be conducted by the NPSC. The petitioners thus being aggrieved are before this Court through the instant writ petition.

[9.] Ms. Z. Zhimomi, learned counsel for the petitioners submits that prior to their appointment vide order dated 15.04.2021, the petitioners were all appointed on contract basis as Ancillary Nurse Midwife (ANM), Community Health Officers (CHO) and General Nurse Midwife (GNM) under the National Health Mission (NHM) and they have been serving as such since the year 2005 - 2018. Upon coming across the Advertisement dated 16.07.2020, inviting applications for regular appointment to the newly created post of Staff Nurse, the petitioners applied for the post and competed in the open recruitment process. Consequently, they were selected and appointed on merit but to their utter disappointment, their appointment was only as a temporary engagement and for a period of 12 months only or till regular appointment was made through the NPSC contrary to what was stated in the Advertisement dated 16.07.2020. The learned counsel submits that the said advertisement was for direct recruitment on regular basis. She submits that the Corrigendum said to be have been issued by the respondents on 17.07.2020 converting regular appointment into temporary appointment at Clause 'C' of the said Corrigendum only came to light

at a later stage and that it was never published or circulated by the respondents. Therefore, it was not within the knowledge of the petitioners that such a Corrigendum was issued. The learned counsel submits that when the advertisement clearly provided that applications were invited for recruitment against newly created post on regular basis, the same cannot be later on changed to a temporary appointment and to the detriment of the applicants such as the petitioners.

[10.] The learned counsel further submits that the petitioners by now have become overaged to get employment elsewhere and therefore, if the respondents are allowed to proceed in making fresh recruitment through the NPSC, the petitioners and their families would suffer great hardship. She submits that the petitioners have put in their respective service ranging from 4 to 17 years under the NHM and the same cannot be ignored and not accounted for. The learned counsel submits that out of the 129 selected candidates in the post of Staff Nurse, only 124 of them are before this Court since the remaining persons have either refused to accept the post, resigned or have expired. Therefore, out of the 129 posts, the respondents may sent five (5) posts for recruitment through the NPSC if they so desire and not the 124 post held by the petitioners. The learned counsel thus submits that the writ petition should be allowed as prayed for. In support of her submission, the learned counsel has relied upon the following authorities:-

(i) K. Manjuree -Vs- State of Andhra Pradesh & Anr. (2008) 3 SCC 512.

(ii) Ramesh Kumar -Vs- High Court of Delhi & Anr. (2010) 3 SCC 104.

(iii) Asangla T. Aier -Vs- Thungdeno Mozhui & Ors. (2021) 3 GLR 238.

(iv) Madan Mohan Sharma & Anr. -Vs- State of Rajasthan & Ors. (2008) 3 SCC 724.

(v) Tej Prakash Pathak & Ors. -Vs- Rajasthan High Court & Ors. (2013) 4 SCC 540.

(vi) Somesh Thapliyal & Anr. -Vs- Vice Chancellor, , H.N.B. Gharwal University & Anr. (2021) 10 SCC 116.

[11.] Mr. N. Mozhui, learned counsel for the respondent Nos. 3 & 4 on the other hand submits that the Cabinet in its meeting held on 11.06.2020 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 again in its meeting held on 23.06.22020 approved creation of 78 additional posts of Staff Nurse in Primary Health Centers while directing 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 and the same was put up in the Department website for information to all concerned.

[12.] The learned counsel submits that the petitioners cannot claim ignorance about the said Corrigendum in view of the fact that as per the Advertisement dated 16.07.2020 itself, the terms and conditions and the prescribed format of the application was anyhow to be downloaded from the department website. Therefore, non-publication of the Corrigendum in a local daily cannot be the basis for claiming ignorance about the Corrigendum. The learned counsel by referring to the Notification dated 05.07.2020 submits that the guidelines for recruitment and service condition of the Nurses amongst others was framed by the Department 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. The learned counsel submits that this was provided as per the decision of the Cabinet in its meeting held on 23.06.2020. Therefore, the Advertisement dated 16.07.2020 cannot be the basis for claiming regular appointment by the petitioners.

