

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.27506 OF 2016

Mrs. Sushila Satyaprakash Nair and others ..Petitioners
Versus

**The Municipal Corporation of Greater Mumbai
and others** ..Respondents

**Shri. S. C. Naidu a/w Shri. Aniketh Poojari i/by Mrs. Vidula S. Patil
for the Petitioners.**

**Shri. A. V. Bukhari, Senior Advocate a/w Shri. B. V. Bukhari i/by Shri.
Vinod Mahadik for the Respondent Nos.1 to 6.**

**Shri. Kishore Kumar Shankar Shetty for the Respondent Nos.7 to 26.
Mrs. Maya Vadgaonkar, Superintendent of Nursing Service for BMC.**

**CORAM : R. M. SAVANT, J.
DATE : 25th OCTOBER, 2016**

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 23.09.2016 passed by the Learned President of the Industrial Court, Maharashtra, Mumbai, by which order, the Review Application being Review Application (ULP) No.17 of 2015 filed by the Respondent Nos.7 to 26 came to be allowed and as a consequence, the order dated 22.08.2014 allowing the application Exh.U-2 filed by the Complainants in Complaint (ULP) No.226 of 2014 came to be modified to the extent mentioned in the operative part of the impugned order. The operative part of the impugned order reads thus :-

“I) Review Application (ULP) No.17 of 2015 is allowed.

II) The order dated 22.08.2014 passed below Exh.U-2 in Complaint (ULP) No.226 of 2014 is hereby modified as under :-

The Respondent Nos.14 to 19 are hereby granted leave to appoint selected candidates for the post of Sister Tutor on adhoc basis including those who have obtained Basic B.Sc Nursing Degree from Open University IGNOU only from recognized centre subject to final outcome of Complaint (ULP) No.226 of 2014, whose names have been mentioned above in the body of the Order.

III) No order as to costs.

IV) The original matter be sent to the Industrial Court, Mumbai then presided over by Shri. R. A. Gaikwad for disposal as per law.”

2 The controversy in the Petition relates to the appointment to
the post of Sister Tutor. The applications for which were invited by the
Circular dated 22.07.2014 and the qualifications prescribed for the said
post were as under :-

- “1) a) Post graduation degree in M.S.C. (Nursing) in Nursing syllabus of recognized university.
OR
b) Degree (basic or post basic) of B.Sc. Nursing in Nursing Syllabus of recognized university.
OR
c) Graduate nurses and registered midwives and Sister Tutors etc. registered with recognized institutions and the candidates who have completed the Diploma in Nursing Education & Administration or similar syllabus.

- 2) (A) Criteria of selection is as follows:
- 1) M.Sc. (Nursing) Degree of recognized university-first priority.
 - 2) B.Sc. (Nursing) Degree of recognized university-second priority.
 - 3) Diploma in nursing from recognized university-third priority (Education & Administration).
 - 4) If more than one candidate having M.Sc. Degree are found, the candidates having first obtained the B.Sc. Degree will be given first priority.
- (B) Seniority in service of the professional experience of 2 years after having obtained the degree/diploma in nursing syllabus in recognized university, will be counted.”

3 It was mentioned just below the said qualifications that the candidates having M.Sc. (Nursing) Degree of recognized university would be given first priority, the candidates having B.Sc. (Nursing) Degree of recognized university would be given second priority and diploma in nursing from recognized university would be given third priority (Education & Administration).

4 It was also provided that if there was more than one candidate having M.Sc. Degree, the candidates having first obtained the B.Sc. Degree will be given first priority. The selection process was carried out pursuant to the said notice and the Petitioners were amongst the unsuccessful candidates. In so far as the selected candidates are concerned, seven candidates were having degrees from the recognized universities, whereas the remaining seven were having degrees in Nursing from Indira Gandhi National Open University (For short

“IGNOU”). The Petitioners in view of their non-selection filed Complaint (ULP) No.226 of 2014 under Items 5 and 9 of Schedule IV of the MRTU & PULP Act, 1971.

5 In the said Complaint, the Petitioners filed an application Exh.U-2 for interim reliefs. The said application Exh.U-2 came to be partly allowed by the Learned Member of the Industrial Court and in so far as seven candidates who had the degrees from IGNOU their appointments were stayed. Out of the said seven candidates, five are Respondents, amongst the Respondent Nos.7 to 26 to the above Petition. The Respondent Nos.7 to 26 applied for their impleadment in the said Complaint (ULP) No.226 of 2014. The said application came to be allowed by the Learned Member of the Industrial Court by order dated 03.12.2015. The said impleaded candidates thereafter filed the instant application being Review Application (ULP) No.17 of 2015. The said application initially came to be allowed by the order dated 03.12.2015 by a Learned Member of the Industrial Court. On the Petitioners challenging the said order in this Court vide Writ Petition No.1 of 2016, the said order dated 03.12.2015 came to be set aside and the Review Application came to be relegated back to the Industrial Court for being tried by the President of the Industrial Court, Pune, as he had passed the order dated 22.08.2014 in his capacity as a member of the Industrial Court.

