

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15771 OF 2022

Mangala Suresh Khadse

... Petitioner

Versus

The State of Maharashtra and Anr.

... Respondents

Dr. Abhinav Chandrachud i/b Ajit Dilip Hon for the Petitioner.

Mr. A.P. Vanarase AGP for the Respondent-State.

Smt. Sadhana Gawande Superintendent Nursing Service, DMER,
Mumbai present in Court.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE JJ.**

DATE : 22nd DECEMBER 2022

PC. :-

1. By this Petition filed under Article 226 of the Constitution of the India, the petitioner seeks writ of Certiorari for quashing and setting aside notification dated 14th October 2022 passed by respondent no. 1 and for declaration that the petitioner is elected as member of respondent no. 2- Maharashtra Nursing Council.

2. It is case of the petitioner that she was promoted to the rank

post of Matron from the post of Sister Tutor in the year 2008. In the year 2021, the petitioner contested the election of Maharashtra Nursing Council to the post of member of Matrons affiliated Institute and got elected. The petitioner was transferred from Ulhasnagar Central Hospital to Alibaug Government Hospital as a Sister-tutor on 24th December 2021, without assigning any reason. The petitioner impugned the said decision by filing an Appeal before the Maharashtra Administrative Tribunal, in the year 2022. On 16th February 2022, Maharashtra Administrative Tribunal rejected the application for grant of interim relief filed by the petitioner. We are informed that the writ petition filed by the petitioner challenging the said impugned order also came to be rejected.

3. Dr. Abhinav Chandrachud, learned counsel for the petitioner, handed over a copy of the judgment dated 16th December 2022 passed by the Maharashtra Administrative Tribunal in Original Application No. 27 of 2022 with M.A. No. 560 of 2022 and submitted that the said Appeal filed by the petitioner is now dismissed. His client proposed to challenge the said judgment by filing a writ petition shortly.

4. It is submitted by learned counsel for the petitioner that though the appeal filed by the petitioner is rejected by Maharashtra Administrative Tribunal, for disqualification of the petitioner for being elected as a member, under Section 7 of the Maharashtra Nursing Homes Registration Act and the Maharashtra Nursing Act, 1966, Council has to submit a report to the State Government and the State Government shall after satisfying, declare the seat as vacant. In this case, no such report is submitted under section 7 of the Maharashtra Nursing Homes Registration Act and the Maharashtra Nursing Act, 1966 and thus the impugned notification dated 14th October 2022 issued by the State Government is totally without jurisdiction. Learned counsel placed reliance on the judgment of the Supreme Court in case of **Carona Ltd Vs. Pravathy Swaminathan and Sons, (2007) 8 SCC 559**, and more particularly on paragraph nos. 26, 27 and 36. He submitted that since the report is not submitted by the council, State Government did not have jurisdiction to issue such notification declaring the post held by the petitioner as vacant.

5. Perusal of the notification indicates that petitioner was not

promoted to the post of Matron and was working as sister-tutor in the District General Hospital, Alibaug , District Raigad. We have also perused judgment delivered by the Maharashtra Administrative Tribunal which indicates that the petitioner was not promoted on the post of Matron. The claim of the petitioner was included as a member only because she was posted since 2008. In view of the finding referred by the Maharashtra Administrative Tribunal, the petitioner was working on the said post of Matron though she was not promoted to the said post. In our view, there is no infirmity in the notification issued by the State Government on 14th October 2022, taking cognizance of the admitted facts.

6. So far as submissions of learned counsel for the petitioner that, council not having submitted report under section 7(3) of Maharashtra Nursing Homes Registration Act and the Maharashtra Nursing Act, the State Government could not have disqualified the petitioner is concerned, perusal of the said provision indicates that a person shall be disqualified for being elected or nominated as, and for continuing as a member if he ceases to be eligible in the category from which he is elected. The petitioner was not elected as a

Matron but was allotted to hold the post of Matron at her request. All these admitted facts are disclosed in the notification which are not disputed. No serious prejudice is thus caused to the petitioner even if no report is sent to the State Government under section 7(3) of the Maharashtra Nursing Homes Registration Act and the Maharashtra Nursing Act. This Court has also rejected earlier writ petition impugning the order passed by the Maharashtra Administrative Tribunal, refusing to grant interim relief in favour of the petitioner.

7. There is no merit in the writ petition. The writ petition is therefore dismissed.

8. It is further made clear that if the petitioner want to file writ petition for impugning final judgment of the Maharashtra Administrative Tribunal referred on 16th December 2022, the petitioner would be at liberty to file a fresh petition challenging the said order. It is made clear that observations made in this order are made only for the purpose of deciding this Writ Petition. If

the petitioner filed writ petition impugning judgment delivered by the Maharashtra Administrative Tribunal, the same shall be considered on its own merits.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]