

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2988 of 2021

Order reserved on: 25-10-2021

Order delivered on: 16-12-2021

1. Smt. Sushila Rajwade, W/o Shri Rajesh Rajwade, aged about 40 years, R/o Village Ganeshpur, Post Lakhanpur, District Surguja, Chhattisgarh
2. Smt. Bimla Singh, W/o Shri Vimlesh Singh, aged about 26 years, R/o Village Bagra, Post Chaki, Tehsil Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh
3. Smt. Jyoti Sahu, W/o Shri Rama Shankar Sahu, aged about 40 years, R/o Village Rampur, Post Patna, Tehsil Baikunthpur, District Korea, Chhattisgarh

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Health and Family Welfare, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh
2. Directorate of Health Services, Through its Director, Department of Health and Family Welfare, 3rd Floor, Indravati Bhawan, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)

For Petitioners: Mr. Abhyuday Singh, Advocate.

For Respondents / State: -

Mr. Chandresh Shrivastava, Deputy Advocate General.

Hon'ble Shri Arup Kumar Goswami, CJ
and Hon'ble Shri Sanjay K. Agrawal, J.

C.A.V. Order

Sanjay K. Agrawal, J

1. The petitioners herein call in question the constitutional validity of Condition No.3(i), Column 5, Entry 1 of Nursing Service under Schedule-III enacted under Rule 8 of the Chhattisgarh Health and

Family Welfare Department Non-ministerial Para-Medical and Nursing (Directorate Health Services) Class-III Service Recruitment Rules, 2013 (for short, 'the Rules of 2013') as amended vide notification dated 11-6-2020, prescribing minimum experience of 5 years for Mitans to be eligible for recruitment under limited direct recruitment to the post of Staff Nurse, and also consequently seek to challenge clause 3(1) of the advertisement dated 24-5-2021, whereby 5 years experience has been sought for in respect of Mitans for enabling them to participate in the limited direct recruitment process for the post of Staff Nurse.

Factual Backdrop: -

2. The petitioners, who were appointed and working as Mitans based on the 17th Stage Mitan Training conducted by the State Health Resource Centre, have undergone the course training for General Nurse Midwifery (GNM) under a government scheme which was fully sponsored and catered to by the State Government. The petitioners have also been sent for 6 months internship at District Hospitals and were registered with the Chhattisgarh Nurses Registration Council, Raipur and as such, they are trained GNMs and qualified to be appointed as Staff Nurse.
3. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Rules of 2013 have been framed which were subject matter of amendment by notification dated 11-6-2020 by which in Schedule-II, Nursing Service Cadre has been included in which the post of Staff Nurse has been placed and by virtue of Rule 6(1)(a) of the Rules of 2013, 80% of posts have to be filled up by direct recruitment and 20% of posts have to be filled-up by promotion. The

rule further provides that 75% posts out of 80% posts of direct recruitment shall be filled on the basis of open competition and 5% posts shall be filled from GNM or B.Sc. (Nursing) Trainees Mitans through limited departmental examination. Similarly, in Schedule-III enacted under Rule 8 of the Rules of 2013, qualifications have been prescribed for the post of Staff Nurse in which one of the qualifications for limited direct recruitment of Mitans is that the candidate should have worked as Mitan continuously / uninterrupted for a period of 5 years which has been sought to be challenged in this writ petition as arbitrary, unconstitutional and violative of Part-III of the Constitution of India and further prescription of 5 years minimum experience for the said post of Staff Nurse is a hostile discrimination and therefore, it is liable to be declared unconstitutional.

4. It is the case of the petitioners that the petitioners, who were qualified GNMs, are otherwise entitled for the post of Staff Nurse. Under Schedule-III of the amended Rules, experience of 5 years as Mitan has been prescribed as additional qualification for appearing in the limited departmental examination which is arbitrary, as the minimum qualification prescribed for direct recruitment is that a candidate should have passed B.Sc. (Nursing) or P.B.B.Sc. (Nursing) or General Nursing and passed Senior Midwifery Training and should be registered with the Chhattisgarh Nursing Council as Nurse, and there is no additional requirement of any experience appended to direct recruitment for the post of Staff Nurse. Even a Mitan who has undergone the GNM course is, even otherwise, eligible for being selected and fulfills all the requisite qualifications for the post of Staff Nurse. Thus, the additional qualification prescribed as mandatory

