

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.3841 of 2017

N.Thangadurai

.. Petitioner

Vs.

- 1 The State of Tamil Nadu
Rep. by the Principal secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai-9.
- 2 The Director of Medical Education
Poonamallee High Road, Kilpauk
Chennai-10.
- 3 R.Shankar Shanmugham
- 4 Tamilnadu Nursing and Midwives Councils
Rep. by its Registrar
140/55 Santhome High Road
Jaiprakash Narayan Buildings
Mylapore, Chennai - 4.
- 5 Indian Nursing Council
Rep. by its Secretary
8th Floor, NBCC Centre
Plot No.2, Community Centre
Okhla Phase-I, New Delhi - 110 020. .. Respondents
(Respondents 4 and 5 impleaded
by order dated 20.12.2017 passed
in W.M.P.No.15850 of 2017)

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Declaration, declaring G.O. (Ms) No.212, Health and Family Welfare (AA2) Department, dated 31.08.2016 issued by the 1st respondent herein insofar as it prescribes for preference to be given to holders of Ph.D. Degree in Nursing for appointment to the

post of Reader in Nursing and makes it mandatory for a person to hold Ph.D. Degree in Nursing for appointment as Reader in Nursing (Research) and permits persons holding the post of Nursing Tutor I Grade or Nursing Tutor II Grade to be appointed directly to the post of Reader in Nursing (Research) as ultra vires Article 14 of the Constitution of India.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondents : Mr.K.Venkataramani
Addl. Advocate General
assisted by
Mr.T.N.Rajagopalan
Government Pleader
(incharge)
for respondents 1 and 2

Mr.K.S.Viswanathan
for Mr.Sivakumar
for 3rd respondent

Mr.L.Chandrakumar
for respondents 4 and 5

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

In this writ petition, the petitioner has challenged the government order, being G.O.(Ms) No.212, Health and Family Welfare (AA2) Department, dated 31.08.2016, to the extent that the same prescribes an eligibility criteria for appointment to the post of Reader in Nursing (Research), which is different from the eligibility criteria for other disciplines of Reader in Nursing, such as Reader in Nursing (Community Health), Reader in Nursing (Medical and Surgical), Reader in Nursing (Obstetrics and Gynaecology), Reader in Nursing (Paediatrics) and Reader in Nursing (Psychiatry).

2. The petitioner claims to have entered into government service as Staff Nurse on 26.9.1994 with the qualification of Diploma in Nursing. According to the petitioner, the petitioner rendered unblemished service.

3. There is no dispute with regard to the quality of service rendered by the petitioner as Staff Nurse. No action has been taken against the petitioner on the ground of his efficiency or competence. The fact that the petitioner might have rendered unblemished service is not material to the issues raised in the writ petition.

4. The petitioner claims to have been promoted to the post of Nursing Tutor Grade II on 10.7.2006. In the seniority list of Civil Nursing Tutors, the petitioner features at Serial No.285. According to the petitioner, the petitioner has eleven years of teaching experience in the said post.

5. As per the averments in the affidavit in support of the writ petition, there are 23 Nursing Schools and 5 Nursing Colleges attached to Government Medical Colleges and Hospitals and District Headquarters Hospitals in the State of Tamil Nadu.

6. The Nursing Schools have posts of Principal, Nursing Tutors Grade I and Nursing Tutors Grade II. The Nursing Colleges have posts of Principal, Reader, Lecturer and Nursing Tutors Grade II.

7. There are also posts of Deputy Director of Medical and Rural Health Services (Nursing) and Additional Director of Medical Education (Nursing). The appointments to the said posts are not in issue in this writ petition.

8. It appears that a candidate possessing minimum B.Sc. (Nursing) qualification and working as Nurse and/or Nursing Superintendent can be promoted to the post of Nursing Tutor Grade II in a Nursing School, subject to seniority. According to the petitioner, there are 485 sanctioned posts of Nursing Tutors Grade II in Nursing Schools.

9. A candidate possessing the qualification of B.Sc. (Nursing)/M.Sc. (Nursing) and working as Nursing Tutor Grade II is eligible for promotion to the post of Nursing Tutor Grade I/Principal in School of Nursing as per seniority. According to the petitioner, there are 30 sanctioned posts of Nursing Tutor Grade I.