6 It is on remand, that the impugned order dated 23.09.2016 has been passed by the Learned Member of the Industrial Court, Mumbai. The Learned President of the Industrial Court has thereby granted leave to the Respondent Nos.14 to 19 i.e. the MCGM to appoint selected candidates to the post of Sister Tutor including those who have obtained Post Basic B.Sc. Nursing Degree from IGNOU only from recognized centre subject to final outcome of Complaint (ULP) No.226 of 2014. Pursuant to the impugned order dated 23.09.2016 appointment letters have been issued to the seven candidates who had been selected in the selection process, but the said candidates could not be issued appointment letters in view of the injunction granted by the order dated 22.08.2014. It has now come on record that six candidates have assumed the post of Sister Tutor and one has not assumed as she is on maternity leave. The gist of the reasoning of the Learned President of the Industrial Court as can be seen from the impugned order is that the candidates who have the degrees from IGNOU are entitled to be appointed as Sister Tutors in terms of the qualification prescribed for the said post. The Learned President of the Industrial Court has referred to the judgment of a Division Bench of the Kerala High Court, wherein the Division Bench of the Kerala High Court has referred to the aspect of the recognition of the IGNOU qualification by the Indian Nursing Council. As indicated above,

the appointment of the seven candidates who have qualifications from IGNOU are made subject to the result of the Complaint.

7 On behalf of the Petitioners, the Learned Counsel Shri. S. C. Naidu would make the following submissions :-

I) That since the qualifications for the post of Sister Tutor are prescribed under Section 81 of the Mumbai Municipal Corporation Act, 1888 (For short “the MMC Act”) and since the qualifications which were originally prescribed did not prescribe the qualification of M.Sc an amendment to the qualification prescribed could only be by a resolution passed by the Corporation and not by an administrative fiat. The Learned Counsel sought to place reliance on the judgment of a Learned Single Judge of this Court reported in 2008(6) Mh.L.J. 176 in the matter of Municipal Corporation of Greater Mumbai Vs. Malen C. Perira and others and the judgment of the Apex Court reported in 2014(3) ALL MR 423 in the matter of Municipal Corporation of Greater Mumbai Vs. Anil Shantaram Khoje and others.

II) The Learned Counsel would contend that since the Nursing Degree from IGNOU has not been recognized, the seven candidates who have admittedly the degree from IGNOU could not have been selected.

III) It was the contention of Shri. S. C. Naidu that the Learned President of the Industrial Court has decided the Review Application without dealing with the judgment in *Municipal Corporation of Greater Mumbai Vs. Malen C. Perira's* case (*supra*) and has also not considered the implications of not complying with the provisions of Section 81 of the MMC Act.

8 Per contra, the Learned Senior Counsel Shri. A. V. Bukhari appearing on behalf of the Respondents MCGM would contend that the submission based on Section 81 of the MMC Act is misconceived, as the qualifications on which reliance were placed as can be seen from Exh.C have been fixed by the Municipal Recruitment Cell which operates under the aegis of the Chief Personnel Officer of the MCGM. Hence according to the Learned Senior Counsel Section 81 of the MMC Act as well as the judgment in *Municipal Corporation of Greater Mumbai Vs. Malen C. Perira's* case (*supra*) would have no application. The Learned Senior Counsel would contend that in so far as the qualification of M.Sc. (Nursing) is concerned, the said qualification has been prescribed right from the year 2002 pursuant to which as many as 60 Sister Tutors have been appointed who have been appointed on the basis of the said changed qualifications. It was the submission of Shri. A. V. Bukhari that the change in qualifications has been approved by the Competent

Authority of the Municipal Corporation on 21.09.2002 and again a modification which took place on 15.05.2009 has also been approved by the Competent Authority of the Municipal Corporation. It was also the submission of Shri. A. V. Bukhari that the Post Basic B.Sc from IGNOU has been approved for registration and higher study and for being appointed as a Sister Tutor in School of Nursing. In support of which, reliance is placed on the letter dated 14.04.2014 issued by the Secretary of the Indian Nursing Council which is annexed at page No.276 of the paper-book, as also the letter dated 20.10.2016 addressed by the President of the Indian Nursing Council to Prof. Ravindra Kumar Vice Chancellor of IGNOU.