qualification for participation of Mitans in the limited direct recruitment is over and above the qualifications thus required for open competition is wholly arbitrary and creates a class within a class of trained Mitans. It is the further case of the petitioners that there is no object in creating sub-classification since the larger object is to provide opportunity to the State sponsored trained Mitans to compete with themselves to be appointed on the basis of merit to the post of Staff Nurse and thus, the prescription of 5 years minimum experience is a hostile discrimination and therefore, same cannot withstand the rigours of Articles 14 & 16 of the Constitution of India, particularly when open competition does not require any experience and any fresh graduate is eligible for being appointed as Staff Nurse. As such, the prescription of 5 years additional experience on the post of Mitans for recruitment on the post of Staff Nurse being arbitrary and unconstitutional, deserves to be struck down.

5. The respondents / State have filed their return stating that the condition prescribed in Schedule-III of the Rules of 2013 relating to additional qualification of experience of 5 years as Mitans continuously for appointment on the post of Staff Nurse through limited departmental examination, is strictly in accordance with law and there is no illegality or infirmity in providing and laying down such qualification / eligibility criteria. It has further been pleaded that laying down of eligibility criteria particularly fixing the number of years of experience for appointment on the said post through limited departmental examination is a policy decision which is within the exclusive domain of the State Government and is not open for judicial review only for the reason that it may result in depriving certain

persons / class of persons not falling in the criteria fixed in the Rules. It has also been pleaded that object and purpose of fixing quota of 5% for recruitment to the post of Staff Nurse is to facilitate those Mitanins who are qualified and have experience of rendering service in villages, but, are out of regular Government employment for being accommodated. Hence, there is a clear and intelligible nexus for the object sought to be achieved by prescription of additional qualification of 5 years experience as Mitanin for recruitment to the post of Staff Nurse through limited departmental examination. As such, there is no such discrimination meted-out to any of the petitioners. It has been pointed out that the concept of serving the rural public through Mitanins is a prevalent concept, but, the Mitanins who have been assisting the State Government for over a long period of time only on the basis of honorarium, deserve certain incentives and therefore the rule making authority thought it expedient while amending the rules by the impugned amendment to give space to them by identifying the Mitanins and sending them to avail training of GNM course so that at appropriate occasion, the services of Mitanins could be availed by the State Government by appointing them under the relevant rules. It is under that backdrop the Mitanins were sent for training and subsequently they were also sent to undergo internship from the Government hospitals and all such efforts were taken by the State Government at the expenses of the State Government, but in the Rules of 2013, originally framed, there was no provision for appointment to the post of Staff Nurse through Mitanins, therefore, the State Government thought it fit to carry out an amendment in the Rules of 2013 so as to enable the Mitanins, who have undergone the

GNM training and the internship course at the expenses of the State Government or otherwise, to recruit experienced Mitans in Government service and accordingly, Schedule-II and Schedule-III of the Rules of 2013 were amended to secure the services of Mitans and fix a quota for them to secure appointment. However, to secure appointment of experienced Mitans, 5% quota has been reserved for Mitans who have 5 years experience of working on the post of Mitans. It has lastly been pleaded that formulation of rule by the rule making authority under the proviso to Article 309 of the Constitution of India is a legislative function and is not amenable to writ jurisdiction unless the party questioning the constitutional validity of Rule is able to demonstrate that the Rules are absolutely in violation of Articles 14 & 16 of the Constitution. As such, the criteria fixed for filling up the post by 5% quota from experienced Mitans is strictly in accordance with law and the writ petition is liable to be dismissed.

