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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30.07.2019

+ W.P.(C) 706/2016

SUSHMA CHAUHAN

..... Petitioner

Through Mr.Y.P. Sharma, Adv.

versus

MINISTRY OF HEALTH & FAMILY WELFARE & ORS

..... Respondents

Through Mr.Gautam Narayan, ASC with
Ms.Shivani Vij & Ms.Dacchita Shahi,
Advs. for GNCTD.
Mr.S.D. Singh, Adv. with Ms.Meenu
Singh, Adv. for R-2.
Mr.Praveen Khattar, Adv. with
Mr.Bapi Das, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby setting aside the office order dated 08.07.2015 issued by the respondent no.2 whereby the services of the petitioner has been dispensed with.
2. Brief facts of the case are that the petitioner got diploma in general nursing & midwifery from Rajasthan nursing council. The petitioner was registered with the said council vide nurse registration no.30322, midwife

registration no.11294 dated 29.11.2006, valid upto 31.12.2010.

3. The petitioner applied for the post of staff nurse on 23.04.2009 with the respondent no.2 and thereafter a memorandum was issued by the said respondent pertaining to joining of the petitioner as staff nurse on contract basis. On 06.03.2011, the petitioner got renewed her registration certificate from Rajasthan nursing council on 06.03.2011 which is valid up to 31.12.2015. Respondent no.2 issued a certificate dated 31.05.2002 of Delhi Nursing Council to the petitioner. Consequently, the petitioner applied on 05.07.2013 for getting registration from Delhi Nursing Council. However, at the time of renewal of contract w.e.f. 02.02.2014 while seeking the DNC registration, the petitioner again requested vide letter dated 28.01.2014 to help and allow her to continue on contract basis.

4. On 12.03.2014, respondent no.2 considered the request of the petitioner and granted extension of contract for further period of three months w.e.f. 02.02.2014 to 01.05.2014.

5. The respondent no. 4 made endorsement dated 11.04.2014 wherein it was stated that *“Rajeev Gandhi general hospital school of nursing, Alwar 301001, Rajasthan for GNM course is not recognized by INC (Indian Nursing Council) as per section 22(4) (5) (6) of Delhi Nursing Council Act*

1997 (*Act 3 of 1999*). Consequently, the petitioner could not be registered under the said Act. On 24.04.2014, the petitioner found no other remedy except to file a writ petition before this Court vide W.P.(C) 2640/2014 against the office order dated 12.03.2014. During the hearing on 28.04.2014, learned counsel for respondent no.2 assured this Court that no precipitate action would be taken for the next four weeks. However, on 07.06.2014, the respondent no.2 passed office order by which the services of the petitioner were dispensed with, with immediate effect. Thereafter, the petitioner filed another writ petition vide W.P.(C) 3991/2014 against the office order dated 07.06.2014 . However, the same was dismissed as withdrawn vide order dated 02.07.2014.

6. Learned counsel appearing on behalf of the petitioner submits that respondent no. 3 updated status of the institution and vide their approval by executive committee, the same being listed at serial no. 2009 at page no. 226 of 285 in the list of school of nursing for G N M course recognized and permitted to admit students for the academic year 2015-16 published by Indian Nursing Council. On 06.05.2015, same information was provided to the office of Delhi Nursing Council where DNC accepted the application of the petitioner and issued the receipt on 06.05.2015 vide receipt no.67217

and issued DNC registration No.58324. The petitioner after DNC registration, sent a representation dated 06.05.2015. Respondent no. 2 replied by letter dated 08.07.2015 by which respondent no.2 flatly refused to accept her representation. Thereafter on 14.07.2015, RTI was filed before DNC to know the status of nursing staff employed with respondent no. 2. Vide reply dated 10.08.2015, it was disclosed that no application for registration Certificate is pending in the office of respondent no. 4 (DNC) of said nursing staff.

7. The petitioner again filed RTI on 26.09.2015 before respondent no.2 regarding the nursing staff Sh.Manish Shankla. Vide letter dated 28.10.2015, reply was received which stated that Sh.Manish Shankla got appointed as Nursing Staff in IHBAS hospital on 22.08.2008 on contract basis. It is further disclosed that he was not terminated from the post. His contract was reinstated till 31.12.2009 with terminal brake. Being aggrieved, the petitioner filed the present petition.

8. It is not in dispute that the Rajeev Gandhi General Hospital School of Nursing, Alwar was not recognized with Indian Nursing Council/respondent no.3. Therefore, the said council of Rajasthan with the respondent no.3 is mandatory under section 22(4)(5)(6) of Delhi Nursing Council Act, 1997.

Despite the repeated opportunity granted to the petitioner to register with Nursing Council of India, however, she failed to do so, therefore, at last, respondent no.2 has dispensed with the services of the petitioner.

9. As stated by counsel for the petitioner, the petitioner was not aware whether the Rajiv Gandhi General Hospital, School of Nursing, Alwar though recognized by Rajasthan Nursing Council, was not recognized by Indian Nursing Council and he came to know about this fact only in the year 2014. Thereafter, the said nursing school was recognized by Nursing Council for Rajasthan in the year 2015-16 onwards but at the relevant time, when the petitioner did nursing from Rajiv Gandhi General Hospital, School of Nursing, Alwar, it was not recognized by Indian Nursing Council School.

10. It is not in dispute that the petitioner was on contract basis. The contractual employee has no perpetual right in the employment. Counsel for the petitioner failed to establish that Rajiv Gandhi General Hospital, School of Nursing, Alwar from where the petitioner did the nursing, was recognized by Indian Nursing Council which is pre-condition as per section 22(4)(5)(6).

11. As per section 17 of the Delhi Nursing Council Act, 1997, no person other than a person registered under this Act or person whose name is

entered in the list under section 16 shall practice directly or by implication as practicing habitually or for personal gains as a nurse.

12. Accordingly, as per section 17 mentioned above, the services of the petitioner cannot be entertained, by the respondent, therefore, I find no legality and perversity in the impugned order passed by the respondent.

13. Counsel for the petitioner submits that in a similar situation, the respondent has allowed the other nurses to work whereas the services of the petitioner was dispensed with. This argument of the petitioner has no weight on the ground that as per section 17 of the Delhi Nursing Council Act, 1997, if any person is not registered under this Act, the said person cannot practice, therefore, if any illegality is committed by the respondent that cannot be allowed to repeat.

14. In view of above, I find no merit in the present petition and the same is, accordingly, dismissed.

(SURESH KUMAR KAIT)
JUDGE

JULY 30, 2019
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