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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.09.2021
Delivered on	29.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Writ Appeal No.2207 of 2021

Shanthi Tamilmani

... Appellant

vs.

1. Sankareswari
2. Union of India,
represented by Secretary to Government,
Ministry of Health and Family Welfare,
New Delhi.
3. Government of Tamil Nadu,
represented by Secretary to Government,
Ministry of Health and Family Welfare,
Fort St. George, Chennai 600 009.
4. Indian Nursing Council,
represented by its Secretary,
8th Floor, NBCC Centre,
Plot No.2, Community Center,
Okhla Phase-I, Pocket A, Okhla I,
Okhla Industrial Area,
New Delhi 110 020.
5. Tamil Nadu Nurses and Midwives Council,
Represented by its Secretary,
Jayaprakash Narayanan Maligai,
Old No.140, New No.56,
Santhome High Road,
Mylapore, Chennai 600 004.
6. The Indira Gandhi Open University (IGNOU),
IGNOU Residential Campus Road,
Maidan Garhi,
New Delhi 110 068.



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7. Jawaharlal Institute of Post Graduate Medical Education and Research (JIPMER), Represented by Director, Dhanwantari Nagar, Puducherry 605 006.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 03.01.2019 passed by this Court in W.P.No.5409 of 2018.

Prayer in WP.No.5409/2018: Writ Petition filed under Article 226 of the Constitution of India for insuance of Writ of Certiorari calling for the records relating to Order in G.O.(D) No.928, Health and Family Welfare (Z1) Department, dated 21.4.2017 issued by the 2nd respondent and quash the/same.

For Appellant	:	Mr.L.Chandrakumar
For 1 st Respondent	:	Mr.Giridhar
For 3 rd Respondent	:	Mr.K.Tippu Sulthan, Government Advocate
For 4 th Respondent	:	Mr.V.Deepak Narayanan
For 7 th Respondent	:	Mr.M.T.Arunan

JUDGMENT

S.VAIDYANATHAN, J.

Aggrieved by the order dated 03.01.2019 passed by the learned Single Judge in W.P.No.5409 of 2018, the contesting Respondent in the Writ Petition viz. Shanthi Tamilmani, has come up with the present Writ Appeal.

2. According to the Writ Petitioner viz. A.Sankareswari, who is the 1st Respondent herein, she was appointed as Public Health Nurse on 27.08.1987 in Jawaharlal Institute of Post Graduate Medical Education and Research (in short 'JIPMER'). The Writ Petitioner holds B.Sc. (Nursing) degree from Delhi University and also holds an M.B.A in Hospital Management. She was promoted as Assistant Nursing Superintendent on 20.12.2000 and as Deputy Nursing Superintendent on 14.08.2007, and finally promoted to the post of Nursing Superintendent on 22.07.2015.

3. It is further stated by the Writ Petitioner that, the Appellant herein, who is holding a Diploma in General Nursing and Midwifery, entered service as a Staff Nurse on 12.10.1987 in JIPMER. She was promoted as Nursing Sister, which is equivalent to the post of Public Health Nurse, on 13.11.1990, three years



after the Writ Petitioner's appointment to the same post. Thereafter, the Appellant was promoted to the post of Assistant Nursing Superintendent on 09.02.1996 and to the post of Deputy Nursing Superintendent on 14.08.2007 and finally to the post of Nursing Superintendent on 14.12.2013.

4. According to the Writ Petitioner, the next avenue of promotion open to her is to the post of Chief Nursing Officer. As per the Recruitment Rules, a candidate who is competing to the post of Chief Nursing Officer must hold a Diploma in Nursing Education and Administration or B.Sc. in Nursing from a recognized University. Before the learned Single Judge, it was the case of the Writ Petitioner that, the 7th Respondent therein, i.e. the Appellant, did not possess the requisite qualification.

5. It was further stated by the Writ Petitioner that, though the 7th Respondent holds a basic Diploma in General Nursing and she has obtained a Degree through Distant Education Programme in Post Basic B.Sc. (Nursing) in 1999 from Indira Gandhi National Open University (in short 'IGNOU'), Post Basic B.Sc. (Nursing) from an Open University is not a recognized qualification. She has also stated that, staff Nurses working in Government Hospitals, who underwent Post-Basic B.Sc. (Nursing) Course through Distance Education mode in IGNOU between 1995 and 2007, filed W.P.No.380 of 2008 and W.P.Nos.37595 and 18194 of 2009 seeking a direction to the Tamilnadu Nurses and Midwives Council to register their additional qualification. However, the said Writ Petition was dismissed by a Division Bench of this Court vide order dated 31.01.2012.

6. Thereafter, as IGNOU was completely closed down, the Government vide G.O.(D) No:928, Health and Family Welfare (Z1) Department, dated 21.04.2017, based on the clearance given by the Indian Nursing Council, directed that, candidates who have undergone Post Basic B.Sc. (Nursing) through IGNOU from 1995 to 2005 in IGNOU approved programme study Centres, shall be granted permission to register retrospectively in the Tamil Nadu Nurses and Midwives Council as a one-time measure, subject to the following conditions:

- The Genuinity of the degrees obtained by the candidate shall be verified with IGNOU by the Council before registration only for the candidates passed out during 1995 to 2005.
- The candidates should not request for any relaxation in Tamil Nadu Government
- This should not be quoted as precedent



7. Before the learned Single Judge, it was the case of the Writ Petitioner that, since the registration of the additional qualification of Post Basic B.Sc. (Nursing) obtained through IGNOU will enable the 7th Respondent therein to qualify to the post of Chief Nursing Officer, the Writ Petitioner has to be given preference for consideration to the post of Chief Nursing Officer, as she is not only senior to the 7th Respondent, but also possesses better qualification.