6. No rejoinder on behalf of the petitioners has been filed to the return filed by the respondents.
7. Mr. Abhyuday Singh, learned counsel appearing for the petitioners, would submit that Condition No.3(i), Column 5, Entry 1 of Nursing Service under Schedule-III enacted under Rule 8 of the Rules of 2013 as amended vide notification dated 11-6-2020 is absolutely illegal, arbitrary and unconstitutional, because, the prescription of 5 years minimum experience for the post of Staff Nurse is wholly arbitrary and creates a class within a class of trained Mitans. It is further submitted that there is absolutely no reason for having created that sub-classification since the larger object is to provide opportunity to the State sponsored trained Mitans to compete within themselves to

be appointed on the basis of merit to the post of Staff Nurse. He would further submit that the prescription of 5 years minimum experience for the post of Staff Nurse through limited departmental examination is hostile discrimination and therefore, same is violative of Articles 14 & 16 of the Constitution of India. He would also submit that the impugned mandatory prescription of additional qualification of 5 years experience for the post of Staff Nurse is arbitrary, as the Mitans cannot participate in the limited direct recruitment without such experience and even the 5 years experience was never a criterion for being selected to undergo the GNM training. Since limited direct recruitment would be done through examination, the experience clause becomes even more unreasonable once the selection is to be done through examination. The experience clause does more harm than good for selecting the best candidates to be appointed as Staff Nurses, since it eliminates most of the candidates who though are eligible but cannot participate due to the unreasonable requirement of 5 year experience. Lastly, he would submit that since open competition / direct recruitment does not require any experience and any fresh graduate is eligible for being appointed as Staff Nurse, there is no need for any experience for being appointed towards the post of Staff Nurse and hence the experience of 5 years for Mitans for recruitment through limited departmental examination is totally arbitrary and without rhyme or reason and therefore it is liable to be struck-down as unconstitutional along with the advertisement. He would rely upon the decisions of the Supreme Court in the matters of Roop Chand Adlakha and others, etc., etc. v. Delhi Development Authority and others, etc.¹ and State of Punjab and others v. Senior

1 AIR 1989 SC 307

Vocational Staff Masters Association and others² to buttress his submission.

8. Mr. Chandresh Shrivastava, learned Deputy Advocate General appearing for the State / respondents, would submit that the Rules of 2013 as amended with effect from 11-6-2020 have been framed under proviso to Article 309 of the Constitution of India and framing of rules under the proviso to Article 309 of the Constitution of India is a legislative function and is not amenable to writ jurisdiction unless the party challenging the provisions of the Rules effectively makes out that the Rules are in direct conflict with Article 14 of the Constitution of India by submitting cogent materials which the petitioners have miserably failed. He would further submit that the Mitanins, who had been assisting the Government for a fairly long time only on the basis of honorarium, deserve certain incentives and therefore after application of the Rules of 2013 came into existence, the State Government formulated a scheme to identify the Mitanins and sent them to avail the training of GNM course so that the services of Mitanins could be availed by the State Government by appointing them under the Rules of the State Government and it is under that backdrop the Mitanins were sent for training. He would also submit that the educational qualification / eligibility criteria for direct recruitment on the post of Staff Nurse has not been disturbed, but, to secure appointment under 5% quota reserved for Mitanins, the additional eligibility / qualifications have been carved out so that 5% quota of Staff Nurse may be filled from amongst the experienced Mitanins. As such, the writ petition deserves to be dismissed.

9. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
10. The Rules of 2013 suffered amendment by notification with effect from 11-6-2020 and in Schedule-II enacted under Rule 6, 80% posts of Staff Nurse under the Nursing Service Cadre have to be filled-up by direct recruitment under Rule 6(1)(a) and 20% posts have to be filled-up by promotion under Rule 6(1)(b). However, out of 80% posts of direct recruitment, 75% posts of Staff Nurse have to be filled on the basis of open competition and 5% posts of Staff Nurse have to be filled from GNM or B.Sc. (Nursing) Trained Mitans through limited departmental examination. Schedule-III enacted under Rule 8 of the Rules of 2013 as amended with effect from 11-6-2020 prescribes essential qualification for the post of Staff Nurse. It provides as under:-

NURSING SERVICE

Sl. No.	Name of posts included in the Service	Minimum Age limit	Maximum Age Limit	Essential Qualification	Members of the Selection Committee	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Staff Nurse	18 years	35 years	(1) Should have passed B.Sc. (Nursing) or P.B.B.Sc. Nursing or General Nursing and passed Senior Midwifery Training; (2) Registered with C.G. Nursing Council as Nurse; (3) The following Qualifications are essential along with abovementioned qualifications for Limited Direct Recruitment of Mitans: -	(1) Divisional Joint Director, Health Services of concerned Division or Senior most Joint Director or Joint Director, Nursing Administration – Chairman. (2) Deputy Director (Nursing) – Member. (3) Assistant Director – Member.	

