

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 24984 of 2014

Date of decision : 12-07-2016

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Jay Kumar Dwivedi and others

.....Petitioners

Versus

Govt. Medical College and Hospital, Chandigarh.

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Anand Chibbar, Senior Advocate with
Ms. Harpriya Khaneka, Advocate for the petitioners.

Mr. Deepak Sharma, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The case set out by the petitioners in the present writ petition is that as per Public Appointment Notices dated 02.06.2014 and 15.7.2014 (Annexure P-11 to P-13) by Government Medical College and Hospital, Chandigarh, 61 posts were advertised for the post of Staff Nurse which were to be filled from the Ex-servicemen category and the essential qualification for the aforesaid posts was Diploma in General Nursing and Midwifery Course from a recognized Board/University/Institution. Thereafter, by way of specific instructions in Corrigendum dated 31.10.2014 (Annexure P-20) and

Interview Notice dated 21.11.2014 (Annexure P-22) the petitioners were rendered ineligible for the said post on the grounds that no alternative course in lieu of 'Midwifery' will be accepted since the petitioners, in fact were eligible on the grounds of possessing 'Equivalent' qualification as provided for under Essential Qualification criteria in Public Appointment Notices (Annexure P-11 to P-13). The grievance of the petitioners is that the change in eligibility criteria is wholly arbitrary and has been resorted to at a stage when written examination has already been conducted.

The Indian Nursing Council for the Award of General Nursing Certificate to Members of the Army Medical Corps issued Instructions (Annexure P-1), wherein the recognition was to be based on identical training for male and female nurses with the exception of Midwifery in lieu of which other subjects were prescribed for male nurses. Clause (b) under Eligibility lays down the subjects which may be taken up in lieu of Midwifery as produced hereunder:-

“(b) They may take midwifery or may elect to take one six months clinical nursing course as approved by the Indian Nursing Council. The subject once selected by the individual will not be changed. The subjects are as under:-

(i) Psychiatric Nursing

(ii) Neurological Nursing

(iii) Occupational Health Nursing

(iv) Cancer Nursing

(v) Operation Theatre Technique

(vi) Ophthalmic Nursing

(vii) Leprosy Nursing

(viii) Tuberculosis Nursing

Moreover, the Defence Ministry vide letter dated 17.2.1999 (Annexure P-2) to School of Nursing, Command Hospital, Western Command, Chandimandir clearly laid down that Nursing Assistant trainees will undergo training in Neurological Nursing in lieu of Midwifery. In pursuance thereto, the petitioners enrolled in the General Nursing for Male Nurses Course for a duration of three years along with alternative course in lieu of Midwifery as an equivalent/alternate course prescribed by the Indian Nursing Council (P-1). Copies of mark sheets of all three years of one of the petitioners are annexed as Annexure P-3(Colly). Petitioners as a part of the course curriculum even attended requisite training. Copy of the training certificates issued by the School of Nursing, Command Hospital (W) Chandimandir to one of the petitioners is annexed herewith as Annexure P-4. Thereafter the petitioners received passing certificates (Annexure P-5) Colly whereby it was stated that the petitioners are entitled for registration as Male Nurses, Midwife/Equivalent qualifications and Public Health Nurse in any State in India. Petitioners completed the General Nursing Course and in pursuance thereto received General Nursing Certificates from the Armed forces Medical Services Examination Board. Copy of General Nursing Certificate issued to one of the petitioners is Annexure P-6. The petitioners Jay Kumar Dwivedi and Satpal Singh were, thereafter, registered by the Punjab Nurses Registration Council, Petitioner-Baljinder Singh was registered by the Haryana Nurses Registration Council and Raj Kumar and Krishan Murari Yadav were registered by the Delhi Nursing Council in the

Nurses and Midwives Register maintained under the provisions of various State Nurses Registration Council. Copies of certificates by the Punjab Nurses Registration Council are annexed as Annexure P-7(Colly). Upon completion of 30 years in service, the petitioners received the Indian Armed Forces (ARMY) Trade Proficiency Certificate for Ex-Servicemen. Copy of the Trade Proficiency Certificate issued to one of the petitioners is Annexure P-8. The petitioners also received Character certificates from the Army Medical Corps Records Lucknow. Copy of the Character certificate issued to one of the petitioners is Annexure P-9. Upon retirement, the petitioners were issued discharge books, detailing all necessary particulars i.e Bio-Data, Service Record, Rank and Trade etc. Copy issued to one of the petitioners of the Discharge Book is Annexure P-10.

