

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.7.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.31383 of 2016

1. Union of India
The Secretary
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi.
2. The Director General
Indian Council of Medical Research
All India Institute of Medical Sciences Campus
Post Box No.4911
Ansari Nagar, New Delhi.
3. The Director
National Institute for Research in Tuberculosis (ICMR)
Mayor Ramanathan Road
Chetpet
Chennai 600 031.
4. Dr.V.M.Katoch
5. Dr.Soumya Saminathan ... Petitioners

Vs.

1. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai.
2. A.Komathi
3. R.Manimegalai
4. Shakila Shankar
5. The Secretary
Indian Nursing Council
Combine Council Building
Korla Road, Temple Lane
New Delhi 110 002.

WEB COPY

6. The Registrar
Tamil Nadu Nurses & Midwives Council
Santhome High Road
Mylapore
Chennai 600 004.

7. Anna Antoney

8. A.Gomathy

9. Shyamala Gopu

10.V.Revathi

11.R.Valarmathi

12.V.Indirani

13.R.Padma

14.R.Sarala Devi

15.P.Pandeeswari

16.M.Rathinam

17.S.Theensuwai

18.P.Kowsalya

19.M.Mohana

20.R.Vetriselvi

... Respondents

Petition under Article 226 of the Constitution of India
praying for a writ of Certiorari calling for the records of the
first respondent relating to the order dated 21.6.2016 made in
O.A.No.310/00773/2016 and to quash the same.

For Petitioners	:	Mrs.N.Mala
For Respondents 2 & 4	:	Mr.M.Kamalanathan
For Respondents 5 & 6	:	Mr.A.R.Nixon
For Respondents 9 to 20	:	Notice Served
		No appearance
For Respondent - 8	:	No appearance
For Respondents 3 & 7	:	Not ready in notice

O R D E R
(Made by G.Jayachandran,J)

This writ petition has been filed seeking to quash the order of the first respondent dated 21.6.2016 made in O.A.No.310/00773/2016.

2. The facts which led to the filing of the writ petition are as under.

The ICMR Nursing Staff Cadre Rules 2000, was amended in the year 2010, creating a new Nursing Cadre. Consequently, the Nurses under Technical Cadre were re-designated under the new Nursing Cadre by memorandum dated 26.7.2012. By the said proceedings, Clinical Nurses and Technical Assistants (Health Visitors) who were in the Grade Pay of 4600, were re-designated as Staff Nurse in Pay Band 2 with Grade Pay 4600, with effect from 01.01.2006 and a seniority list was also prepared on 01.10.2012.

3. As per the Recruitment Rules 2000, for the post of Staff Nurse, no educational qualification was prescribed to the promotees. But, in the year 2010, the Recruitment Rules were amended, wherein educational qualification on par with direct recruits was prescribed for promotees. The said Rule again got amended in the year 2014 wherein no educational qualification was prescribed for promotees, for promotion to the post of Nursing Sister. Therefore, when Health Visitors who were re-designated as Staff Nurses, they were clubbed with Clinical Nurses and based on the combined seniority list prepared on 01.10.2012, Mrs. Anna Antoney and Mrs. A. Gomathy, namely respondents 7 and 8 herein, were promoted as Nursing Sister. Aggrieved by that and questioning the promotion based on new Recruitment Rules, 2014, respondents 2 to 4 filed an application before the Tribunal.

4. The disparity between the direct recruits and promotees in the educational qualification prescribed in the amended ICMR Nursing Staff Cadre Rules 2014, in respect of Staff Nurse and Nursing Sister and the consequential promotion given to respondents 7 and 8 herein, were the subject matter before the Central Administrative Tribunal in O.A.No.310/00773/2014. The Tribunal found in favour of the respondents 2 to 4 and held that the pre-amended recruitment Rule which prescribes the educational qualification of Diploma in Nursing 'A' Grade, which is essential requirement for the post of Staff Nurse and Nursing Sister has to be followed to fill up the vacancies which arose prior to the amendment. Therefore, the Tribunal ordered that the recruitment to the vacancies for the post of Nursing Sister has to be filled up as per the unamended Rule by constituting review DPC.

5. Aggrieved by the said order of the Tribunal, the present writ petition has been filed by the Union of India and the other respondents who are managing the affairs of Indian Council Medical Research on the ground that educational qualification for promotees was in vogue only for a short period between 2010 and 2014. Taking into consideration that such requirement has been erroneously crept in the Recruitment Rules 2010, the same has been rectified in the Recruitment Rules 2014 and the old Recruitment Rule prevailing till 2010 was reintroduced in the year 2014.