				(i) Should have worked as Mitadin Continuously / uninterrupted for a period of 5 years; (ii) Should not have been dismissed from the responsibilities of Mitadin; and (iii) No Criminal case has been lodged / recorded with regard to duties of Mitadin while working as Mitadin.	(4) Assistant Director (Non-medical) – Member (5) Administration Officer – Member	
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11. Condition No.3(i) of the aforesaid rule has been called in question in this writ petition. The sole question for consideration in the writ petition is, whether Condition No.3(i), Column 5, Entry 1 of Nursing Service under Schedule-III enacted under Rule 8 of the Rules of 2013 as amended vide notification dated 11-6-2020 prescribing qualification for the post of Staff Nurse through limited direct recruitment, is constitutionally valid?
12. The Rules of 2013, as amended by notification dated 11-6-2020, have been enacted in exercise of powers conferred by proviso to Article 309 of the Constitution of India. In order to adjudicate the constitutional validity of condition No.3(i) of Schedule-III enacted under Rule 8 of the Rules of 2013, it would be expedient to notice Article 309 of the Constitution of India. Article 309 of the Constitution of India provides as under: -

“309. Recruitment and conditions of service of persons serving the Union or a State.—Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President

or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.”

13. A careful perusal of the aforesaid provision would show that the object of Article 309 of the Constitution is that matters relating to Government service should be regulated by legislation (see Ramanatha v. State of Kerala³), and until such legislation is available, they should be governed by Rules made under the Proviso to Article 309 of the Constitution of India. The rule-making function of the competent authority under proviso to Article 309 is legislative in nature (see Nagara v. State of A.P.⁴). The Rules made in exercise of the power conferred by the Proviso to Article 309 of the Constitution have statutory force (see State of U.P. v. Baburam⁵). Where a Rule is made in exercise of the power conferred by Article 309 of the Constitution or of a statute, such Rule has the force of law and is, accordingly, enforceable by a Court like any other statutory provision or subordinate legislation, subject, of course, to the doctrine of *ultra vires* (see State of Haryana v. Shamser⁶). The Rules so framed under proviso to Article 309 of the Constitution must be reasonable, fair and not unjust if they are to survive the test of Articles 14 and 16 of the Constitution (see Baleshwar Dass v. State of U.P.⁷, State of U.P. and

3 AIR 1973 SC 2641

4 AIR 1985 SC 551 (para. 36)

5 AIR 1961 SC 751 (763)

6 AIR 1972 SC 1546 (para. 8)

7 (1980) 4 SCC 226

another v. Ramgopal Shukla⁸ and State of Mysore v. M.H. Krishna Murthy and others⁹).

14. It is well settled that it is open to the appointing authority to lay down requisite qualifications for recruitment to Government Service as this pertains to the domain of policy (see Banarsidas v. State of U.P.¹⁰ and Commissioner, Corp of Madras v. Madras Corp. Teachers' Mandram¹¹). The Supreme Court in the matter of V.K. Sood v. Secretary, Civil Aviation and others¹² has held that in the exercise of the rule-making power, the President or authorised person is entitled to prescribe method of recruitment, qualifications, both educational as well as technical, for appointment or conditions of service to an office or a post under the State. It was further held that the rules having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. It was also held by their Lordships of the Supreme Court that no motives can be attributed to the Legislature in making the law. Their Lordships finally held that it is for the rule-making authority to regulate the method of recruitment, prescribe qualifications etc. and this is not the province of the Court to trench into and prescribe qualifications.

15. In Roop Chand Adlakha (supra), their Lordships of the Supreme Court have held that if the educational qualification by itself was recognised as conferring eligibility for promotion, then, the superimposition of

8 (1981) 3 SCC 1

9 (1973) 3 SCC 559

10 AIR 1956 SC 520

11 (1997) 1 SCC 253

12 1993 Supp (3) SCC 9

further conditions such as a particular period of service, selectively, on certain class of persons (Diploma-Holders) alone to their disadvantage might become discriminatory and the State is empowered to formulate a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service-experience. Their Lordships further held that the infusion of higher academic and technical quality in the personnel requirements in the relevant cadres of Engineering Services is necessary and these are essentially matters of policy.

