

10.8.2023

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WPA 3522 of 2023

Sonali Maity
Vs.
The State of West Bengal & Ors.

Mr. Pintu Karar
Ms. Sayani Manna
... For the petitioner.

Mr. Nilotpall Chatterjee
Mr. Abhijit Chatterjee
... For INC.

Ms. Anwari Quraishi
Ms. Zainab Tahur
... For the State.

The petitioner had passed Higher Secondary Examination in the year 2014. In the said examination the petitioner secured 51 marks in Chemistry, 76 marks in Physics and 28 marks in Biology. The petitioner also passed English as her compulsory subject. The percentage of marks in Chemistry, Physics and Biology taken together was, therefore, 51.66%.

The petitioner, thereafter, took admission in B. Sc. Nursing Course at Utkal University, Odisha and completed the said course the year 2018. In the year 2019, the petitioner registered herself under the Odisha Nurses and Midwives Registration Council.

The petitioner made an application on December 23, 2020 before the West Bengal Nursing Council for her registration.

It appears that the said application dated December 23, 2020 was rejected by the West Bengal Nursing Council by making an endorsement on the application that the petitioner had failed to obtain pass marks in Biology in B. Sc. Nursing course.

Nothing else has been submitted on behalf of the West Bengal Nursing Council to deny the registration in favour of the petitioner.

Mr. Nilotpal Chatterjee, learned advocate appearing for the Indian Nursing Council has drawn attention of this Court to the relevant notification dated July 05, 2021, issued by the Indian Nursing Council which provides the minimum educational qualification for the B. Sc. Nursing Course as follows:

“Candidate with Science who have passed the qualifying 12th Standard examination (10+2) and must have obtained a minimum of 45% marks in Physics, Chemistry and Biology taken together and passed in English individually.”

It is true that the petitioner has failed to secure pass marks in Biology in Higher Secondary Examination, but the aforesaid notification dated July 05, 2021, does not mandate that to secure admission for B. Sc. Nursing Course, a candidate must obtain minimum 45 % marks individually in Physics, Chemistry and Biology.

As noted above, the percentage of marks in Physics, Chemistry and Biology taken together in case of the petitioner is 51.66%. Therefore, it cannot be said that the petitioner was an ineligible candidate for admission in B. Sc. Nursing Course in terms of the regulations of the Indian Nursing Council.

In any event, the petitioner's case is covered by a Division Bench judgment of this Court passed in **MAT 596 of 2017** with **CAN 4235 of 2017 (Sonali Nandi vs. The West Bengal Nursing Council & Ors.)**. In that case also the eligibility of the petitioner was questioned by the West Bengal Nursing Council on the ground that the petitioner therein failed to secure required marks in Chemistry. In the said judgment it was held, inter alia, as follows:

“... Even assuming for the sake of argument that on a true interpretation of the relevant rules/regulations, the appellant cannot be considered to have passed in her optional subject, i.e. Chemistry, in our opinion, the same cannot be relevant at the stage or registration after the appellant has successfully undergone training and has successfully completed the B. Sc. Nursing course. We have also noticed that in the Bio-chemistry paper the appellant has secured impressive marks. It will be grossly unfair and unjust on the part of the Council not to register the appellant as a nurse after the appellant was permitted to get enrolled on the B.

Sc. Nursing course and pursued the course for four years before successfully completed it and it will be inequitable and unconscionable to uphold such decision of the Council.”

In that view of the matter, this writ petition stands allowed. The West Bengal Nursing Council shall grant registration to the petitioner within two weeks from the date of communication of this order.

Accordingly, **WPA 3522 of 2023** is allowed.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)