6. Heard the learned counsel appearing for the petitioner and learned counsel appearing for the respondents.

7. Admittedly, respondents 2 to 4 have neither challenged the Memorandum dated 26.7.2012 nor the seniority list dated 01.10.2012. But, when the respondents 7 and 8 were given promotion, they have challenged the same on the ground that they did not possess required educational qualification to hold a post in Nursing Cadre.

8. It appears that pending litigation, Mrs. Anna Antoney, seventh respondent herein, who was promoted as Nursing Sister, retired from service on attaining superannuation.

9. The moot point is whether the Recruitment Rules 2014 suffers disparity or legal infirmity and whether the recruitment has to be done as per the old Recruitment Rule of the year 2010 or amended Rule of the year 2014 for the vacancy which has fallen after re-designation of the cadre in the year 2012. In other words, whether the promotion granted to Mrs. Anna Antoney and Mrs. A. Gomathy, respondents 7 and 8 respectively, requires interference.

10. On the date of challenging the provisions of the Recruitment Rules 2014 which came into force on 27.3.2014, the applicants in O.A., who are the respondents 2 to 4 herein, were serving as Staff Nurses. The next promotional post for them is Nursing Sister. The DPC for the post of Nursing Sister was convened subsequent to the amendment of the Recruitment Rules. Therefore, the Recruitment Rules prevailing on the date of DPC was taken into consideration and the respondents 7 and 8 herein were promoted as Nursing Sister, by order dated 23.5.2014. The Tribunal has held that for the vacancies arose prior to amendment, only the pre-amended Rule, i.e. 2010 Rule is applicable and not the post amended Rule.

11. It is contended by the learned counsel for the writ petitioner that even assuming that for the vacancies prior to

the Rule amendment the old Recruitment Rule should apply, before 2014, only one Nursing Sister post was vacant and for that vacancy, Mrs. Anna Antoney was promoted and soon after promotion, she retired on attaining superannuation on 30.5.2014. Therefore, nothing prejudicial to the applicants in O.A. has caused. Further, the relaxation in educational qualification for promotees is not discriminatory in nature. It is in lieu of their vast experience as Health Visitors for several years which has been later re-designated as Staff Nurse in the year 2012.

12. This Court, on considering the rival submissions, finds that the order passed by the Tribunal requires interference since the Tribunal has not gone into the factual position of law on the date of DPC vis-a-vis the vacancy position and the re-designation of the post of Health Visitors as Staff Nurse in the year 2012.

13. Furthermore, by the time when new Nursing Cadre was created by clubbing Clinical Nurses and Technical Assistants (Health Visitors) and re-designated as Staff Nurse in Pay Band 2 with Grade Pay 4600, with effect from 2006, the respondents 7 and 8 herein, had reached the grade of Staff Nurse in the new Nursing Cadre. Therefore, the order of the Tribunal to constitute Review DPC is erroneous and unsustainable.

14. The ICMR, a sui generis institution on Tuberculosis Research has taken into consideration the hazardous nature of the job and the prolonged service in the cadre of Health Visitor re-designated as Staff Nurse, had thought fit to exempt them from the required educational qualification (Diploma in Nursing) prescribed for direct recruits.

15. The ancillary submission that relaxation in educational qualification for Nursing Staff is not in consonance to the Tamil Nadu Nurses and Midwives (Amendment) Act 7 of 1934 and Act 26 of 1960 is not sustainable. The said Acts are State legislatures and it is for the Union to consider whether amendment to its Recruitment Rules is required or not. Till such time, the Recruitment Rules of the ICMR, which is a Central Government Institution, will prevail. To add further, the respondents 2 to 4 herein have not challenged the re-designation of posts and creation of new Nursing Cadre. The combined seniority list prepared in the year 2012 also not under challenge. Under the guise of challenging the Recruitment Rules 2014, the promotion made to the post of Nursing Sister is impugned.

16. As a result, we hold that the direction of the Tribunal to hold Review DPC following the Recruitment Rule prevailing before 27.3.2014 is unwarranted in the factual scenario. Hence,

the said order is set aside. As a consequence, O.A.No.310/00773/2016 is dismissed and the writ petition is allowed. However, there shall be no order as to costs. Consequently, WMP No.27246 of 2016 is closed.

Sd/-
Assistant Registrar(CS III)

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To

Sub Assistant Registrar

1. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai.
2. The Secretary
Indian Nursing Council
Combine Council Building
Korla Road, Temple Lane
New Delhi 110 002.
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Santhome High Road
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Chetpet, Chennai 600 031.

+2cc's to Mr.A.R.Nixon, Advocate, S.R.No.47211

+1cc to Mr.N.Mala, Advocate, S.R.No.47117

+2cc's to Mr.M.Kamalanathan, Advocate, S.R.No.47055

W.P.No.31383 of 2016

SR(CO)
CA(10/08/2017)