

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.40936 of 2023

(In the matters of the applications under Articles 226 and 227 of the Constitution of India.)

B.Ajaya Patro **Petitioner**
Mr. S.K. Mishra, Advocate

-versus-

State of Odisha and others **Opposite Parties**
Mr. N.K.Praharaj, A.G.A.

W.P.(C) No.38200 of 2023

Lipsarani Parida **Petitioner**
Mr. S.K. Samal, Advocate

-versus-

State of Odisha and others **Opposite Parties**
Mr. N.K.Praharaj, A.G.A.

W.P.(C) No.38203 of 2023

Loree Hati **Petitioner**
Mr. S.K. Samal, Advocate

-versus-

State of Odisha and others **Opposite Parties**
Mr. N.K.Praharaj, A.G.A.

W.P.(C) No.38478 of 2023

Rashmirekha Mohanta and others **Petitioners**
Mr. Tanmay Mishra, Advocate

-versus-

State of Odisha and others **Opposite Parties**
Mr. N.K.Praharaj, A.G.A.

W.P.(C) No.38741 of 2023

Jyotismita Parida and others ***Petitioners***
Mr. Tanmay Mishra, Advocate

-versus-

State of Odisha and others ***Opposite Parties***
Mr. N.K.Praharaj, A.G.A.

CORAM:
JUSTICE A.K.MOHAPATRA

Date of hearing : 21.02.2024 : Date of judgment : 01.03.2024

A.K. Mohapatra, J.

1. The present batch of writ applications have been filed by some of the candidates who have applied pursuant to the advertisement under Annexure-1 dated 21st January, 2023 for appointment as Nursing Officers against a total of 7483 advertised posts of district cadre Group-C post of Nursing Officer, 2023. The petitioners in all the writ applications are all qualified Nursing staff having received their post-Nursing Diploma/Degree certificate from the recognized institutions. The present writ application has been filed with a specific prayer to quash the reject-list dated 08.08.2023 and for a further direction to the opposite parties to consider the case of the petitioners by granting the weightage mark of 5% as has been provided for the Healthcare Workers who have rendered their services during the Covid-19 Pandemic in the State of Odisha. Accordingly, the petitioners have also prayed for a direction that in the event the petitioners are found to be eligible with such weightage

mark of 5%, they shall also be given appointment to the post of Nursing Officer as has been advertisement under Annexure-1 to the writ application.

2. Heard Sri. B.Routray, learned Senior Counsel, Sri. Manoj Mishra, learned Senior Counsel, Mr. Sukant Kumar Mishra, learned counsel and many other counsels appearing for the petitioners in the present batch of writ petitions. Heard Mr. N.K.Prharaj, learned Additional Government Advocate for the State-Opposite Parties. Perused the writ application as well as the documents/materials placed in record by the petitioners.

3. Since the batch of writ applications referred to hereinabove involve a common question of law, this Court deems it proper to dispose of all the writ applications by the following common order. For the sake of convenience the facts involved in case of the Lipsarani Parida in W.P.(C) No.38200 of 2023 is being taken up for analysis of the factual background of the above noted batch of writ applications.

4. The factual background of the abovenoted batch of writ applications leading to the filing of the present writ applications, in short, is that the petitioners have completed Diploma in GNM, 2020 from the Subham School of Nursing situated in Bhadrak district, after completing her +2 Science degree course from Salandi Residential College, Bhadrak. In the abovenoted Diploma GNM course, the petitioners had secured 76.44% mark. It appears from the record that the petitioners was engaged as short-term Covid Worker during the Covid-19 Pandemic, which has been duly certified by the authorities. On perusal of the certificate attached to the writ application, it appears that the petitioners were engaged by the Tata Steel Medical Hospital at Jajpur under the Covid scheme from

29.08.2022 to 02.02.2022 as such the petitioners were eligible for being appointed against regular vacancy post by giving her the weightage marks as provided in the Rules, as well as in the advertisement.

5. While the matter stood thus, the Odisha Subordinate Staff Selection Commission published an advertisement on 21st January, 2023, under Annexure-1 to the writ application, to fill up 7483 posts of district cadre Group-C Nursing Officer, 2023. Such advertisement reveals that the applications were to be filed online from the starting date of application on 27.01.2023 to the end date of application on 17.02.2023. It has been stated in the writ application that the present petitioners satisfies all the eligibility criteria as has been provided under clause 3 of the said advertisement. Further, the said advertisement under clause 3(A)(III) provides for grant of weightage for Covid-19 health workers. Pursuant to Rule 3 of Odisha grant of weightage in marks in the Recruitment for Short-Term COVID-19 Healthcare workers Rules, 2022, the aforesaid clause in the advertisement also provides that the persons who have rendered the service as covid-19 healthcare workers and have been engaged to perform such duties for a minimum period of 3 months shall be allowed 5% extra mark on the total marks secured by him/her in the recruitment examination. It is further contended that although the petitioners are entitled to the weightage mark of 5% as has been provided pursuant to the Rules, 2022 and as per the advertisement under clause 3(A)(III), such weightage mark has not been awarded to the petitioners. Being aggrieved by such conduct of the OSSSC the petitioners have approached this Court by filing the present writ application.

