

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1317 OF 2022

Muktabai D/o Baburao Jadhav
Age : 22 years, Occu : Nil,
R/o : Wantakli, Post Nagapur,
Tq. Parli, Dist. Beed 431 530
At present R/o C/o Digambar Datta Sawant,
Near Kuttar Vihir, Tanaji Malusare Chowk,
Ambajogai, Tq. Ambajogai, Dist. Beed 431517 .. Petitioner

Versus

- 1] The State of Maharashtra,
Through Secretary, Medical Education & Drugs
Department, Mantralaya, Mumbai – 400 032
- 2] The Competent Authority & Directorate of
Medical Education & Research,
Government Dental College & Hospital,
St. George's Hospital Compound, Near C.S.M.T.,
Mumbai – 400 001.
- 3] The Dean,
Vilasrao Deshmukh Government Medical College
& Hospital, Near Rajasthan Marwadi School,
Gandhi Chowk, Latur, Tq. & Dist. Latur – 413 512.
- 4] The Principal,
Nurses Training College,
Vilasrao Deshmukh Government Institute of Medical
Sciences, Near Rajasthan Marwadi School,
Gandhi Chowk, Latur, Tq. & Dist. Latur – 413 512.
- 5] Priyanka Baburao Rathod,
R/o Shindalwadi, Post Borphal,
Tq. Ausa, Dist. Latur 413 520,
At present R/o Government Hostel,
Nurses Training College,
Vilasrao Deshmukh Government Institute of Medical
Sciences, Near Rajasthan Marwadi School,
Gandhi Chowk, Latur,
Tq. & Dist. Latur – 413 512 .. Respondents

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Advocate for petitioner : Mr. Abhay G. Deshmukh
AGP for respondents 1 to 4 : Mr. A.S. Shinde
Advocate for the respondent no. 5 : Mr. Abhishek C. Deshpande

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 16 OCTOBER 2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents 1 to 4. Mr. Abhishek Deshpande waives service for respondent no. 5. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner possesses qualification of HSC and is also registered as Auxiliary Nurse Midwifery (ANM) with the Nursing Council. The respondent no. 3 who is the Dean of the Government Medical College at Latur published an advertisement in the newspaper on 24.10.2021 inviting applications for admission to the General Nursing Midwifery (GNM). Petitioner as also the respondent no. 5 applied for admission to GNM course, in the 5% quota of the seats reserved for ANM qualification holders.

3. According to the petitioner, though she was registered with the Maharashtra Nursing Council, the respondent no. 5 was not so registered and still the respondent no 5 was granted admission. She had merely applied for such registration with the Maharashtra Nursing Council and obtained it subsequently. Her application was not annexed with any such registration certificate.

4. The learned advocate for the petitioner would invite our attention to the guidelines issued by the Maharashtra Nursing Council for admission to the ANM, GNM etc. courses. He would advert our attention to the Admission Rules published for the year 2021-22 governing the relevant admission process. He would submit that pursuant to clause 8, it was imperative to annex all the documents including the registration certificate issued by the Maharashtra Nursing Council along with the other documents else it was expressly declared that the applications would not be considered. He, would, therefore submit that since the respondent no. 5 was not registered with the Maharashtra Nursing Council on the date she made the application, she was not entitled to be admitted to the course thereby adversely affecting the petitioner's chance of getting admitted against that seat.

5. The learned advocate would further submit that by communication dated 12.11.2021 (**Exhibit – J**), she had adverted attention of the respondent no. 3 – Dean, precisely pointing out that the respondent no. 5 had merely applied to the Maharashtra Nursing Council for registration but had not actually obtained it when the candidates were invited and were supposed to submit all the documents on 10-11-2021, still, her representation was not considered. The respondent no. 5 was allotted a seat illegally and against the

guidelines and submits that her admission be cancelled and in her place, the petitioner be allotted the seat.

6. The learned AGP referring to the affidavit in reply filed by the Assistant Professor from the Department of Community Medicine of the respondent - Government Medical College would oppose the petition and would submit that the petitioner was from Arts faculty and had completed 12th Arts as against which the respondent no. 5 had completed 12th Science with basic requisite educational qualification and minimum age prescribed by clause 5(a) of the Admission Rules with subjects Physics, Chemistry, Biology, English. Besides, the respondent no. 5 had acquired higher percentage of marks (76.64%) which were more than the petitioner had secured and was rightly offered the seat.

7. The learned AGP would submit that though registration with the Maharashtra Nursing Council was mandatory, the admission Rules do not expressly require any document to be furnished with the application in that regard. He would submit that subsequently even that defect was cured and the respondent no. 5 was duly registered with the Maharashtra Nursing Council and the admission cannot be disturbed much less the petitioner cannot be allowed to displace the respondent no. 5.

8. The learned advocate for the respondent no. 5, by referring to the affidavit in reply, would submit that as per clause no. 8 of the Admission Rules, it was not incumbent to furnish certificate of registration along with the other documents. The select list was published on 11.11.2021. She was placed at serial no. 6 from ANM quota, the GNM course was to start from 15.11.2021 and on her request, the Maharashtra Nursing Council issued her certificate of registration on 10.11.2021 which was submitted to the college on 16.11.2021. He would submit that since the course has already begun and she has completed first year and has to appear for the second year examination to be conducted in November 2023, her admission may not be cancelled.

9. We have considered the rival submissions and perused the papers.

10. It is a common ground that both, the petitioner as well as the respondent no. 5 were eligible to be considered for the seat of the GNM course from the 5% quota reserved for ANM candidates as prescribed by clause 5(c) of the Admission Rules. The eligibility criterion prescribed in section 5 is in three parts. Clause (a) provides that a candidate should possess HSC (10+2) or equivalent examination from Government recognized institute preferably with subjects Physics, Chemistry, Biology and English and must have passed in the first

attempt with minimum of 40%. Clause (b) provides that if no such number of candidates possessing the requisite qualification were available any candidate possessing HSC (10+2) of the Maharashtra State Board of Higher and Secondary Education in any faculty with minimum of 40% marks in the first year would be offered the seat. Sub clause (c) of clause 5 then declares that for GNM course, 5% seats would be reserved for ANM qualified candidates but they should be possessing HSC passing certificate and should possess the rest of the requisite educational qualification.

11. It is, therefore, being submitted by the learned AGP that even for the candidates from this 5% quota, the requisite educational qualification would be as laid down in sub clause (a) and (b) (supra). He would submit that since the petitioner has completed HSC from Arts faculty as against which the respondent no. 5 has passed the HSC with Science as far as qualification criterion is concerned, indeed, the respondent no. 5 was meritorious than the petitioner.

12. As regards the other requisite qualification of the candidate being registered with the Maharashtra Nursing Council is concerned, the stand of the respondents 1 to 4 in their affidavit in reply that neither the advertisement nor the Admission Rules (supra) mandatorily required possession of registration certificate, has not been

controverted either by filing any rejoinder or by producing some other material.

13. Besides, admittedly, the rules do not expressly require such registration certificate to be produced on some specific date *albeit* the rules in clause 8 gives a list of 9 documents which the candidates were supposed to produce. This list does not require registration certificate to be produced.

14. Again, there is no demur to the stand that though belatedly, the respondent no. 5 was registered with Maharashtra Nursing Council. Therefore, *ex facie*, the respondent no. 5 possess the requisite educational qualification and being meritorious than the petitioner, has been rightly offered the seat.

15. The submission of the learned advocate for the petitioner that due to lapse on the part of the authorities, her right to secure admission has been denied, does not appeal to us. She cannot derive any benefit from the decisions of this Court in the following matters :-

i) Miss Firdos Vahajuddin Ansari Vs. State of Maharashtra and others; 2017(6) Mh.L.J. 187

ii) Tejaswini D/o Rajkumar Phad Vs. State of Maharashtra and others; 2018(5) Mh.L.J. 78 and

iii) Dipak Kumar Jagubhai Patel and another Vs. Union of India and others; 2020(4) Mh.L.J. 561.

16. Ex facie, facts and circumstances in those matters were such that the petitioners were unlawfully denied the admission due to the lapse of the authorities wherein they were held entitled to receive compensation. Since we have reached the conclusion that the petitioner was not eligible to occupy the seat offered to the respondent no. 5 and when it is not a matter of unlawful denial of the admission, she is not entitled to such relief.

17. We find no illegality in offering respondent no. 5 the seat for GNM from 5% quota. Besides, it was the admission process of the year 2021-2022, the respondent no. 5 was admitted in 2021. The petition was filed in January 2022 and that is why even the issue regarding delay in approaching the Court was kept open as has been indicated in the order dated 27.01.2023. Again by this time, the respondent no. 5 is on the verge of completing second year inasmuch examination of second year of GNM course is scheduled in the next month i.e. November 2023.

18. Needless to state that it was always open for the petitioner to have applied for the GNM seat from 5% ANM quota even in the subsequent admission processes. The age criterion is not applicable to the candidates aspiring to secure admission to GNM course from 5% reserved quota.

19. In the peculiar facts and circumstances, as discussed herein-above, there is no merit in the petition.

20. The petition is dismissed.

21. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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