HIGH COURT OF MADHYA PRADESH : JABALPUR

Heard through Video Conferencing

Writ Petition No.18542/2020

Ram Prasad Kushwaha

vs.

Union of India & others

Shri K.K.Kushwaha, learned counsel for the Petitioner.

Shri Ashish Anand Bernard, learned Deputy Advocate General for the respondent-State of M.P.

Shri Brahmdatt Singh, learned counsel for respondent No.3.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Acting Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

O R D E R

Jabalpur, dated : 07.12.2020

Per : Sanjay Yadav, Acting Chief Justice.

At the outset, learned counsel for the petitioner gives up relief sought in paragraph 7(C) and 7(D), whereby, the petitioner seeks quashment of corrigendum dated 09.10.2020 reserving 14% seats in favour of Other Backward Classes.

2. As regard to relief sought in paragraph 7(A) and 7(F), it is pointed out by learned counsel for respondent No.3-National Health

Mission, Madhya Pradesh, appearing on Caveat that, the issue has already been decided by this Court forming subject matter of Writ Petition No.14793/2020 (*Ashish Kumar Vishwakarma vs Government of India)*, wherein, it is held :

> "This batch of Writ Petitions at the instance of the petitioner who are B.Sc. (Nursing) and General Nursing Midwifery Course are directed against Clause 6 and more particularly clause 6.2 of National Health Mission Madhya Pradesh (Department of Public Health and Family Welfare) Rule Book for selection of Community Health Officer (through Online Written Test) and the corresponding clause incorporated as an essential eligibility criteria for appointment to the post of Community Health Officer, under National Health Mission, Department of Public Health and Family Welfare. Whereas the Essential Eligibility Criteria for appointment as Community Health Officer vide recruitment notice dated 18.09.2020 stipulates-
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> "Essential Eligibility Criteria-
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> B.Sc. (Nursing) with Integrated curriculum of Certificate in Community Health (CCH) Post Basic (Nursing) with Integrated curriculum of Certificate in Community Health (CCH) by recognized by Indian Nursing Council or Madhya Pradesh Nursing Council, may also apply."
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> 2- That Clause 6 of the Rule Book lays down the disqualifications-
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> "6. Disqualifications-
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> 6.1 Candidates with B.Sc. Nursing OR Post Basic B.Sc. Nursing from the institutions/university who offer the self-sponsored courses OR distance learning mode courses;

6.2 Candidates who have passed B.Sc. Nursing or Post Basic B.Sc. Nursing course without integrated CCH curriculum.

6.3 The candidate shall be disqualified from examination/selection process by the selection authority if by any candidate or for any candidate or by any medium, the effort is made to obtained to support in selection by any other mean;

6.4 Candidate should overview the rules and selection criteria and ensure the eligibility before applying for the position. If any candidate is found ineligible during the examination phases and/or after the declaration of results and candidate provided details are found wrong, in the event of this candidate candidature shall be disqualified at any point in the process;

6.5 Candidates shall be disqualified/expelled from the examination in case they misbehave and involve in peace hampering during the examination;

6.6 Candidates shall be disqualified if they provide fake documents or their documents are changed/morphed/forged or have hidden any substantial information;

6.7 Candidates shall be disqualified from the examination if they use or try to use an impersonator for the examination;

6.8 Any candidate against whom a criminal case is considered in the court or has been punished by the Court will be disqualified (shall not be eligible).”

3- The exception is taken on the ground that the conditions are detrimental to the interest of the petitioner who though are B.Sc. (Nursing) but lacks Integrated Curriculum of Certificate in Community Health which has been introduced in the Curriculum of B.Sc. (Nursing) from the Academic Year 2020-21 by the Indian Nursing Council and Madhya Pradesh Nursing Council.

4- It is contended that the Essential Eligibility Criteria be read down to the extent of excluding the present incumbents who had no opportunity to acquire

the Integrated Curriculum of Certificate in Community Health.

5- The respondent No.4 against whom the reliefs are sought though have raised a preliminary objection as to the maintainability of the petition on the anvil of the decision of the Supreme Court in **V. K. Sood vs. Secretary Civil Aviation and others:1993 Supp (3) SCC 9** wherein it is held that Article 14 and 16 of the Constitution do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. And that it is for the expert body and the Court does not have the assistance of experts. It is for the rule making authority or for the legislation to regulate the method of recruitment, prescribe qualification. However, in paragraph 14 and 15 of consolidated return filed in Writ Petition No.14763/2020, it is stated:

> "14- That, as such, it is humbly submitted in all the earlier phases of selection initiated vide advertisements dated 15.05.2019, 23.10.2019, etc. the essential qualification was B.Sc. Nursing only but, in the impugned selection process integration of the CCCH curriculum in the B.Sc., Nursing courses was done pursuant to notifications dated 18.01.2019, 12.02.2019 and 29.05.2019 of the INC and consequent letters dated 14.08.2019 and 25.11.2019 of the MoHFW. Needless to say, the such notifications/letters were based on decisions taken by the expert bodies of the INC and MoHFW.
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> However, the answering respondent have taken a policy decision on 23.11.2020 to also give opportunity to candidates of the class of the Petitioners herein who have obtained B.Sc. Nursing qualification in the previous academic years without the integrated CCCH curriculum in the next phase of selection.
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> Hence without prejudice of the submissions made and objections raised hereinabove, it is humbly submitted that in view of the aforesaid

development which took place in the matter on 23.11.2020 these Wps deserve to be disposed of as all such petitioners herein shall be at liberty to participate in the next phase selection process which is most likely to commence in December, 2020.

15- That, lastly, as to the ground raised by some of the petitioners that rule 6.1 disqualifies those candidates who have obtained the qualification of B.Sc. Nursing from private institutions/universities, it is humbly submitted that the same is absolutely baseless and demonstrates nothing but, shear misinterpretation/misunderstanding of the said rule. The answering respondent hereby clarifies that there is no bar in inclusion of candidates who have obtained qualification from private institution, provided it is duly recognized under the law and is neither self-sponsored nor imparting distance learned mode course."

6- In view whereof, while keeping the issue raised in the petitions open, the Writ Petitions are disposed of in terms of concession granted as contained in paragraph 14 and 15 of the return filed in Writ Petition No.14763/2020. No costs."

3. In view whereof, present petition qua relief sought in paragraph 7(A) and 7(F) is ***disposed of*** in the terms of order passed in Writ Petition No.14793/2020 which shall apply *mutatis mutandis* to the present petitioner.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

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