On 2.6.2014, Public Appointment Notices (Annexure P-11 and P-12) and Public Appointment Notice dated 15.7.2014 (Annexure P-13) were issued by respondent no.1 by way of special recruitment drive for Ex-Servicemen inviting applications for filling up the posts of staff nurse exclusively for Ex-servicemen category. The said Public Appointment Notices laid down the Essential Qualification criteria which is reproduced as under:

*“Diploma in General Nursing and Midwifery
Course from a recognized Board/University/Institution or
equivalent*

or

*B.Sc Nursing or equivalent from recognized
Board/University/Institution*

AND

*Registered as Nurse and midwife with State
Nursing Council”*

Being eligible under the Essential Qualifications Criteria given in the Public Appointment Notices (Annexure P-11 to P-13) for the post of Staff Nurse as advertised by Respondent no.1, online applications (Annexure P-14) were submitted by the petitioners. Thereafter public notice was issued on 15.10.2014 (Annexure P-15) intimating the date of written examination as 2.11.2014. The said public notice further directed candidates to submit deficient documents by 24.10.2014. Another public notice dated 15.10.2014 (Annexure P-16) was issued by respondent no.1 along with a list of candidates detailing and specifying the deficient documents wherein the petitioners' names were given in the list. Thereafter corrigendum dated 31.10.2014 (Annexure P-19) postponing the written examination which was scheduled for 2.11.2014 to 16.11.2014 was issued. Thereafter vide corrigendum dated 31.10.2014 all the candidates were provisionally allowed to appear in the written test to be held on 16.11.2014. Under Clause 5 of the Instructions laid down in the corrigendum, the Essential qualification was arbitrarily altered to the extent that no alternative course other than midwifery will be considered for appointment to the post of Staff Nurse, therein rendering the petitioners ineligible to said post since the petitioners in fact were eligible on the grounds of possessing 'Equivalent' qualification as provided for under Essential Qualification criteria in Public Appointment Notices (Annexure P-11 to P-13). Clause 5 of the Instructions in the

Corrigendum is reproduced hereunder:

5. It is made clear to all the candidates specially for Ex-Servicemen(Self) that they must have passed Diploma in General Nursing and Midwifery or B.Sc Nursing and must have Registered as Nurse and Midwife with any State Nursing Council. No alternative course other than midwifery will be considered and the Nursing Registration Certificate must be renewed up to date”.

Petitioners appeared in the written examination on 16.11.2014 and secured meritorious positions. Thereafter, interview Notice dated 21.11.2014 (Annexure P-21) was issued informing that interviews for Ex-Servicemen category candidates would be held on 15.12.2014 and 16.12.2014. Another notice dated 21.11.2014 (Annexure P-22) laid down instructions to candidates wherein Clause 3 once again mentioned that no alternative course other than midwifery will be considered for determining eligibility to post of Staff Nurse. Clause 3 of the Instructions as given in Notice is reproduced hereunder:-

“3. It is made clear to all the candidates specially for Ex-Servicemen (Self) that they must have passed Diploma in General Nursing and Midwifery or B.Sc Nursing and must have Registered as Nurse and Midwife with any State Nursing Council. No alternative course other than midwifery will be considered and the Nursing Registration Certificate

must be renewed up to date.”

Corrigendum dated 31.10.2014 (Annexure P-20) and notice dated 21.11.2014 (Annexure P-22) rendered the petitioners ineligible for being appointed to the post of Staff Nurse (male) despite the fact that they have cleared the written test.