[13.] The learned counsel further submits that UTNA had approached this Court through WP(C) No. 93/2020 claiming that the entire posts created should be filled up by *queue system*. However, the High Court rejected the claim of the writ petitioners by observing that the *queue system* is outside the Constitutional Scheme and violates the equality clause as provided under Article 14 and 16 of the Constitution of India. However, considering the fact that it was due to the emergency arising out of Covid-19 spread and as a one (1) time measure that the Cabinet had taken such a decision. Therefore, the decision of the Cabinet to fill up the created post equally by *queue system* and by direct recruitment through the NPSC was not interfered with. He thus submits that the writ petition is without any merit and therefore should be dismissed.

[14.] Mr. V. Zhimomi, learned Govt. Advocate adopts the argument of Mr. N. Mozhui, learned counsel and submits that under the facts and circumstances, the

petitioners cannot have any legitimate grievance against the respondents and the writ petition should be dismissed.

[15.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record, including the authorities cited by the parties.

[16.] The controversy raised by the petitioners is that they have not been appointed to the post of Staff Nurse in terms of the Advertisement dated 16.07.2020 which provided that recruitment was to be done on regular basis through Department Recruitment Board. It is their further case that the Corrigendum said to have been issued on 17.07.2020 by the Principal Director, Directorate of Health & Family Welfare making a correction to the advertisement by replacing "regular appointment" with that of "temporary appointment" was not published in the newspaper and it was not within their knowledge. The further case of the petitioners is that similarly situated persons have been appointed through *queue system* which is in violation of the Court's direction passed in WP(C) No. 93/2020.

[17.] The petitioners in their writ petition have annexed the Meeting Minutes of the Cabinet dated 11.06.2020, which was circulated vide Memorandum dated 13.06.2020 wherein, 143 posts of Staff Nurse were created for deployment in all the District Hospitals. The petitioners have also annexed the Notification dated 02.07.2020 by which 78 additional posts of Staff Nurse was created for Public

Health Centers. The petitioners have further annexed the Notification dated 05.07.2020 by which basic guidelines for recruitment and service condition of Medical Officers, Staff Nurse, Technicians and other paramedical staff has been framed. The notification has a reference to the recommendation of the Cabinet decision circulated vide Memorandum dated 25.06.2020. The said Memorandum has been annexed by the State respondents in their counter affidavit as Annexure-1. A perusal of the same goes to show that it is regarding the decision taken by the Cabinet in its meeting held on 23.06.2020. The Cabinet apart from approving the creation of 78 posts of Staff Nurse in Public Health Centers directed that all the newly created post should be filled up by the Health & Family Welfare Department within a month's time with proper advertisement. While filling up the post, due weightage should be given to the marks obtained by the candidate in the qualifying degree of the University/Medical College and years of work experience. The interview panel should include independent experts from outside the State. It further provided that the Department should clearly indicate that the appointment will be temporary and regular recruitment shall be conducted through special NPSC recruitment drive. In respect of the post of Staff Nurse and as per the recommendation of the Manpower Rationalization Committee, the Department should fill in 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.

Therefore, on the basis of the decision of the Cabinet, the basic guideline for recruitment and service condition of Staff Nurse amongst others was framed vide Notification dated 05.07.2020 wherein, it was clearly indicated that the appointment to be made will be temporary/fixed and regular recruitment shall be made through special NPSC recruitment drive for all posts coming under the purview of the NPSC. Therefore, it appears that the Advertisement dated 16.07.2020 inviting applications for recruitment against the newly created post of Staff Nurse on regular basis apparently was a mistake committed by the Issuing Authority. The same was rectified vide the Corrigendum dated 17.07.2020 by the same authority who had issued the advertisement. Although the petitioners claim that they were not aware about the Corrigendum as it was not published in the local daily but the fact remains that the Corrigendum was put up in the Department website. Similarly, the Advertisement dated 16.07.2020 require all the intending applicants to download the prescribed format of the application and the terms and conditions prescribed from the Department website. Therefore, the stand of the petitioners that they were not aware about the Corrigendum cannot be accepted. Further, even if one is to accept that the petitioners were not aware about the Corrigendum, the fact remains that the recruitment was to be a temporary recruitment only can be traced back to the decision of the Cabinet in its meeting held on 23.06.2020 and also, the resultant basic guidelines framed and circulated through Notification dated 05.07.2020.

