

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5012 of 2021**

1. Ku. Divya Nag D/o Shri Khagpati Nag Aged About 30 Years R/o Village Damaguda, Post Pahurbel, Block Bakawad, District - Bastar (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava Raipur, District - Raipur (C.G.)
2. Directorate Of Health Services Through Its Director, Department Of Health And Family Welfare, 3rd Floor, Indravati Bhawan, Atal Nagar, Nava Raipur, District - Raipur (C.G.)
3. Joint Director Health Services, Department Of Health And Family Welfare, Raipur Division, Raipur, District - Raipur (C.G.)

---- Respondent

For Petitioner	:	Mr. K. Rohan, Advocate.
For State	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****20.09.2021**

1. The present writ petition has been filed assailing the order passed by the respondents whereby the petitioner has been declared ineligible for participating in recruitment process for the post of Staff Nurse.
2. According to the Counsel for the petitioner that the Representation/Objection filed by the petitioner have also been rejected vide Annexure P/1 and this is the order under challenge in this writ petition. The petitioner has also prayed for an appropriate writ from

this Court for directing the petitioner to be eligible for selection to the Post of Staff Nurse.

3. The facts relevant for the disposal of the present writ petition are that the respondents have issued an advertisement on 24.05.2021 for filling up of the post of staff Nurse from among the Mitans working under the respondents. The Rules governing the field of staff Nurse was the Chhattisgarh Health and Family Welfare Department Non-ministerial Para-medical and Nursing (Directorate of Health Services) Class III Service Recruitment Rules 2013 (Rules 2013). The minimum eligibility criteria and the essential qualification for appointment to the post of Staff Nurse is enshrined in the Schedule-III of the said Rules 2013.
4. It would be relevant at this juncture to take note of the essential qualification so prescribed under the said rules and schedule-III. For ready reference essential qualifications for Staff Nurse are reproduced hereinunder:-

(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 qualification are essential along with abovementioned qualifications for limited direct recruitment of Mitans:-

(i) Should have worked as Mitan continuously /Uninterrupted for a period of five years;

(ii) Should not have been dismissed from the responsibilities of Mitan; and

(iii) No Criminal case has been lodged / recorded with regard to duties of Mitan while working as Mitan."

5. From the aforesaid essential qualifications and experience that have been reflected in the Schedule-III, the petitioner is aggrieved of clause-

III of the said Rule which prescribes for a minimum experience of five years on the post of Mitanins.

6. The contention of the petitioner is that the petitioner is trained 'Mitanin' and is working under the respondents for over four years now but admittedly less than five years as is prescribed under the said Rules. The petitioner prays that the experience of five years should have been done away by the respondent-authorities or was not at all necessary for appointment to the post of Staff Nurse from among the Mintanins working under the respondents and the said amended Rules or amended provision is also without any basis.
7. According to the petitioner, except for the experience clause, the petitioner fulfills all other requisite eligibility criteria. If the petitioner is not considered for recruitment at this juncture to the post of staff Nurse, she would be put to an irreparable loss in her service careers.
8. Further grievance of the petitioner is that the period that the petitioner has undergone General Nurse Midwifery training (GNM), has been excluded for the purpose of counting the experience and if that period is also counted, the petitioner do have all the requisite eligibility criteria including the experience of five years which is otherwise required.
9. Having heard the contentions put forth on either side and on perusal of records it appears that the petitioner or other similarly placed persons have already questioned the said Rules of 2013 so far as the amendment which was incorporated by the respondents vide notification dated 11.06.2021 before the Division Bench in Writ Petition i.e. WP(S) No. 2988 of 2021. It has been informed that there is no

interim order as such in operation in the said writ petition pending before the Division Bench where the challenge is to the said Rule.

10. All said and done from the essential qualification prescribed in Schedule-III of the Rules 2013 it is clear that the experience of five years on the post of Mitnin is an essential eligibility criteria fixed by the respondents. The said Rule still is in-force and there is no interim order or any interim protection for the people or persons with less than five years of experience. There is also no order by the Government or for that matter any Court of law for counting the services rendered by the petitioner and similarly placed persons for the period they have undertaken the GNM course (General Nurse Midwifery).

11. Therefore, for all practical purposes as of now the service of the petitioner would be only the service rendered by her as Mitnin under the Respondents. As long as the amendment is not held to be bad by the Division Bench of this Court, any recruitment to the post of Staff Nurse from among the Mitnins have to be strictly adhering to the Rules in existence.

12. The claim that the petitioner makes is one which can only be considered subject to the said amended provisions being declared bad-in-law by the Court or the Government withdrawing the said amendment. This Court while exercising the writ jurisdiction testing the recruitment process initiated by way of an advertisement has limited scope of interference. The only scope of interference permissible is to test whether the advertisement is in consonance or in accordance with the Rules governing the field. There is no quarrel or dispute that in the

advertisement, the essential qualifications and experience prescribed are strictly adhering to the Rules of 2013 which stood amended in 2020.

13. Given the said factual matrix of the case, this Court at this juncture would not be in a position to exercise its discretionary power by interfering with the advertisement at this stage. The writ petition therefore sans merits and the same is accordingly dismissed. Any benefit that the petitioner can avail, would be only subject to the outcome of the writ petition pending before the Division Bench.

Sd/-

P. Sam Koshy
Judge

J/-