

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D. AUDIKESAVALU

W.A. No. 973 of 2013

Mrs. Gowri Mohan ..Appellant/ Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3.
2. Government of Tamil Nadu
rep. by its
Secretary to Government,
Health and Family Welfare
(MCA I) Department,
Fort St. George,
Chennai - 600 009.
3. The Tamil Nadu Nurses and
Midwives Council, rep. by its
President,
140/56, Santhome High Road,
Mylapore, Chennai 600 004.
4. Indira Gandhi National Open
University (IGNOU),
rep. by its Registrar,
Maidan Garhi, IGNOU Road,
New Delhi - 110 068.

(R2 to R4 impleaded as party respondents
vide order of Court dated 15.10.2014
made in M.P. No. 1 of 2014)

..Respondents/ Respondents

Prayer: Writ Appeal as against the order dated
07.11.2012 in W.P. No. 14902 of 2012.

W.P. No. 14902 of 2012:- Writ Petition under Article 226 of the Constitution of India, seeking Writ of Certiorari to call for the records on the file of the 1st Respondent herein in proceeding No.Maa.Ku.Na.(Ma). Ma.Ku.Na. No.F12/ 725/2012 dated 9.5.2012 and quash the same as illegal incompetent and without jurisdiction and further direct the respondent to appoint the petitioner as Maternity Child Health Officer.

For Appellant :: Mr.V. Raghavachari

For Respondents:: Mr.R. Arunmozhi for R1
Mrs.A. Srijayanthi ,
Special Govt. Pleader for R2
Mr.A.R. Nixon for R3
Mr.S. Saravanan for R4

J U D G M E N T

(Judgment of the Court was delivered by K.K. SASIDHARAN,J.)

The claim made by the appellant for promotion to the post of Maternal and Child Health Officer was rejected by the Chennai Corporation primarily on the ground that the degree in B.Sc (Nursing) obtained by her from Indira Gandhi National Open University was not recognised and that the said degree was not registered with the Tamil Nadu Nurses and Midwives Council. The order was unsuccessfully challenged before the Writ Court. The appellant dissatisfied with the order passed by the learned Single Judge has filed this intra-court appeal.

2.The appellant was appointed as a Staff Nurse and after obtaining Diploma in Nursing, her name was registered with the Tamil Nadu Nursing Council. The name of the appellant was included in the panel for appointment to the post of Maternal and Child Health Officer. The promotion list was prepared on 22 January, 2008. The Chennai Corporation promoted two out of six persons empanelled without indicating any reason. The subsequent enquiry revealed that the qualification obtained by the appellant was not recognised and that the degree was not registered with the Tamil Nadu Nurses and Midwives Council. The representation submitted by the appellant for giving her promotion was also rejected by stating the very same reason.

3.The learned Single Judge opined that the degree obtained by the appellant was not recognised. The appellant also failed to satisfy the other requirements relating to registration. The writ petition was therefore dismissed.

4. We have heard the learned counsel for the appellant. We have also heard the learned Standing Counsel for the Chennai Corporation and Nursing Council.

5. The appellant initially took a Diploma in Nursing. The Diploma was also registered with the Tamil Nadu Nurses and Midwives Council. It was pursuant to the said qualification, the appellant was appointed as a Staff Nurse in Chennai Corporation.

6. The next avenue of promotion to a Staff Nurse is to the post of Maternal and Child Health Officer. The method of recruitment to the said post is by promotion or by direct recruitment. For Staff Nurses to be eligible for promotion to the post of Maternal and Child Health Officer, the qualification required is B.Sc (Nursing) from a recognised University or Diploma in Public Health Nursing in any of the institutions recognised by Government of Tamil Nadu. The candidate must also have successfully undergone 10 months Diploma Course in Public Health Nursing and must have registered with the Nurses and Midwives Council. The qualification prescribed for direct recruitment is B.Sc (Nursing) from a recognised University and the candidate must have registered with the Nurses and Midwives Council.

7. The appellant had obtained a degree in B.Sc (Nursing) from Indira Gandhi National Open University ('IGNOU' for short). The course offered by IGNOU was not approved earlier. Therefore, it was not possible for the appellant to register her name before the Tamil Nadu Nurses and Midwives Council. The appellant had not undergone 10 months Diploma Course in Public Health Nursing. Therefore, she was not found eligible for promotion.

8. The question regarding the validity of B.Sc (Nursing) Degree Certificate issued by IGNOU came up for consideration before the Delhi High Court in W.P. (C) No. 5604 of 2010. The Delhi High Court, by order dated 26 October, 2010, while allowing the writ petition filed by the candidates, made it very clear that IGNOU is not a private enterprise and that the degree awarded by the said University is valid like a degree given by any other University. Even though the Delhi High Court by order dated 26 October, 2010 clarified the position with regard to the degree obtained from IGNOU, the fact remains that the applications for registration were not entertained by the Tamil Nadu Nurses and Midwives Council.

9. The counter affidavit filed by the Registrar, Tamil Nadu Nurses and Midwives Council indicate that since IGNOU was not an approved University, the certificates issued by the said University were not recognised by the Tamil Nadu Nurses and

Midwives Council.

10. There is no dispute that the appellant was not eligible to be considered for promotion to the post of Maternal and Child Health Officer when her juniors were given promotion. The claim made by the appellant was therefore rightly rejected. The Chennai Corporation once again prepared the panel for promotion to the post of Maternal and Child Health Officer. The cut-off date was 1 April, 2017. The promotion was made for the year 2017-2018. Since the appellant was not eligible, she was not considered.

11. We are informed by the Chennai Corporation through the learned Standing Counsel that the appellant is now eligible for promotion. According to the Standing Counsel, the local body is now in the process of preparing the panel for promotion and the entire process would be completed within a period of two months. It is also submitted that the name of the appellant would also be included in the panel for promotion.

12. The appellant has now satisfied the eligibility conditions for promotion to the post of Maternal and Child Health Officer. Since there are several such posts vacant in the Corporation, every effort should be taken to complete the process of giving promotion to all the eligible candidates. Such exercise shall be completed on or before 31 July, 2019.

13. The learned counsel for the appellant submitted that opportunity should be given to the appellant to submit a comprehensive representation to the Chennai Corporation to consider her case for retrospective promotion taking into account the promotion given to her juniors.

14. We give liberty to the appellant to make such a representation along with documents to prove her claim. In case, any such representation is given, the same shall be considered and disposed of by the Corporation within a reasonable period after giving her promotion in the next departmental promotion.

15. The intra-court appeal is disposed of with the above direction. No costs.
nv

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3.
2. The Secretary to Government of Tamil Nadu,
Health and Family Welfare
(MCAI) Department,
Fort St. George,
Chennai - 600 009.
3. The President,
The Tamil Nadu Nurses and
Midwives Council,
140/56, Santhome High Road,
Mylapore, Chennai 600 004.
4. The Registrar,
Indira Gandhi National Open
University (IGNOU),
Maidan Garhi, IGNOU Road,
New Delhi - 110 068.

+1cc to Mr.A.R.Nixon, Advocate, SR.No.36747
+1cc to Mr.R.Arunmozhi, Advocate, SR.No.36833
+1cc to Mr.S.Saravanan, Advocate, SR.No.36129

W.A. No. 973 of 2013

Kak (21/06/2019)

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