Counsel for the petitioners, Mr. Anand Chhibber has referred to notice (Annexure P-23), whereby Government of India under the Central Health Scheme in Kolkatta has advertised posts of Staff Nurse, wherein the Essential Qualifications criteria allows 'Equivalent' status to a six months duration course as prescribed by Indian Nursing Council for male nurses in lieu of Midwifery. He has further referred to the public notice issued in the year 2013 (Annexure P-24) by respondent no.1 where online applications were invited to fill up posts of staff nurse exclusively for Ex-Servicemen category in Government Medical College and Hospital, Sector-32, Chandigarh. Counsel for the petitioners submits that the impugned Clause No.5 in the Instructions given in Corrigendum dated 31.10.2014 (Annexure P-20) and impugned Clause No.3 given in Instructions in Notice dated 21.11.2014 (Annexure P-22) are liable to be set aside as it is against the principles of equity and fairness.

Learned counsel for the petitioners has also referred to a judgment passed by the Supreme Court of India in the case of **K. Manjusree vs. State of A.P and another 2008(2) JT 437** on the proposition that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.

On notice, respondents have filed a written statement taking the

stand that the post of Staff Nurse in the respondent-Institute i.e Government Medical College and Hospital is governed by Government Medical College and Hospital, Chandigarh (Group 'C' Ministerial Posts) Recruitment Rules, 2002 (hereinafter referred to as recruitment rules). The Essential Qualification prescribed for the post of Staff Nurse is as under:-

Essential:

(i) 10+2 with science from a recognized board/University.

(ii) Certificate in General Nursing and Midwifery from a recognized Institution.

(iii) Registered 'A' grade Nurse and Midwife with State Nursing council.

The Recruitment Rules, 2002 have further been amended and notified in the year 2011 with the following Essential Educational Qualification:

(i) Diploma in General Nursing and Midwifery course from a recognized Board/University/Institution or equivalent OR

B.Sc Nursing or equivalent from a recognized Board/University/Institution.

(ii) Registered as Nurse and midwife with State Nursing Council

It is further explained that since 2002 the required Essential Qualification for the post of Staff Nurse is General Nursing and Midwifery.

All the selections till date for the post of staff Nurse are being done with the

above said qualifications either Female or Male. There is no gender discrimination being made by way of recruitment to the post of Staff Nurses. It is further stated that more than 130 Males Nursing Staff have been deployed in this Institute with the above qualifications. In response to the advertisement dated 2/6/2014 (Annexure P-11) and Corrigendum dated 16.7.2014 (Annexure P-13), 330 candidates applied online for the above said posts. After scrutinizing their applications, it was found that number of persons were not having the requisite qualifications as stipulated by GMCH in its advertisement. However a public notice dated 15.10.2014 (Annexure P-15) was issued by GMCH vide which the applicants were informed about the date of the written test i.e 2.11.2014 to be held within the premises of GMCH. Vide this public notice, the applicants were also required to submit the deficient documents, if any, as per the list available at website of GMCH on 24.10.2014. The petitioners were allowed to appear in the written test provisionally. Some of the petitioners made a representation to GMCH for considering the candidature in view of the fact that they are having equivalent qualification. In view of such representation made by the petitioners, the Director Principal, GMCH constituted a Committee for taking the decision in that regard. In the meeting of the Committee held on 30.10.2014, it was decided that the applicants who have not passed Midwifery along with General Nursing and also not registered with the Indian Nursing Council as General Nurse and Midwife are not eligible which is the basic requirement for the posts advertised according to the recruitment Rules. Moreover this issue had already been decided in the meeting held in last year on 13.12.2013. Since the Roll numbers had already been issued, they were allowed to appear in the written test but they would only be considered eligible for the interview