16. In Senior Vocational Staff Masters Association's case (supra), their Lordships of the Supreme Court have held that the doctrine of equality is a dynamic and evolving concept having many dimensions. Articles 14-18 of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination which lacks the object of achieving equality, in matters of employment. It was further held that though Article 14 forbids class legislation but it does not forbid reasonable classification. It was also held that there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule.
17. Reverting to the facts of the case in the light of the above-stated legal proposition and in the light of the impugned Rule {condition No.3(i)} which prescribes the additional mandatory qualification of 5 years experience for the post of Staff Nurse for selection and appointment through limited direct recruitment, it is quite vivid that 5% posts of Staff Nurse have been earmarked for Mitans who have worked continuously / uninterrupted for a period of 5 years on the said post. It

is the case of the respondents / State that the very purpose of fixing 5% quota for recruitment for the post of Staff Nurse is to facilitate those Mitanins who are well qualified and having the experience of rendering service, but they are out of regular employment; those Mitanins can be accommodated as they are assisting the State Government for a fairly long time, that too only on the basis of honorarium and those Mitanins deserve certain incentives. Therefore, the Rules of 2013 have been amended and 5% posts have been earmarked to be filled through limited direct recruitment from amongst the Mitanins who have worked as Mitanins continuously / uninterruptedly for a period of 5 years.

18. It is not in dispute that the Mitanins are working with the Health Department and assisting the Department in rendering health services since fairly long time and the Government of Chhattisgarh has issued Mitanin Programme in which "Role of Mitanin" has been defined and their functions have also been assigned in that programme which state as under: -

"Role of "Mitanin"

"Mitanin" in Chhattisgarhi means a friend. In fact She is much more than a friend. It is an age old tradition in the villages of Chhattisgarh, that people make other people their "Mitan" or "Mitanin". It is customary in the villages of Chhattisgarh for girls to become Mitadin of their close girl friends. This is done ceremoniously. Once the two girls have become Mitadins, they are closer to each other than real sisters. This relationship continues for the rest of their life, even after they are married, and becomes a bond between families. The "Mitan" or the "Mitanin" is a friend not only in this life, but even in heaven. The friendship continues even after marriage, and becomes a bond between families. The "Mitans" and "Mitanins" are ready to sacrifice everything for each other. It is this tradition that the scheme seeks to revive. The "Mitanin" therefore is not

just a voluntary worker, but will be a friend, philosopher and guide for the community of the habitation. The community of the habitation should have full faith and confidence in the “Mitandin” and they should have a rewarding, friendly relationship, which may also have a sentimental element. In this sense the “Mitandin” will be a true guide to the community of the habitation in all their endeavors. In the field of Public Health the “Mitandin” will have the following functions:-

1. She will give health education to the community of the habitation.
2. She will take on the leadership role in all Public Health activities of the village, and will encourage community service for public health specially in -
 - a. Cleanliness of the village.
 - b. Ensuring safety of drinking water.
 - c. Making a parapet wall on all wells and covering all wells.
 - d. Making soak pits and proper drainage system in villages.
 - e. Teaching proper drinking water storage practices to the people.
 - f. Encouraging people to make and use sanitary latrines.
 - g. Taking care of the health of women and children specially promoting good health practices by -
 - i. Teaching good nutrition practices.
 - ii. Teaching good breast feeding and weaning practices.
 - iii. Taking care of iron and iodine deficiency by propagating the use of iron folic acid pills, and iodized salt.
 - iv. Propagating the use of iron and Vitamin A rich foods, and giving supplementary Vitamin A to children.
 - v. Ensure regular weighing of children to monitor

growth and development.

vi. Ensure at least 3 Ante natal checkups for all pregnant women.

vii. Ensure that all deliveries are institutional deliveries.

viii. Ensure 100% registration of births, death, marriages, and pregnancies.

ix. Provide consultation on MTP services.

x. Provide consultation on Family Planning services, and ensure regular supplies of contraceptives.

xi. Help women in reproductive health.

xii. Provide counseling to youth on matter related to adolescence, puberty and sexuality, with special reference to STD, and HIV AIDS.

h. Organizing community participation for the control of diseases like Malaria, Leprosy, Tuberculosis, Diarrhoea and Dysentery.

i. Be a link between the Government Health system, and the community for all National Health Programmes.