[18.] The further case of the petitioners is that persons who are similarly situated have been appointed through *queue system* and the same is in violation of the Court's direction passed in WP(C) No. 93/2020. It may be seen that a coordinate Bench of this Court in its Judgment & Order dated 19.08.2020 in the said writ petition was of the view that *queue system* of appointment does not come under the Constitutional scheme and therefore, in violation of the equality clause as provided under Article 14 & 16 of the Constitution of India. However, upon perusal of the two (2) Cabinet meeting minutes and the notifications issued thereafter, Court was of the view that it was only due to the emergency situation and as a one (1) measure, a decision was taken to deal with the health issues of the people of the State arising out of the Covid-19 spread. As such, the Court was not inclined to interfere with the same. The same Cabinet decisions and the notifications issued thereafter have been questioned in the present writ petition and this Court being a Coordinate Bench cannot take a different view without referring the matter to a larger Bench. It may be seen that the Notification dated 15.12.2020 was issued by the State respondents pursuant to the decision taken by the Cabinet for filling up 50% of the post created/vacancies by way of *queue system*. The petitioners have not challenge the said Notification nor have they made the appointed persons as party to the instant proceedings and therefore, there is no scope for this Court to enter into that aspect.

[19.] The learned counsel for the petitioners has relied upon a number of

authorities in support of the claim made by the petitioners. The case of *K. Manjuree* (supra), *Ramesh Kumar* (supra) and *Tej Prakash Pathak & Ors.* (supra) pertains to impermissibility for changing the rules of the game in a recruitment process. It may be seen that in the present case, no changes have been made in the rules of the game and that it was only a mistake or an error that was rectified by the Corrigendum. The rectification is also supported by the decision taken by the Cabinet in its meeting held on 23.06.2020. Therefore, the authorities cited are found to be not relevant. The case of *Asangla T. Aier* (supra) has been relied upon by the learned counsel for the petitioners to support her submission that writ petitions cannot be rejected merely on technicality. However, considering the facts and circumstances involved in the present case and the findings arrived at in the preceding paragraphs, the authority cited is found to be not applicable. Claiming regular appointment on the basis of the mistake made in the Advertisement is found to be not tenable. Similarly, the case of *Madan Mohan Sharma & Anr.* (supra) which provides that the earlier criteria for recruitment shall prevail over any subsequent criteria in view of what has been stated in the foregoing paragraphs is also found to be not applicable to the present case.

[20.] Lastly, the case of *Somesh Thapliyal & Anr.* (supra) has been relied upon by the learned counsel for the petitioners to impress upon the Court that the appointees are not in a bargaining position and therefore, did not have any

choice but to accept their appointment orders but however, the same is also found not to be applicable to the present case. As already stated herein above, the selection and appointment of Staff Nurses through the Advertisement dated 16.07.2020 was meant to be on temporary basis till a regular appointment can be made through special NPSC recruitment drive as decided by the Cabinet in their meeting held on 23.06.2020. Therefore, the petitioners cannot insist that their appointments should be on regular basis as was advertised in the Advertisement dated 16.07.2020. It may further be noticed that the post of Staff Nurse is a non-gazetted post and at Level 8 of the new Pay Matrix of ROP, 2017. The mode of recruitment as prescribed by the service rules i.e., the Nagaland Nursing Service Rules, 1988 is through the NPSC. The petitioners in the instant case were screened by the Department Recruitment Board in view of the urgency and shortage of manpower in the backdrop of unprecedented situation arising out of the Covid-19 pandemic. Therefore, the petitioners under the facts and circumstances cannot have any legitimate grievance.

[21.] Thus, upon due consideration of the case in its entirety, I do not find merit in the writ petition and the same is dismissed. The interim order passed earlier stands vacated. No cost.

Sd/-
JUDGE

Comparing Assistant