10. In Nursing Colleges, the lowest teaching post is Lecturer. Persons working as Nursing Tutor Grade II possessing M.Sc. (Nursing) Degree are eligible for appointment as Lecturer, provided they have the requisite seniority and teaching experience. There are, according to the petitioner, 32 sanctioned posts of Lecturers in Nursing Colleges.

11. Persons working as Lecturers are eligible for promotion as Readers, subject to seniority and teaching experience. There are 20 posts of Readers sanctioned by the Government. Persons working as Readers are eligible for promotion as Principal, provided they have the requisite seniority and teaching experience.

12. According to the petitioner, the petitioner had worked as Staff Nurse at the Madras Medical College Hospital, Chennai, from 26.9.1994 to 6.10.2006 and he was promoted as Nursing Tutor Grade II from 10.7.2006 and he was posted at the School of Nursing, Government Headquarters Hospital, Cuddalore. The petitioner was later transferred to Stanley Medical College Hospital, Chennai, in 2008 and has till date been working at the said institution. The petitioner claims to have eleven years of teaching experience as Nursing Tutor Grade II.

13. By way of orders and/or notifications issued from time to time, the Government framed Special Rules of eligibility for various posts of Readers in Nursing, such as Reader in Nursing (Paediatrics), Reader in Nursing (Obstetrics and Gynaecology), Reader in Nursing (Psychiatry), Reader in Nursing (Community Health), Reader in Nursing (Medical and Surgical), etc.

14. By a notification being F.No.11/2007 INC published in the Government Gazette of India Part III, Section 4, No.58, dated 15.4.2008, the Indian Nursing Council prescribed the qualification for appointment to the post of Reader/Associate Professor. The requisite educational qualification was an M.Sc. Degree in Nursing with ten years experience. The aforesaid qualification was revised by resolution No.F.No.1.5/2014 INC, dated 29.10.2014, whereby the educational qualification prescribed for the post of Reader in Nursing/Associate Professor, remained the same, that is M.Sc. Degree in Nursing, but the total work experience was reduced to eight years out of which there had to be five years' teaching experience.

15. The eligibility criteria for the posts of Reader in Nursing (Community Health), Reader in Nursing (Medical and Surgical), Reader in Nursing (Obstetrics and Gynaecology), Reader in Nursing (Paediatrics), Reader in Nursing (Psychiatry), Reader in Nursing (Education and Administration) and Reader in Nursing (Research) were prescribed by G.O.Ms.No.212, Health and Family Welfare (AA2) Department, dated 31.8.2016.

16. The requisite eligibility criteria for the post of Reader in Nursing (Research) as prescribed by the said Government Order are:

- (i) Masters' Degree in Nursing in any of the specialties in Nursing awarded by the Tamil Nadu Dr. MGR Medical University or any other University recognized by the Indian Nursing Council;
- (ii) Ph.D. Degree in Nursing in any of the specialties in Nursing awarded by the Tamil Nadu Dr. MGR Medical University or any other University recognized by the Indian Nursing Council;
- (iii) Teaching experience of eight years in the field

of Nursing in the category of Lecturer in Nursing or Nursing Tutor Grade I or Nursing Tutor Grade II and guiding Ph.D. Candidates for research; and
(iv) Name registered as a Nurse and Midwife in Tamil Nadu Nurses and Midwives Council.

17. The eligibility criteria for the other posts of Reader in Nursing are as follows:

Posts (1)	Qualifications (2)
Reader in Nursing (Community Health)	(i) A Master degree in Nursing in the specialty of Community Health Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council; (ii) Teaching experience of eight years in the field of Nursing out of which five years shall be in the subject of Community Health Nursing in a position not below the rank of Lecturer in Nursing; and (iii) Must have registered his name as a Nurse and Midwife in the Tamil Nadu Nurses and Midwives Council Provided that preference shall be given to the holders of Ph.D. Degree in Nursing in the specialty concerned awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council.