3. She will provide first aid, and over the counter (OTC) drugs for minor ailments.

4. She will be trained in taking care of common illnesses in the village, and will gradually take on the responsibility for treating these diseases in the village. This will be done gradually during the refresher training organized every fortnight in the sector hospitals. The emphasis in these trainings will be on skill development. The “Mitadin” will be allowed to treat diseases only when she has attained the required proficiency levels in both knowledge and skills. She will be examined periodically, and given certificates of proficiency. The important thing in deciding whether she should be allowed to treat a disease is the confidence, which she has in her own ability, and the confidence, which the sector health team has in her ability. A detailed system of

examination, and certification will be worked out.

5. She will be given the knowledge to refer all cases beyond her competence to the proper place where they can receive proper health care.”

19. A careful perusal of the above-stated Mitani Programme would also show that the selection of Mitanis was earlier used to be by the community of the habitation and it has to be formally approved by the Gram Sabha. A detailed selection procedure has also been provided in the said Programme and there is also need for training of Mitanis after their selection and the said training includes Attitude, Knowledge and Skills. Thus, it appears that the State Government has taken a lot of pain in training Mitanis so that they may help the State Government in rendering health services, particularly in rural areas / villages and since they have been working only on payment of honorarium for quite long time although they are well qualified and have good experience of serving in villages, but they are not in Government service and therefore in order to take their services on regular basis in the Government employment on the basis of their educational / professional qualification and experience of five years as Mitanis, which has to be done through limited departmental examination, 5% quota has been fixed for those Mitanis who have worked as Mitanis continuously with the Health Department of the State Government and have an experience of working as Mitanis for five years.
20. The Rules of 2013 as amended on 11-6-2020 stipulate that out of 80% posts of direct recruitment, 75% posts shall be filled on the basis of open competition and 5% posts shall be filled from GNM or B.Sc. (Nursing) Trainees Mitanis through limited departmental

examination. As such, 5% posts of Staff Nurse have to be filled by limited departmental examination from amongst the Trained Mitans of having experience of 5 years. The object of the State Government is to give opportunity and incentive to those Mitans who have worked for the Health Department of the State Government for a reasonably long time for five years or more, that too only on the basis of honorarium. The purpose behind fixing 5% quota for Mitans is to provide an opportunity to the Mitans who are deprived of being in regular Government service though they have the requisite qualification for the post of Staff Nurse and who have served the State Government for five years or more so that they may come-in and join the State service on the basis of their merit / experience. It is the decision of the Government to allow them to come to the substantive State service and to take their services as regular Government servant in token of their excellent service rendered on the post of Mitans by working for more than 5 years. As such, there is an intelligible nexus and object sought to be achieved by the State Government by giving them an opportunity to join the State Health Service and to reward them for their service which they extended only on the basis of some meagre honorarium, as they are well qualified as per rules for the post of Staff Nurse and have good experience of rendering service. Therefore, prescription of essential qualification / eligibility condition in the shape of five year continuous experience as Mitans for the post of Staff Nurse through limited departmental examination by the State Government, which is the exclusive domain and policy of the State Government, could not be shown to be arbitrary or capricious as these are essentially matters of policy as

held by their Lordships of the Supreme Court in Banarsidas (supra) and V.K. Sood (supra). The prescription of essential qualification by way of experience may cause some hardship in their application in some cases, but on that ground, the impugned condition in the Rules of 2013 cannot be struck down as arbitrary or unreasonable, particularly when it is not violative of Articles 14 & 16 of the Constitution of India. As such, the petitioners have failed to demonstrate any ground of arbitrariness or unreasonableness in Condition No.3(i), Column 5, Entry 1 of Nursing Service under Schedule-III enacted under Rule 8 of the Rules of 2013 as amended vide notification dated 11-6-2020 and accordingly, we hold that the said condition is constitutionally valid.

21. As a fallout and consequence of the aforesaid legal analysis, we do not find any merit in the writ petition. It deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge