

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 01.08.2017

PRONOUNCED ON 07.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.5416 of 2013

P.Revathy

... Petitioner

vs

1.Indira Gandhi Medical College and Research Institute,
(Government of Puducherry Institution),
rep. by its Director,
Vazhudavur Road,
Kathirkamam,
Puducherry - 605 009.

2.S.Rajan

... Respondents

(Respondent No.2 impleaded as per order
dated 04.09.2013 in M.P.No.5 of 2013)

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records relating to the notification for provisional selection for appointment to the post of Staff Nurse dated 26.2.2013 vide No.151-1/IGMC&R1/Estt./Rectt.(NP)/2012 from the file of the respondent and consequently quash the said notification in so far as the selection of candidates from Serial No.47 under the General category and from Serial No.3 under OBC category and consequently direct the respondent to select the petitioner for the appointment to the post of Staff Nurse.

For Petitioner : Mr.Asokapathy

for M/s.Pass Associates

For Respondents : Mr.C.T.Ramesh

Addl. G.P. (Pondicherry)

for 1st respondent

ORDER

The writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus, calling for the records relating to the Notification for provisional selection for appointment to the post of Staff Nurse dated 26.02.2013 vide No.151-1/IGMC&R1/Estt./ Rectt.(NP)/2012 from the file of the first respondent and consequently quash the Notification dated 22.06.2012 in so far as the selection of candidates from Serial No.47 under the General category and from Serial No.3 under OBC category and consequently direct the first respondent to select the petitioner for the appointment to the post of staff nurse.

2. The facts in a nutshell are as follows: The first respondent called for applications vide Notification dated 22.06.2012 from the eligible Indian citizens who were natives/residents of the Union Territory of Pondicherry for filling up of 141 vacancies in the post of Staff Nurse (Group B) in the first respondent Institute by direct recruitment. The Notification stipulated the methodology for selection, reservation, educational qualification for eligibility, age limit and the last date for receipt of on-line generated application.

3. The qualifying marks prescribed was 115 - (i) 50% of marks in Higher Secondary or equivalent; (ii) 50% of marks in Diploma in degree in nursing; and (iii) 1.5% marks per every completed year of seniority from the date of registration of the requisite technical qualification in the Employment Exchange, subject to maximum of 15% marks. According to the petitioner, out of 141 vacancies, 38 vacancies were reserved for OBC.

4. Regarding educational qualification, the candidates must possess: (i) pass in Higher Secondary examination or its equivalent; (ii) Degree in Nursing/Diploma in General Nursing; and (iii) Midwives or equivalent from a recognised Institution and Registration as a Nurse and Midwife equivalent in any State Nursing Council in India shall be eligible. As far as age is concerned, the candidate should not exceed 35 years as on 10.08.2012. Insofar as the candidates belonging to OBC are concerned, the upper age limit of 35 would be relaxed to further three years.

5. The case of the petitioner is that she was born on 06.08.1985 and is native of Puducherry. She completed her S.S.L.C. in the year 2001 at Thriuvalluvar Government Girls Higher Secondary School, Pondicherry and Higher Secondary education at Sinnatha Government Higher Secondary School, Muthialpet, Pondicherry in the year 2003. The petitioner

pursued her graduation in Bachelor of Science (Nursing) at Mother Theresa Institute of Health and Sciences, Pondicherry University and completed in the year 2007. She was admitted into the Register of Nurses and Register of Midwives by the Tamilnadu Nurses and Midwives Council. According to the petitioner, she got married in the year 2009 and at present she was working as Assistant Professor in Mahatma Gandhi Medical College and Research Institute.

6. The further case of the petitioner is that her school education, graduation and technical qualification certificates were registered with the Employment Exchange, Pondicherry and the registration is still in force. According to the petitioner, she was fully qualified for the post of Staff Nurse in pursuance of the Notification dated 22.06.2012.

7. In pursuance of the Notification dated 22.06.2012, the petitioner submitted her application in person with the first respondent on 09.07.2012 with supporting documents. The petitioner secured 81.37% marks out of 115 marks. According to the petitioner, the candidates who secured lesser marks than the petitioner were placed in General category from Serial No.47 and also in the OBC category from Serial No.3. As regards the General list, the candidate who secured 56.3% marks was provisionally selected and as regard the OBC category, the candidate who secured 72.5% marks was also provisionally selected for the post. Even though the petitioner secured 81.37% marks, she was not selected. The petitioner was not given any valid reason for her non-selection. Hence, the petitioner has filed the writ petition with the aforesaid prayer.

8. Resisting the writ petition, the first respondent filed the counter stating that the selection of candidates for the post was by merit, reckoning the marks obtained in the Higher Secondary and Diploma/Degree in Nursing and weightage for the registration of technical qualification in the Employment Exchange. Apart from this, the candidate becomes eligible for consideration only where he/she is a resident of the Union Territory of Puducherry and should have been a continuous resident of the Union Territory of Puducherry for the last 5 years immediately preceding the date of Notification. Totally 1002 candidates have applied on-line, out of which only 814 applications were received in full shape. Out of 814 applications, 643 were found under eligible category for consideration. Based on the provisions of the recruitment rules, 134 candidates in various categories have been selected for the post of Staff Nurse and notified on 26.02.2013. Out of 134 candidates called for certificate verification, only 120 candidates turned up and after scrutiny, 120 candidates were offered appointment on 08.03.2013.

9. It is stated in the counter that in the residency certificate produced by the petitioner, it has been mentioned that she is a native of Puducherry by birth. However, in the certificate, it has not been stated that she was the continuous resident of Puducherry for 5 years preceding the date of the notification and, therefore, her name was not taken into consideration in the provisional list. Therefore, the question of considering her marks, seniority etc. along with other contenders does not arise, as the certificate of residency given by her does not fulfill the requirement as prescribed.

10. In the counter, it has also been stated that the petitioner's continuous residence of at least 5 years preceding the date of notification has not been certified by the Revenue Department as required in the Notification. Further, as per the experience certificate produced by the petitioner, she worked as Nursing Tutor in the School of Nursing, Kamala College of Medical Sciences at Salem from 15.04.2009 to 31.08.2010. The petitioner at no point of time approached the office of the first respondent, nor ascertained the reasons for non-selection. No discriminatory treatment was adopted in the selection process. Hence, prayed for dismissal of the writ petition.

11. The learned counsel for the petitioner submitted that the provisional selection for appointment to the post of Staff Nurse so far as the candidates who secured lesser marks than the petitioner from Serial No.47 under General category and from Senior No.3 under OBC category suffers from infirmity, illegality and the same is liable to be quashed. He submitted that in the selection process, the petitioner secured 81.37%. The learned counsel argued that the first respondent has miserably failed to consider the fact that the petitioner was a native of Puducherry by birth and also a permanent resident of Puducherry as evidenced from the Birth Certificate, Nativity Certificate and also the Community Certificate and prayed quashing of Notification in so far as the petitioner is concerned.

12. Per contra, the learned Additional Government Pleader (Puducherry) appearing on behalf of the first respondent submitted that since the petitioner has failed to produce certificate from the Revenue Department that she is the resident of Puducherry and was continuously residing there for 5 years preceding the date of the notification, the question of considering her marks, seniority etc. does not arise and therefore, she is not entitled to question either the Notification or the selection process made by the first respondent.

13. I heard Mr.Asokapathy for M/s.Pass Associates, learned counsel appearing for the petitioner and Mr.C.T.Ramesh, learned Additional Government Pleader (Pondicherry) appearing for the first respondent and also perused the materials available on record.

14. Though the petitioner's challenge in this writ petition was on multiple grounds, on a perusal of the counter-affidavit of the first respondent, it is seen that the only objection of the first respondent in not considering the petitioner's name in the provisional selection list is that she has failed to produce certificate showing that she was continuously residing for the last 5 years preceding the date of the Notification in Puducherry.

15. Thus, the only point that arises for consideration in this writ petition is whether the petitioner has established that she was continuously residing for the last 5 years preceding the date of the impugned Notification in Puducherry.

16. The General Instructions, particularly Clause (f) [Resident/Nativity Certificate] appended to the Notification dated 22.06.2012, calling for applications from the eligible Indian citizens for filling up of 141 vacancies in the post of Staff Nurse in the first respondent Institution, reads thus:

"(f) Resident / Nativity Certificate : The candidates who are natives of the Union Territory of Puducherry and residents by continuous residence in the Union Territory of Puducherry for the last 5 years immediately preceding the date of notification are only eligible to apply for the posts. (Note: Certificate issued on or after 01.01.2012 and duly valid Permanent Integrated Certificate (PIC) and certificates already issued by the Competent Authority will only be accepted)."

17. Thus, for applying to the post of Staff Nurse as called for in the impugned Notification, apart from the other conditions stipulated in the General Instructions, the candidates should enclose the Resident/Nativity Certificate issued by the competent authority to the effect that the candidates who are natives of Union Territory of Puducherry were continuously residing for the last 5 years immediately preceding the date of Notification in Puducherry.

18. Let this Court consider first the address of the petitioner given in the application form and various certificates. If this Court looks into the application form of the petitioner, the petitioner has mentioned her address as follows:

"32, Vandikara Street,
Muthialpet,
Puducherry,
Puducherry-605 003."

19. In the birth certificate enclosed along with the application, the address of the parents of the petitioner has been stated as under:

"3, Vandijara Street,
Muthiyalpet,
Pondicherry."

20. The educational qualification certificates and the technical educational qualification certificate show that the petitioner studied in Pondicherry.

21. In the Nativity Certificate issued by the Tahsildar-cum-Executive Magistrate, Taluk Office, Puducherry, dated 18.06.2012, it has been stated that the petitioner is the resident of "No.32, Vadicara Street, Muthialpet, Puducherry by virtue of birth."

22. In the certificate of OBC, dated 18.06.2012 the Tahsildar-cum- Executive Magistrate, Taluk Office, Puducherry certified that "Revathy (petitioner), wife of Thiru.Padmanaban, residing at No.32, Vandikara street, Muthialpet, Puducherry in the Union Territory of Pondicherry belongs to Telegu Devanga Community which is a recognised as Backward Class in the Union Territory of Pondicherry vide Serial No.12 of the Annexure to the"

23. The Voter Identity Card issued by the Election Commission of India and the Family Card issued by the Civil Supplies Department would show that the petitioner is the resident of "No.32, Vandikaran street, Muthialpet, Pondicherry".

24. Even in the Aadhaar Card issued by the Government of India, the residence address of the petitioner is stated as under:

"No.32, Vandikaran Street,
Muthialpet,
Muthialpet-Pondicherry,
Pondicherry-605 003."

25. It is pertinent to note that the Aadhaar Card was issued on 02.09.2012. The impugned notification is dated 22.06.2012. Thus, if the petitioner was not a resident of

No.32, Vandikaran Street, Muthialpet, Muthialpet-Pondicherry, Pondicherry-605 003 continuously for the last 5 years immediately preceding the Notification, the authority could not have issued the Aadhaar Card by mentioning the aforesaid address. Therefore, the contention of the first respondent that the petitioner has failed to establish her residential proof that she was continuously residing in Puducherry for the 5 years immediately preceding the date of notification cannot be accepted.

26. As stated supra, in all the certificates referred to above, it has been categorically stated that the petitioner is the resident of No.32, Vandikara Street, Muthialpet, Pondicherry. In fact, in the Nativity Certificate dated 18.06.2012, the Tahsildar certified that the petitioner is the native of Union Territory of Puducherry by virtue of birth, which shows that from the date of birth itself, the petitioner is residing in Puducherry. Therefore, the first respondent was not right in saying that the petitioner was not continuously residing for the 5 years immediately preceding the date of notification in Puducherry.

27. Though in the counter, it has been stated by the first respondent that the petitioner was residing in Salem and was working as Nursing Tutor in the School of Nursing, Kamala College of Medical Sciences at Salem from 15.04.2009 to 31.08.2010, the first respondent has not produced any document to show that actually, the petitioner stayed away from Puducherry and resided and settled down in Salem even after 31.08.2010. May be for the work purpose, the petitioner would have temporarily gone to Salem. Merely because the petitioner worked at Salem for one year or above, will not mean that the petitioner has changed her domicile from Pondicherry to Salem.

28. In *Craignish v. Craguish*, reported in (1892) 3 Ch 180, the definition of "domicile" has been described thus:

"That place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom."

29. In *Central Bank of India v. Ram Narain*, reported in AIR 1955 SC 36, the Supreme Court held as under:

"9. But even this definition is not an absolute one. The truth is that the term "domicil" lends itself to illustrations but not to definition. Be that as it may, two constituent elements that are necessary by English law for the existence of domicil are: (1) a residence of a particular kind, and (2) an intention of a particular kind. There must be the factum and there must be the animus. The residence

need not be continuous but it must be indefinite, not purely fleeting. The intention must be a present intention to reside for ever in the country where the residence has been taken up. It is also a well established proposition that a person may have no home but he cannot be without a domicile and the law may attribute to him a domicile in a country where in reality he has not. A person may be a vagrant as when he lives in a yacht or wanderer from one European hotel to another, but nevertheless the law will arbitrarily ascribe to him a domicile in one particular territory. In order to make the rule that nobody can be without a domicile effective, the law assigns what is called a domicile of origin to every person at his birth. This prevails until a new domicile has been acquired, so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, nevertheless his domicile of origin adheres to him until he actually settles with the requisite intention in some other country."

30. The first respondent has not produced any record to show that the petitioner has permanently changed her residence to Salem or settled down there. On the other hand, the petitioner has produced number of documents to show that she is the permanent resident of Puducherry.

31. As stated supra, since the petitioner has established that she is the resident of Puducherry by birth, the question of she not being continuous resident for the last 5 years immediately preceding the Notification as contended by the first respondent does not merit consideration.

32. In the counter, it has been specifically stated in paragraph 12 that "In the circumstances, the question of considering her marks, seniority etc. along with other contenders does not arise, as the certificate of residency given by her does not fulfill the requirement as prescribed".

33. Since the marks obtained by the petitioner, age, reservation etc., have not been disputed by the first respondent and since in the counter of the first respondent it has been stated that question of considering her marks and seniority etc. does not arise and also the counter only deals about the certificate of residency, this Court is also not considering those aspects.

34. For the foregoing reasons:

(a) the writ petition is allowed and the notification under challenge dated 26.02.2013 is set aside in so far as the writ petitioner is concerned;

(b) the first respondent is directed to consider the case of the petitioner in the light of the observations made in this order regarding her nativity as Puducherry and grant appointment to her, if she was otherwise qualified as on the date of original application;

(c) the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs
To

The Director,
Indira Gandhi Medical College and Research Institute,
(Government of Puducherry Institution),
Vazhudavur Road,
Kathirkamam,
Puducherry - 605 009.

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