

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 9486 of 2010 (I)

PETITIONER(S):

**LIGI JACOB, AGE 41, W/O. SUNNY,
PALAYIKUDIYIL HOUSE, AYAVANA P.O., MUVATTUPUZHA.**

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT(S):

- 1. MAHATMA GANDHI UNIVERSITY, REPRESENTED
BY ITS REGISTRAR, PRIYADARSHINI HILLS P.O., KOTTAYAM.**
- 2. THE ACADEMIC COUNCIL, MAHATMA GANDHI
UNIVERSITY, REPRESENTED BY ITS VICE CHANCELLOR,
PRIYADARSHINI HILLS.P.O., KOTTAYAM.**
- 3. SCHOOL OF MEDICAL EDUCATION,
MAHATMA GANDHI UNIVESITY, REPRESENTED BY THE DIRECTOR,
GANDHI NAGAR P.O., KOTTAYAM.**
- 4. THE KERALA NURSES AND MIDWIVES COUNCIL,
THIRUVANANTHAPURAM.**
- 5. THE INDIAN NURSING COUNCIL,
KOTLA ROAD, NEW DELHI, REPRESENTED BY
ITS SECRETARY.**

**R1 TO R3 BY ADV. SRI.VARUGHESE M.EASO, SC
R4 BY ADV. SRI.N.RAGHURAJ, SC
R5 BY SRI.NOUSHAD THOTTATHIL, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: TRUE COPY OF THE PROSPECTUS ON POST BASIC B.SC.DEGREE IN NURSING ISSUED BY THE MAHATMA GANDHI UNIVERSITY.
- EXT.P2: TRUE COPY OF PETITIONER'S MARK LIST OF PRE-DEGREE EXAMINATION CONDUCTED BY MAHATMA GANDHI UNIVERSITY.
- EXT.P3: TRUE COPY OF REGISTRATION CERTIFICATE IN GENERAL NURSING ISSUED BY THE KARNATAKA NURSING COUNCIL TO THE PETITIONER.
- EXT.P4: TRUE COPY OF REGISTRATION CERTIFICATE IN MIDWIFERY ISSUED BY THE KARNATAKA NURSING COUNCIL TO THE PETITIONER.
- EXT.P5: TRUE COPY OF REGISTRATION CERTIFICATE ON NURSING ISSUED TO THE PETITIONER BY THE KERALA NURSES AND MIDWIFERY COUNCIL.
- EXT.P6: TRUE COPY OF REGISTRATION CERTIFICATE ON MIDWIFERY ISSUED TO THE PETITIONER BY THE KERALA NURSES AND MIDWIFERY COUNCIL.
- EXT.P7: TRUE COPY OF THE TRANSCRIPT OF STUDIES ISSUED BY THE SCHOOL OF NURSING TO THE PETITIONER.
- EXT.P8: TRUE COPY OF THE CERTIFICATE ISSUED BY THE MINISTRY OF HEALTH, SULTANATE OF OMAN.
- EXT.P9: TRUE COPY OF THE WORK PERMIT ISSUED TO THE PETITIONER BY THE EMPLOYER IN U.K.
- EXT.P10: TRUE COPY OF INFORMATION DOWN LOADED BY PETITIONER FROM RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES, KARNATAKA.
- EXT.P11: TRUE COPY OF THE JUDGMENT IN WP(C) 30014/09 DTD.4.1.2010.
- EXT.P12: TRUE COPY OF THE COMMUNICATION ISSUED BY THE UNIVERSITY DTD.5.3.2010.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. Vinod Chandran, J.

W.P(C) No.9486 of 2010-I

Dated this the 2nd day of March, 2015

JUDGMENT

The petitioner desires admission to the Post Basic B.Sc. Degree in Nursing, with a duration of two years. The respondents 1 to 3 refused to grant admission to the petitioner only on account of her not having studied Biology in the Plus Two/Pre-Degree course she had completed. The petitioner has admittedly passed Pre-degree; with Physics, Chemistry and Mathematics and has passed General Nursing and Midwifery Examination conducted by the Karnataka Nursing Council, as is evidenced by Exhibit P3.