9 I have heard the Learned Counsel for the parties. The question that arises is whether the interdiction of this Court in its writ jurisdiction under Article 227 of the Constitution of India is warranted against the impugned order dated 23.09.2016. In the said context, a gist of the facts narrated hereinabove would have to be revisited. As indicated above, by order dated 22.08.2014 the interim application filed by the Complainants being Exh.U-2 was allowed and injunction came to be granted staying the appointment of the seven candidates who were selected and who have the Post Basic B.Sc Nursing from IGNOU. The candidates who had the qualifications from IGNOU filed applications for

impleadment which came to be allowed on 31.03.2015 and thereafter filed instant application for review being Review Application (ULP) No.17 of 2015. Hence though the said seven candidates were selected, an injunction was passed against them on 22.08.2014 without hearing them. The said candidates therefore filed the Review Application and brought to the notice of the Learned Member of the Industrial Court that the degree obtained from IGNOU is a recognized qualification in so far as registration and appointment to the post of Sister Tutor is concerned. The Learned President of the Industrial Court has referred to the judgment of the Division Bench of the Kerala High Court, wherein the Division Bench has referred to the degree obtained from IGNOU as being recognized. It is in the said context that the Learned President of the Industrial Court deemed it appropriate to allow the Review Application and permit the MCGM and its officers i.e. the Respondent Nos.14 to 19 to appoint selected candidates who have obtained Basic B.Sc Nursing Degree from IGNOU and made the said appointments subject to the result of the Complaint. That is how out of the seven candidates who were selected, six have joined and one has not joined though appointment letter has been issued, as she is on maternity leave.

10 Now coming to the contention urged on behalf of the Petitioners by Shri. S. C. Naidu that the qualifications for the post of

Sister Tutor could not be modified or changed without following the procedure prescribed for the same by Section 81 of the MMC Act. As indicated above, the Learned Senior Counsel Shri. A. V. Bukhari on instructions of the Superintendent of Nursing Services who is personally present in Court made a statement that the original qualifications prescribed for the said post have been prescribed by the Municipal Recruitment Cell which operates under the aegis of the Chief Personnel Officer and therefore the qualifications could be modified or changed without following the procedure prescribed under Section 81 of the MMC Act. It is required to be noted that the said modified or changed qualifications are in operation since the year 2002 and as many as 60 Tutor Nurses who have M.Sc, B.Sc qualification have been selected and the said selections have not been questioned. It is also required to be noted that the modified or changed qualification to include M.Sc Nursing has been approved on 21.09.2002 by the Competent Authority thereafter one more amendment to the said qualification has been approved on 15.05.2009. The instant selection is of the year 2014 and in the backdrop of the aforesaid sanctions, it could not be said that the selection has been carried out pursuant to the qualifications which do not have the approval of the Competent Authority. In view thereof, the judgment in *Municipal Corporation of Greater Mumbai Vs. Malen C. Perira's case (supra)*, would

have no application, as in the said case, the post in contention was the post of Matron and admittedly, the qualifications prescribed for the said post were originally under Section 81 of the MMC Act and therefore in the said context the Learned Single Judge held that the said qualifications could be amended or changed only after following the procedure prescribed under Section 81 of the MMC Act. As indicated above, in the instant case, the qualifications have been prescribed by the Municipal Recruitment Cell and therefore the need of following Section 81 of the MMC Act was obviated.

11 In so far as the contention of the Learned Counsel that the judgment in *Municipal Corporation of Greater Mumbai Vs. Malen C. Perira's* case (*supra*) and the import of Section 81 of the MMC Act has not been taken into consideration by the Learned President in view of what has been stated hereinabove, the same would have no consequence and would not have any import on the order passed by the Learned President of the Industrial Court. Similarly the judgment of the Apex Court in *Municipal Corporation of Greater Mumbai Vs. Anil Shantaram Khoje's* case (*supra*) would also not further the case of the Petitioners. Since the appointments of the seven selected candidates have been made subject to the Complaint and having regard to the fact that the Petitioners would have an opportunity to agitate their contentions before the Industrial

Court in the said Complaint and also having regard to the fact that the seven selected candidates have been issued appointment letters and six of them have already assumed their posts, it is not necessary for this Court to exercise its writ jurisdiction in so far as the impugned order is concerned. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]