

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.47154 of 2018

ORDER:

This writ petition is filed seeking the following relief :-

“.....to issue a writ, order or direction especially one in the nature of writ of mandamus declaring that (a) the revised integrated seniority list of Staff Nurses/ Nursing Tutors Grade-II of zone V and VI issued vide Rc.No.4934/ E4.C/ 2018, dt.29.11.2018 is illegal, arbitrary and discriminatory violating Articles 14 and 16 of the Constitution of India (b) further declare that the petitioner Nos.1 to 3 are entitled to be shown over and above the respondent Nos.4 to 11 and petitioner No.4 is entitled to be shown over and above respondent Nos. 12 to 17 and accordingly they are entitled to be promoted as Lecturers (Nursing) in the available / existing vacancies.....”.

Heard Mr.M.Surender Rao, the learned Senior counsel representing Sri M.Srinivas Rao, learned counsel for the petitioners and the learned Government Pleader for Services-II.

It has been contended by the petitioners that they are all working as Staff Nurse and they are fully qualified and eligible to be promoted by recruitment by way of transfer to the post of Lecturer in terms of special Rules issued in G.O.Ms.No.101 dated 04.04.1997. As per the Special Rules for the post of Lecturer, the method of recruitment is as follows :-

- “(i) by appointment by transfer from the category of Nursing Tutor Grade-I from A.P.Subordinate Nursing Services.
- (ii) If no qualified Nursing Tutor Grade-I is available then by promotion from the category of Nursing Tutor Grade-II.
- (iii) If no qualified Nursing Tutor Grade-II is available then by promotion from the category of Public Health Nurse from A.P.Subordinate Nursing Services.
- (iv) if no qualified Public Health Nurse is available then by promotion from the category of Staff Nurse of A.P.Subordinate Nursing Services.

The petitioners submit that they are all fully qualified to be considered for recruitment by way of transfer to the post of Lecturer and they are working in Zone-V. For the post of recruitment by transfer to the post of Lecturer, the respondents have to prepare a common integrated seniority list of all Staff Nurses working in Zone-V and Zone-VI in accordance with Rule 34 of A.P.State and Subordinate Services Rules, 1996 (for short 'the Rules').

The petitioners further contended that the respondents have prepared a common integrated seniority list of staff nurses working in Zone-V and Zone-VI and communicated the same vide proceedings dated 29.11.2018, which is contrary to Rule 34 of the Rules.

It is relevant to extract Rule 34 of the Rules, which reads as follows:-

34. Preparation of integrated or common seniority list of persons belonging to different units of appointment :-
Where as integrated or common seniority list of a particular class, or category or grade in any service belonging to different units of appointment has to be prepared for the purpose of promotion or appointment by transfer, to a class or category having different units of appointment or for any other purpose, such an integrated or common seniority list shall be prepared with reference to the provision of sub-rule (a) of Rule 33, provided that the seniority list of the persons *inter-se* belonging to the same units shall not be disturbed.

Learned counsel for the petitioners has illustrated a few discrepancies in the common integrated final seniority list and one of such discrepancies, as pointed out, in the common integrated final seniority list of Staff Nurses is that persons such as J.Sujatha, who is the 1st petitioner in the present writ petition, is a member

belonging to Zone-V and she was appointed on 24.11.1998 as a Staff Nurse. However, while preparing the common integrated seniority list of Staff Nurses, the name of one Vijaya Kumari was placed 10 members over and above the 1st petitioner even though the said Vijaya Kumari has joined in the service on 25.11.1998 in Zone-VI. As per Rule 34 of the Rules, the date of joining is to be given paramount importance while deciding the seniority. Though the 1st petitioner has joined on 24.11.1998, she was shown down to one Vijaya Kumari, who was placed 10 members over and above the 1st petitioner and hence, the final seniority list prepared by the respondents is not in accordance with Rule 34 of the Rules. Therefore, the learned counsel submits that the impugned seniority list is liable to be set aside only on the ground that it is violative of Rule 34 of the Rules and the respondents may be directed to prepare the common integrated seniority list of Staff Nurses in accordance with Rule 34 of the Rules.

Learned Government Pleader appearing for the respondents has contended that the respondents have constituted a Committee for finalizing the common integrated seniority list of Staff Nurses and based on the recommendations made by the said Committee, the respondents have prepared the common integrated seniority list of Staff Nurses strictly in terms of Rule 34 of the Rules. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that from a perusal of the common integrated seniority list of

staff nurses in respect of 1st petitioner, which was demonstrated before this Court, it is evident that though the 1st petitioner joined on 24.11.1998 in Zone-V, she was shown at S.No.34 and Vijaya Kumari, who joined on 25.11.1998 in Zone-VI, was shown at S.No.25, which proves that the common integrated seniority list of Staff Nurses is prepared contrary to Rule 34 of the Rules. Therefore, the impugned common integrated seniority list of Staff Nurses is liable to be set aside and it is accordingly set aside. The respondents are directed to prepare the common integrated seniority list of Staff Nurses working in Zone-V and Zone-VI strictly in terms of Rule 34 of the Rules within a period of four months from the date of receipt of a copy of this order.

With the above observations, this writ petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

Date: 05-12-2019
Prv

ABHINAND KUMAR SHAVIL, J