if they submit the required documents on the date of interview. A copy of the minutes of the meeting held on 30.10.2014 was attached as Annexure R-2 with the written statement. After holding the written test on 16.11.2014 in which the petitioners were allowed to sit provisionally, the interview notice dated 21.11.2014 was issued by GMCH through publication in the newspapers as well as on the website. Through this notice the candidates were directed to submit their applications along with testimonials on the prescribed format which was available on the website of GMCH by 8.12.2014. Accordingly a list of candidates who had appeared in the written test at 16.11.2014 was released vide which they were directed to submit their applications along with testimonials on the prescribed format. In the said list again the Instructions were issued to the candidates who applied online under Ex-Servicemen category to the effect that they must have passed Diploma in General Nursing and Midwifery or B.Sc Nursing and must have registered as Nurse and Midwife with any State Nursing Council. It was also made clear that no alternative course other than midwifery will be considered. Clause no.5 as alleged by the petitioners is neither arbitrary nor frivolous or against the principle of equality and fair play. Clause no.5 of the corrigendum dated 31.10.2014 is merely a clarification of the rule vide which the essential qualification has been laid down in the aforesaid recruitment rules.

On 5.2.2016, a direction was given to the State to file a better affidavit on the proposition whether the Ex-servicemen who had done equivalent course to Midwifery Course can be eligible as per the essential qualification (Annexure P-13). In compliance of the above said order an affidavit dated 2.3.2016 by the Director Principal, Government Medical College and Hospital, Sector 32, Chandigarh. As per this affidavit, the

Chandigarh Administration had adopted the Punjab Recruitment of Ex-Servicemen Rules, 1982 (Annexure R-3) vide notification dated 10.3.2000 (Annexure A-1). As per Rule 7 of the Punjab Recruitment of Ex-Servicemen Rules, 1982, no person shall be eligible for recruitment to a reserved vacancy unless he possesses the minimum educational qualification and experience if any prescribed by the Government for direct appointment to such a vacancy in the concerned service rules. Further a Committee was also constituted including the Zila Sainik Welfare Officer as a member to the Committee to look into the eligibility of various ex-servicemen applicants regarding the eligibility of equivalent course in lieu of midwifery course for male nurses and it has been decided that the candidates who do not possess the requisite educational qualification and registration certificate as nurse and midwife with the State Nursing Council are not eligible for the post of staff nurse under Ex-Servicemen category. In the absence of any provision for relaxation, the petitioners who have not passed Midwifery course are ineligible to be appointed.

After hearing counsel for the parties, this petition deserves to be dismissed. The petitioners, in the present case pursuant to the Instruction (P-1) and P-2 have undergone Neurological nursing in lieu of Midwifery course. A perusal of Annexure P-7 shows that the petitioner Jay Kumar Dwivedi has been registered as a Nurse (Neurology). Petitioners Satpal Singh and Baljinder Singh have been registered as Nurse and petitioners Raj Kumar and Krishan Murari Yadav have been registered as Nurse and Midwife. Petitioners Jay Kumar Dwivedi and Satpal Singh have been registered at Punjab Nurses Registration Council. Petitioner Baljinder Singh has been registered at Haryana Nurses Registration Council. Petitioners Raj Kumar

and Krishan Murari Yadav have been registered at Delhi Nursing Council. The objection of the respondent is that even though they have been registered with the State Council they do not fulfill the prescribed qualification of a Diploma in Nursing and Midwifery course from the recognized Board. The Course done in lieu of Midwifery course cannot be taken equivalent to a Midwifery course which is essential qualification for appointment of a Staff Nurse. Moreover as per the Instructions P-1, the Indian Nursing Council has accorded recognition to the training imparted to the Nursing Assistants in the Army Medical Corps for the award of General Nursing Certificate. The recognition is based on identical training for male and female nurses with the exception of Midwifery in lieu of which other subjects may be prescribed for male nurses. The duration of the course will be three years at par with probationary nurses.

