

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.29507 of 2017

N.Vanitha

.. Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-9.
2. The Director of Medical Education,
Poonamallee High Road,
Kilpauk, Chennai-600 010.
3. The Secretary,
Indian Nursing Council,
8th Floor, NBCC Centre,
Plot No.2, Community Center,
Okhla Phase-I,
New Delhi-20.
4. The Registrar,
Tamilnadu Nursing Council,
No.140, Jayaprakash Narayan Maligai,
Santhome High Road,
Chennai-04.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration, declaring G.O.Ms.No.212, Health and Family Welfare (AA2) Department dated 31.8.2016 issued by the first respondent herein insofar as it prescribes for preference to be given to holders of Ph.D degrees in Nursing for appointment to the post of Reader in Nursing and makes it mandatory for a person to hold Ph.D. persons holding the post of Nursing Tutor Grade-I and Grade-II to be appointed directly to the post of Reader Nursing (Research) as ultra vires Articles 14 and 16 of the Constitution of India.

For Petitioner :Mr.G.Ilamurugu

For Respondents:Mr.K.Venkatramani,
Additional Advocate General
assisted by Mr.T.N.Rajagopalan,
Govt. Pleader (In-charge) for RR1 and 2

Mr.L.Chandrakumar for R-4

ORDER

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

The petitioner claims to be a Post Graduate in Nursing, who joined service as Staff Nurse on 18th October 1999. According to the petitioner, she was promoted as Nursing Tutor Grade-II on 8th February 2006. According to her, she has completed 10 years of teaching experience and is entitled to promotion to the post of Reader in Nursing.

2 In the writ petition, it is pleaded that there are posts of Readers in different Nursing disciplines in Medical Colleges in the State of Tamil Nadu, namely, Medical and Surgical Nursing, Community Health Nursing, Obstetrics and Gynecology Nursing, Psychiatry Nursing, Pediatrics Nursing, Nursing Research and Nursing Education and Administration.

3 The Government had framed Special Rules for the posts of Reader in Nursing (Medical and Surgical) and Reader in Nursing (Public Health, now Community Health) vide G.O.Ms.No.302, Health and Family Welfare Department dated 26th February 1980. Later by a Government Order being G.O.Ms.No.1690 of the Health, Indian Medicine and Homeopathy and Family Welfare Department dated 11th September 1989, Special Rules were made for the posts of Reader in Nursing (Pediatrics Nursing). The other disciplines, like Obstetrics and Gynecology Nursing, Psychiatry Nursing, Nursing Research and Nursing Education and Administration were not governed by Special Rules or by any adhoc rules.

4 According to the petitioner, appointment to the post of Reader in Nursing in the disciplines Medical and Surgical, Community Health and Pediatric Nursing is made by promotion from amongst Tutors in Nursing (Re-designated as Lecturer in Nursing) or by direct recruitment, if no suitable person is available for promotion from amongst holders of the posts of Tutors in Nursing.

5 According to the petitioner, Indian Nursing Council being the Regulatory authority has, from time to time, issued regulations regulating Nursing Colleges and Schools established in India. The Regulations of the Nursing Council, according to

the petitioner, have statutory binding force.

6 By a notification being F.No.11/2007 INC published in the Government Gazette of India Part III, Section 4, No.58 dated 15th April 2008, the Indian Nursing Council prescribed qualifications to the post of Reader and Associate Professor with M.Sc. in Nursing and 10 years experience. The aforesaid qualification was revised by resolution No.F.No.1.5/2014 INC dated 29th October 2014. The qualification prescribed for the post of Reader in Nursing / Associate Professor is M.Sc. degree in Nursing with 8 years experience, of which 5 years teaching experience is meant for five specialities, i.e., Medical and Surgical, Community Health, Pediatric Nursing, Obstetrics and Gynaecology and Psychiatry Nursing. In the aforesaid resolution, there is no qualification specified in respect of Nursing Research and Nursing Administration and Education.

7 The petitioner is aggrieved by the rules framed by the first respondent for the post of Reader in Nursing to various disciplines, viz., G.O.Ms.No.212, Health and Family Welfare (AA2) Department dated 31st August 2016. As per the said Government Order, the qualification for the post of Reader in Nursing (Research) is a Master's degree in Nursing in any of the specialities in Nursing awarded by the Tamil Nadu Dr. M.G.R. Medical University or any other University recognised by the Indian Nursing Council, Ph.D. degree in Nursing, teaching experience of 8 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. students for Research and registration as a Nurse and Midwife in the Tamil Nadu Nurses and Midwives Council. The petitioner has questioned the Government Order insofar as it makes Ph.D degree in Nursing mandatory for appointment to the post of Reader in Nursing (Research).

8 It is alleged that the enhancement of qualification for promotion and or appointment to the post of Reader in Nursing (Research) is violative of Articles 14 and 16 of the Constitution of India. Unfortunately, in the entire writ petition, there is not a whisper of how the enhancement of pre-requisite qualification for appointment as Reader in Nursing (Research) violates Article 14 or Article 16 of the Constitution of India.

9 Article 14 read with Article 16 mandates equal opportunity for all. It ensures equality before the law and equal treatment of equals. Articles 14 and 16 do not prevent the State from issuing notifications prescribing specific qualifications for any particular post.

10 It is not for us to go into the reasoning behind alteration and or enhancement of eligibility criteria and or qualifications for appointments to different posts. However, it seems to us 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 Reader in Nursing Research should ideally have successfully done research himself / herself.

11 Learned counsel appearing for the petitioner submitted that the impugned order enhancing the qualification is retrospective and hence violative of Article 14. We do not find that it affects any rights retrospectively. We are informed that the post was created in 2000. However, nobody had been appointed and no qualifications had been fixed. It is only now that steps are being taken to fill up the post.

12 Learned Government Pleader (In-charge) points out that the post was not created, but was only re-designated as Reader / Professor in Nursing.

13 Learned counsel for the petitioner drew our attention to a judgment of the Supreme Court in Union of India v. Tushar Ranjan Mohanty reported in (1994) 5 SCC 450, where the Supreme Court held that retrospective operation of the amended Rule 13, in challenge in that case, could not be sustained, observing that retrospective amendment of rule took away the vested rights of other candidates senior to respondent Nos.2 to 9. In this case, no vested right of any other person has been taken away. No one has any inherent right to promotion. Article 16 read with Article 14 contemplates a fair consideration of the candidatures of all eligible and willing candidates. The eligibility criteria can be changed any time before the selection process actually commences. The judgment in Tushar Ranjan Mohanty supra is, thus, distinguishable. We do not find any ground to interfere. The writ petition is dismissed. No costs.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

vvk

To

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Chennai-04.

+1 Cc to Mr.G. Ilamurugu, Advocate sr 82106.
+1 CC to Mr.L. Chandrakumar, advocate sr 82052.
+1 Cc to Govt. Pleader sr 82479.

W.P.No.29507 of 2017

SP(05/12/2017)

सत्यमेव जयते

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