2. The petitioner's contentions are many fold; one that the petitioner having obtained a qualification from the Karnataka Nursing Council and having been registered as a "Registered Nurse" and "Registered Midwife" under the Kerala Nurses And Midwives Council, the petitioner is entitled to be admitted to the Post Basic B.Sc. Nursing. The petitioner then contends that she having acquired the higher diploma, the fact that she did not take

Biology as a subject in Plus Two/Pre-Degree is not of any consequence. The petitioner also places reliance on the decision in ***Jyoti K.K. & Ors. v. Kerala Public Service Commission & Ors.*** [JT 2002 (Suppl.1) SC 85]. The next contention is that, even going by the First Statute of the University; Chapter 21 Statute 4 prescribes only a pass in the Pre-Degree Examination of the University and there cannot be a prescription contrary to the statute, in the prospectus, as is evidenced at Exhibit P1. The petitioner also relies on the similar prescription of qualification in other Universities, contrary to which the respondent-University has insisted on Plus Two/Pre-Degree with Biology. The Indian Nursing Council, the 4th respondent, also is said to have prescribed only the qualification of Pre-Degree without any subject specification and the said Council being the apex body, the University cannot make conditions in violation of the same, is the last argument.

3. The University has filed a counter affidavit, refuting the contentions of the petitioner and placing on record the distinction in the Regulations. The University avers that the petitioner's case is different from the afore-cited decision. It is stated that in the case of

the University, the prescription is not Pre-Degree or Diploma in Nursing, but any candidate who seeks admission to the 2 year Post Basic B.Sc. Degree in Nursing has to have Plus Two/Pre-Degree with Physics, Chemistry and Biology and a three year Diploma in Nursing. The regulations for admission are said to be framed by the Academic Council and Chapter 39 Statute 1 of M.G.University Statutes is relied on to sustain the regulation made, insofar as prescribing the said qualification by the Academic Council.

4. **Jyoti K.K.** (*supra*) was a case in which the Kerala Public Service Commission had called for selection to the post of Sub Engineer (Electrical) in the Kerala State Electricity Board. The qualification prescribed was Diploma in Electrical Engineering or a Certificate in Electrical Engineering with five years service under the Board. Graduate degree holders were before this Court, contending that they also ought to be considered. The Hon'ble Supreme Court took note of Rule 10(a)(ii), which prescribed that those higher qualifications, which presuppose the acquisition of the lower qualification, prescribed for a post, shall also be sufficient for consideration to the post. A graduate degree in Engineering in a

particular field definitely is a higher qualification than a diploma in Engineering in that particular field. Herein no such comparison can be made of the Plus Two/Pre-Degree qualification and the Diploma acquired by the petitioner. Further, as has been stated by the University, the requirement is that a candidate who applies for Post Basic B.Sc. Nursing course of two years duration should have a Plus Two/Pre-Degree with Physics, Chemistry and Biology as also the higher diploma.

5. As has been pointed out by the Standing Counsel for the University, the afore-cited decision is not applicable to the facts of this case. The petitioner is required to have both the aforementioned qualifications for admission to the Post Basic B.Sc. Degree in Nursing which has a duration of only two years, as against the usual graduate course of duration of about four years. It is also trite that though Nursing Council prescribes the minimum standards, what is interdicted is, the Academic Council prescribing qualifications lowering the minimum standards notified by the apex body. A more rigorous condition brought in, cannot be held to be violative of the prescription of the apex Council. In the present case, the admission

sought is to a Nursing course and the prescription of the University is that a person should have studied Biology in the Plus Two course/Pre-Degree, which is one of the qualifications entitling a candidate to obtain admission. The petitioner who had not obtained that qualification, cannot be granted admission in the said course.

The writ petition would stand dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]