The petitioners who have done a course of General Nursing and have taken six months course in lieu of Midwifery have no experience in the line of Midwifery. Their experience would range from Psychiatry Nursing and Diploma Courses and as per the passing Certificate (Annexure P-5) issued by the School of Nursing Chandimandir, the petitioners are entitled for registration as male nurse, Neurology Nursing Midwife and Public health nurse in any State in India. Pursuant to certificate (P-5) the petitioners have got the necessary registrations with State councils as is evident from Annexure P-7. The question for consideration in the present case is whether as per the notice (P-13) where the essential qualification prescribed for appointment is a Staff Nurse is a Course in General Nursing and Midwifery, then six months course in Neurology as in the case of one petitioner, Jai Kumar (P-7) is equivalent to Midwifery Course. The answer would be no. A

perusal of appendix 'C' of Annexure P-1 shows that Indian Nursing Council had carved out 8 courses of six months duration for male students in lieu of Midwifery. There are 8 subjects in which Courses can be done and none of the course can be stated to be equivalent to Midwifery. The Chandigarh Administration on 10.3.2000 has adopted the Punjab Recruitment of Ex-servicemen Rules, 1982 and in these Rules, there is no provision for relaxation for appointment in the case of ex-servicemen category.

Learned counsel for the petitioner had argued that even in the selection made in the year 2013. The respondent did not insist that the Diploma in General Nursing and Midwifery Course was an essential qualification. This contention has been refuted by the respondents by placing on record minutes of the Meeting dated 30.10.2014 (Annexure R-2). In this meeting a representation made by the petitioners was considered and it was rejected on the ground that even in the selection made in the year 2013 also the applicants who had not passed Midwifery were not considered eligible which the basic requirement for the posts advertised according to the recruitment rules. No replication has been filed to the written statement filed by the respondents.

The question for consideration now would be since there is no rule as regards relaxation in the Recruitment Rules of Ex-servicemen and in view of the consistent stand of the respondents that no selections have been made by treating any course equivalent to Midwifery Course in lieu of Midwifery, can a direction be now given to the respondent to give appointment to the petitioners who are not eligible as per the notice (Annexure P-13). The answer to this question would be no. The qualification for the post of Staff Nurse has been amended on 21.11.2011 (R-1) and as per

the amendment in the Rules Diploma in General Nursing and Midwifery has been made an essential qualification in the recruitment. The petitioners cannot seek a direction to appoint them by giving relaxation to the said eligibility criteria.

The judgment cited by the counsel for the petitioner will not be applicable in the facts and circumstances of the present case as the criteria of essential qualification given in Annexure P-1 has not been altered by the corrigendum (P-20).

Counsel for the petitioners finally made a prayer that the prayer of the petitioner can be considered since the petitioners have passed in the written examination and in case the respondents find them suitable for appointment they can be given one opportunity to complete Nursing Course in Midwifery within a period of six months of their appointment. Petitioners are ex-serviceman and will abide by the essential qualifications as prescribed in the rule (Annexure R-1).

The prayer of the petitioners is reasonable. 61 posts of Staff Nurse (Male) reserved for Ex-servicemen category had been advertised. The petitioners have retired from Army Medical Corps after serving for 30 years. They have a rich experience of serving in the disciplined force. The object of reserving the posts for ex-servicemen is to give an opportunity to the persons who have served in the Army to be a part of the normal civilian life. As per the Instructions (Annexure P-1), the petitioners had opted for six months Clinical Nursing Course from the eight options. The respondents can use the experience of service of 30 years of the petitioners for the betterment rather than keeping the posts vacant especially when the posts had been specifically reserved for ex-servicemen category. Otherwise, the object of reservation will

get defeated. At this stage, the petition is being disposed of by giving directions to the respondents to appoint the petitioners to the post of Staff Nurse (Male) with the condition that they shall complete six months course in Midwifery within a period of one year of their appointment. After completing the six months course, the petitioners will fulfill the eligibility criteria as set out in the Recruitment Rules, 2002 which were amended in the year 2011.

Disposed of accordingly.

12-07-2016

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(**RITU BAHRI**)
JUDGE