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Posts (1)	Qualifications (2)
Reader in Nursing (Medical and Surgical)	(i) A Master degree in Nursing in the Specialty of Medical and Surgical Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council; (ii) Teaching experience of eight years in the field of Nursing out of which five years shall be in the subject of Medical and Surgical Nursing in a position not below the rank of Lecturer in Nursing; and (iii) Must have registered his name as a Nurse and Midwife in the Tamil Nadu Nurses and Midwives Council: Provided that preference shall be given to the holders of Ph.D. Degree in Nursing in the speciality concerned awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council.

सत्यमेव जयते

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Posts (1)	Qualifications (2)
Reader in Nursing (Obstetrics and Gynaecology)	(i) A Master degree in Nursing in the specialty of Obstetrics and Gynaecology Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council; (ii) Teaching experience of eight years in the field of Nursing out of which five years shall be in the subject of Obstetrics and Gynaecology Nursing in a position not below the rank of Lecturer in Nursing; and (iii) Must have registered his name as a Nurse and Midwife in the Tamil Nadu Nurses and Midwives Council: Provided that preference shall be given to the holders of Ph.D. Degree in Nursing in the specialty concerned awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council.

सत्यमेव जयते

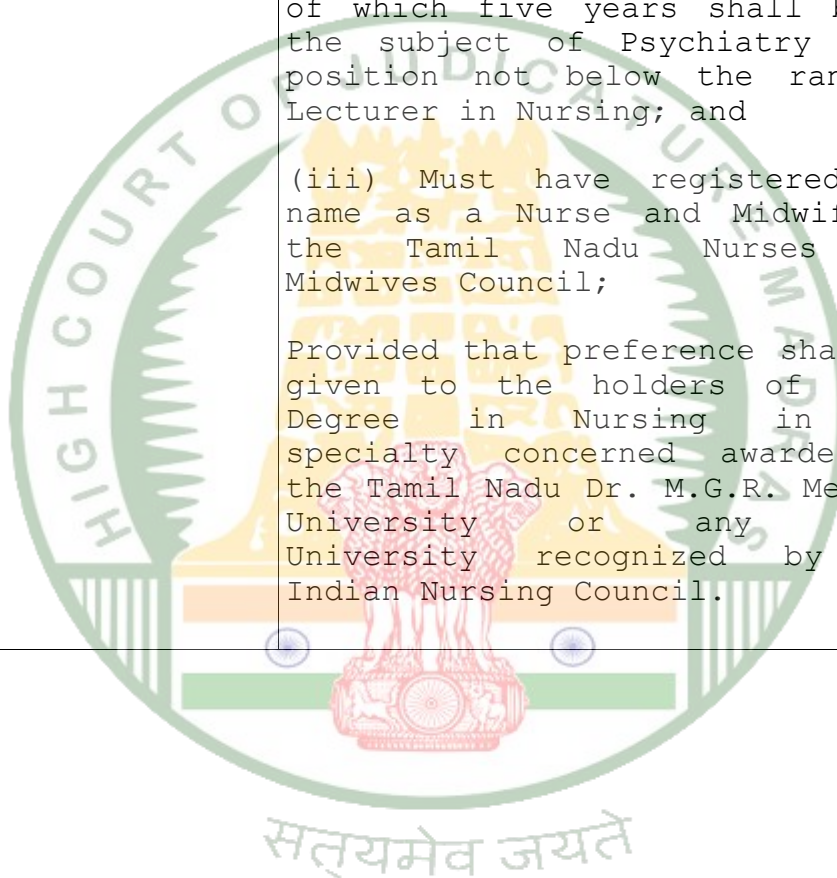
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Posts (1)	Qualifications (2)
Reader in Nursing (Paediatrics)	(i) A Master degree in Nursing in the Specialty of Paediatric Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council; ii) Teaching experience of eight years in the field of Nursing out of which five years shall be in the subject of Paediatrics in a position not below the rank of Lecturer in Nursing; and (iii) Must have registered his name as a Nurse and Midwife in the Tamil Nadu Nurses and Midwives Council: Provided that preference shall be given to the holders of Ph.D. Degree in Nursing in the specialty concerned awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council.