8. Before the learned Single Judge, the Writ Petitioner submitted that, the power to recognize the qualification is vested with the Indian Nursing Council under Section 10 of the Indian Nursing Council Act, 1947 and the Central Government alone is empowered to amend the Schedule under section 15 of the Act. Hence, according to the Writ Petitioner, the impugned Government Order is without jurisdiction.

9. The learned Single Judge has held that, in terms of Section 10 of the Act, qualifications which are included as Part I of the Schedule are the recognized qualifications and the qualifications included in Part II of the Schedule are the recognized higher qualifications. Under Section 10(2) of the Act, the Council has to declare a qualification to be a recognized qualification for the purpose of the Act. Under Section 11(1)(b), no person shall, after the commencement of Indian Nursing Council Act, be entitled to be enrolled in any State, register as a Nurse, Midwife, Auxiliary Nurse - Midwife, Health Visitor or Public Health Nurse, unless he or she holds a recognized qualification.

10. In the order under challenge, the learned Single Judge has observed that, the Indian Nursing Council, by a letter, has granted post facto approval by granting recognition to register all students who have qualified post basic B.Sc. (Nursing) course through IGNOU approved programme Study Centres prior to the year 2012 with retrospective effect. However, there is no reference to any declaration of Indian Nursing Council or its publication in the Gazette. Hence, the learned Single Judge was of the view that, when the Indian Nursing Council has no power to recognize degrees obtained through IGNOU with retrospective effect, the State Government cannot validate the qualification of Post Basic B.Sc. (Nursing) course through Distance Education mode in IGNOU. In view of the same, the learned Single Judge interfered with the impugned Government Order vide G.O.(D) No.928, dated 21.04.2017. Aggrieved by the same, the 7th Respondent therein, has come up with the above Appeal.

11. It is represented by the learned counsel for the Appellant that, the Tamil Nadu Nurses and Midwives Council has



registered the qualification of Post Basic B.Sc. (Nursing) through IGNOU, INC recognized Study Centres as "Certificate for Additional Registration". That being the case, standing on technicalities, moreso, when the Government wanted to extend the benefits by means of a Government Order, it shall not be put against the Appellant herein, as there are no avenues to consider the case of the Appellant, when she has actually undergone the course, which has been recognized by the Indian Nursing Council. It is his contention that, depriving the Appellant further march in her career, cannot be prevented by the contesting Respondent and that, the Government was well within the powers in having issued G.O.(D) No.928, dated 21.04.2017 and the same ought not to have been quashed.

12. Heard the learned counsel on either side and perused the material documents available on record.

13. In view of the fact that, no qualification can be prescribed by means of a Government Order, and that, Statute alone prevails, the learned Single Judge was right in quashing the Government Order and allowing the Writ Petition. Hence, we are of the view that, the learned Single Judge was right in holding that, a degree or a course which is not recognized by the Indian Nursing Council, cannot be approved by an Executive Committee without following the procedures prescribed.

14. As the Government cannot validate the qualification which is not recognized under the Indian Nursing Council Act, 1947, we are of the view that, the learned Single Judge was right in allowing the Writ Petition, by quashing the Government Order in G.O.(D) No.928, dated 21.04.2017. Hence, we find no reason to interfere with the order of the learned Single Judge and the same is upheld.

In fine, the Writ Appeal fails and stands dismissed. No costs. Consequently, connected C.M.P.No.13972 of 2021 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

(vm/aeb)

To:

1. The Secretary to Government,
Union of India,
Ministry of Health and Family Welfare,
New Delhi.



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2. The Secretary,
Government of Tamil Nadu,
Ministry of Health and Family Welfare,
Fort St. George, Chennai 600 009.
3. The Secretary,
Indian Nursing Council,
8th Floor, NBCC Centre,
Plot No.2, Community Center,
Okhla Phase-I, Pocket A, Okhla I,
Okhla Industrial Area, New Delhi 110 020.
4. The Secretary,
Tamil Nadu Nurses and Midwives Council,
Jayaprakash Narayanan Maligai,
Old No.140, New No.56,
Santhome High Road,
Mylapore, Chennai 600 004.
5. The Indira Gandhi Open University (IGNOU),
IGNOU Residential Campus Road,
Maidan Garhi, New Delhi 110 068.
6. The Director,
Jawaharlal Institute of Post Graduate
Medical Education and Research (JIPMER),
Dhanwantari Nagar,
Puducherry 605 006.

+1cc to Mr.Gridhar Sai, Advocate, S.R.No.56303
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.56340
+1cc to the Government Pleader, S.R.No.47858

W.A.No.2207 of 2021

NMI (CO)
SB(30/11/2021)