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Posts (1)	Qualifications (2)
Reader in Nursing (Psychiatry)	(i) A Master degree in Nursing in the Specialty of Psychiatric Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council; (ii) Teaching experience of eight years in the field of Nursing out of which five years shall be in the subject of Psychiatry in a position not below the rank of Lecturer in Nursing; and (iii) Must have registered his name as a Nurse and Midwife in the Tamil Nadu Nurses and Midwives Council; Provided that preference shall be given to the holders of Ph.D. Degree in Nursing in the specialty concerned awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council.



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Posts (1)	Qualifications (2)
Reader in (Education and Administration)	(i) A Master degree in Nursing in any of the specialties in Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council; (ii) Teaching experience of eight years in the field of Nursing, out of which five years shall be in any one of the subject in Nursing in a position not below the rank of Lecturer in Nursing; and (iii) Must have registered his name as a Nurse and Midwife in the Tamil Nadu Nurses and Midwives Council: Provided that preference shall be given to the holders of Ph.D. Degree in Nursing in any of the specialties in Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council.

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Posts (1)	Qualifications (2)
Reader in Nursing (Research)	(i) A Master Degree in Nursing in any of the specialties in Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council; (ii) Must have obtained Ph.D. Degree in Nursing in any of the specialties in Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognized by the Indian Nursing Council (iii) Teaching experience of eight years in the field of Nursing in the category of Lecturer in Nursing or Nursing Tutor I Grade or Nursing Tutor II Grade and Guiding Ph.D., Candidates for research; and (iv) Must have registered his name as a Nurse and Midwife in the Tamil Nadu Nurses and Midwives Council:

18. In cases of Reader in Nursing (Community Health), Reader in Nursing (Medical and Surgical), Reader in Nursing (Obstetrics and Gynaecology), Reader in Nursing (Paediatrics), Reader in Nursing (Psychiatry), Reader in Nursing (Education and Administration), the requisite eligibility criteria is a Master's Degree in Nursing in the concerned field with teaching experience of eight years in the field of nursing, of which five years should be in the specialty subject in a position not below the rank of Lecturer in Nursing and also registration as a Nurse and Midwife in Tamil Nadu Nurses and Midwives Council. Moreover, for all posts of Readers preference is to be given to holders of Ph.D. Degree in Nursing in the concerned specialty, subject to the candidates fulfilling the requisite eligibility criteria as prescribed. However, in the case of Reader in Nursing (Research), the eligibility criteria is different. A candidate is required to have a Masters' Degree as well as a Ph.D. Degree in Nursing with teaching experience of eight years in the field of Nursing in the category of Lecturer in Nursing or Nursing Tutor I Grade or Nursing Tutor II Grade and

experience of guiding Ph.D. candidates for research.

19. May be as contended by the petitioner, the posts of Reader in different disciplines are equivalent posts. However, the job requirements are different. Readers in Nursing (Research) are required to supervise research and guide research candidates. Obviously, the post requires the higher qualification of Ph.D. Degree.

20. In W.P.No.29507 of 2017 (N.Vanitha v. The Secretary to Government, Health and Family Welfare Department, and others), the petitioner had questioned the same government order insofar as it made Ph.D. Degree in Nursing mandatory for appointment to the post of Reader in Nursing (Research) contending that prescription of a higher qualification for the same post of Reader is violative of Articles 14 and 16 of the Constitution of India. By an order dated 17.11.2017, a Division Bench of this Court, inter alia, held that Article 14 read with Article 16 ensured equality before law and equal treatment of equals and mandated equal opportunity for all. The said Articles did not prevent the State from issuing notifications prescribing specific qualifications for any particular post.

21. This Court, in effect and substance, held that it was not for this Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India to go into the reasoning behind alteration and/or enhancement of eligibility criteria and/or fixing of the requisite qualifications for appointments to different posts. Policy decisions are not generally interfered with by this Court. In any case, this Court observed that it seemed to be logical enough to introduce a Degree of Ph.D. in Nursing for the post of Reader in Nursing (Research). A faculty member of the post of Reading in Nursing (Research) should ideally have successfully done research himself/herself. The writ petition was dismissed.

22. In this case, the writ petitioner apart from questioning the fixing of the higher qualification for the post of Reader in Nursing (Research) has also questioned the requisite teaching experience which in this case is eight years in the field of Nursing in the category of Lecturer in Nursing or Nursing Tutor I Grade or Nursing Tutor II Grade.

23. The learned counsel appearing on behalf of the petitioner strenuously contended that relaxation of the teaching experience to include teaching experience as a Nursing Tutor II Grade or Nursing Tutor I Grade in the case of Reader in Nursing (Research), while the teaching experience in the case of all other Readers was eight years in the field of Nursing, of which five years had to be in the subject concerned in a position not

below the rank of Lecturer in Nursing, was discriminatory and arbitrary. Such relaxation, according to the petitioner, would enable Nursing Tutors of II Grade to supersede Nursing Tutors of I Grade and Lecturers and the result would be that the persons working in the lowest post of Nursing Tutor II Grade would be appointed as Readers and be made the Head of the Department.

24. On behalf of the respondents, it is argued that the requisite teaching experience had to be relaxed as there were no suitable candidates who were Lecturers with the requisite Ph.D. Degree.

25. The petitioner, however, is not a Lecturer, nor a Nursing Tutor Grade I, but a Nursing Tutor Grade II himself. He also does not have the requisite educational qualification of Ph.D. Degree for appointment to the post. The petitioner cannot be aggrieved by the requisite experience criteria for appointment.

The writ petition is, therefore, dismissed. No costs. Consequently, W.M.P.Nos.3905, 3906, 10488, 18893 and 28877 of 2017 are closed.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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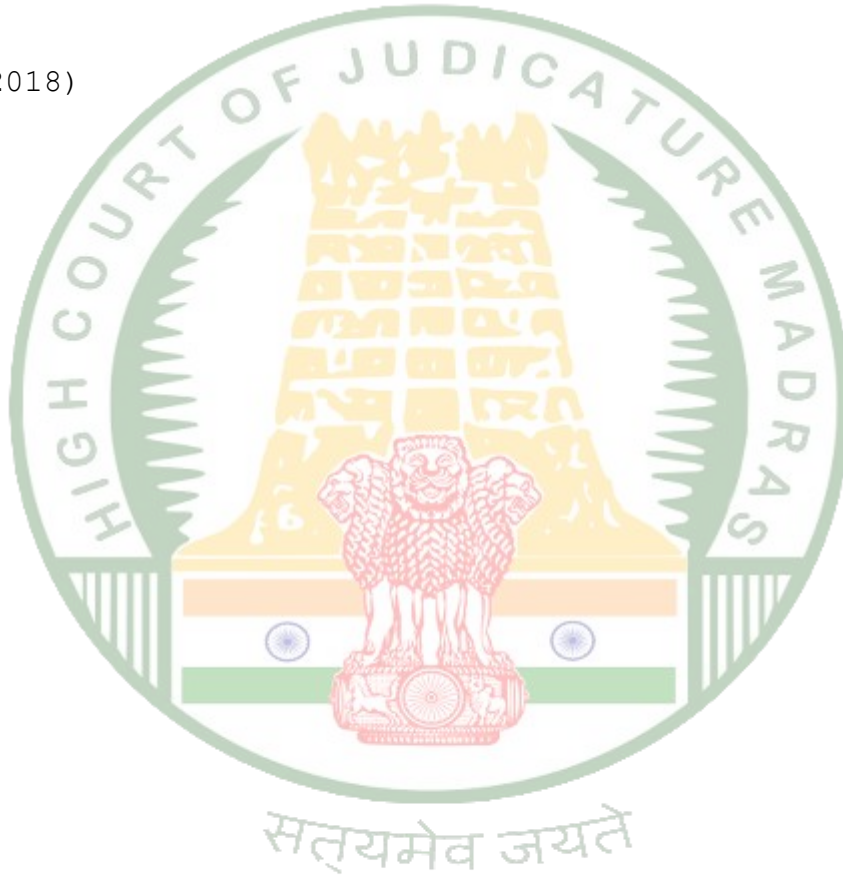
- 1 The Principal secretary to Government
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W.P.No.3841 of 2017

AD(CO)
TR(10/01/2018)



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