6. Learned Senior Counsels as well as other counsels appearing for the petitioners, at the outset, contended that the petitioners in the batch of writ applications have all submitted their documents in support of their contention that they have worked as Short-term Covid-19 Health Workers for more than three months in different hospitals/ healthcare institutions in the State of Odisha. It was also contended that during the Covid-19 Pandemic both hospitals run by the Government as well as the private hospitals were engaged in Covid-19 duty under active & direct supervision of the Govt. of Odisha. Learned senior counsel appearing for the petitioners also contended that since the covid-19 healthcare operation was being conducted under the direct supervision of the Government and the local bodies, almost all the hospitals were following a common protocol so far as the Covid-19 patients are concerned. Keeping in view the valuable service rendered by the petitioners in the present batch of writ applications, the Government took a policy decision and accordingly the Rules, 2022 was formulated thereunder providing a 5% weightage mark to such Health Workers who had worked as short-term Covid-19 healthcare workers for more than three months.

7. Accordingly, learned Senior counsels appearing for the petitioners in the batch of writ applications submitted that it is not open to the Government to discriminate amongst the petitioners and to create a sub-class by classifying and differentiating the applicants with regard to the grant of weightage mark by denoting one group as health workers serving in the Government hospitals and the other as health workers serving in private hospitals. It was further emphatically contended by learned senior counsel that the same would be violative of the underlying principles of Article 14 and 16

of the Constitution of India. Therefore, such an approach, in the event same is adopted by the State Government while granting such weightage mark to the applicants, would be against the spirit of law as well as the mandate of the Constitution.

8. In view of the aforesaid submissions, learned counsels appearing for the petitioners in the present batch of writ applications submitted that the Opposite Parties be directed to consider the case of the petitioners afresh by keeping in view the certificate submitted by them in support of their contention for grant of 5% weightage mark under clause 3(A)(III) of the advertisement, as well as pursuant to the rules of the year 2022. With a further direction to the Opposite Parties, including the OSSSC, to recommend such eligible candidates for appointment to post of Nursing Officer immediately within a stipulated period of time, since many such posts are still lying vacant at the moment.

9. In course of their arguments Mr. Routray & Mr. Mishra, leaned senior counsels appearing for the petitioners in the present batch of writ petitions, referred to the Health & Family Welfare department, Govt. of Odisha letter No.6599 dated 03.07.2020 and submitted that the same contains a guideline for management of Covid-19 positive cases in Covid care centers by PSUs, Corporate Institutions, Private and NGO Sector. In such view of the matter, learned Senior Counsel submitted that the entire healthcare operation during the Covid-19 pandemic was being supervised and was being carried out under the active & direct control of the Health & Family Welfare department, Govt. of Odisha.

10. The guidelines attached to the aforesaid letter also provides the details with regard to the treatment of such Covid-19 positive patients. Further, referring to the said guidelines under the heading

“human resources” learned senior counsels for the petitioners submitted that the guideline provides one GDMO/Ayush Doctor, two Pharmacist/Staff nurse/ANM, two attendants, two cleaning staffs and one BLS ambulance should be attached per 50 persons per shift. Therefore, he submitted that it is beyond any doubt that all the hospitals during Covid-19 Pandemic were governed and guided by the aforesaid guideline of the state Govt. and accordingly, such healthcare workers were engaged pursuant to such guidelines.

11. For better appreciation of the factual background of the petitioners’ case, this court deems it proper to quote the letter dated 13.07.2020 of the Health & Family Welfare Department, Government of Odisha as well as the relevant portion of such guidelines:-

“GOVERNMENT OF ODISHA
HEALTH & FAMILY WELFARE DEPARTMENT
File No.HFW-MEII-COVID-0006-2020-16599/H&F.W.
Dated 13.07.2020

From

Shri P.K. Mohapatra, IAS
Additional Chief Secretary to Government

To

All Collector & District Magistrates
All Municipal Commissioner
All CDM & PHOs,

Sub:- Guideline for management of COVID-19 positive cases in COVID Care Centres by PSU, Corporate, Institutions, private and NGO sectors.

Sir,

In inviting a reference to the subject cited above, I am directed to send herewith the guideline for management of COVID-19 positive cases in COVID Care Centres by PSU, Corporate, Institutions, private and NGO sectors for information and necessary action.

You are therefore requested to take necessary steps to circulate the above guideline among all concerned and to instruct them to follow the guideline scrupulously.

Yours faithfully

Additional Chief Secretary to Government”

**“COVID CARE CENTRES BY CORPORATE,
PRIVATE AND NGO SECTOR”**

The COVID care centres (CCC) Created by the Govt. in the state are facilities to accommodate mild and asymptomatic COVID-19 positive cases without requiring advanced medical attention. These facilities have either separate room or dormitories with comfortable beds with adequate spacing and required hygiene and care by trained manpower. Such facilities can be replicated to isolate and monitor the health of the COVID-19 positive cases till they recover and the discharged to return to their homes, in accordance with the protocols laid down by health authorities.”

“Human Resource :

- One Authorised Medical Officer/Nodal Officer to be attached to the CCC.
- One GDMO/AYUS Doctor, two Pharmacists/staff Nurse/ANM, two attendants, two cleaning staff (M&F) and one BLS Ambulance should be attached per 50 persons per shift.”

“The local authorities i.e., District Collectors/Municipal Commissioners shall administer local/specific required stipulation in addition to the above to meet with any unforeseen contingencies.”

12. Learned Additional Government Advocate on the other hand, referring to the instruction received from the OSSSC vide letter dated 15th December 2023, submitted before this Court that some of the candidates who are petitioners in the abovenoted batch of writ applications had not applied and thereby not claimed the weightage mark for short-term covid-19 healthcare workers, in their online applications. They OSSSC on such instruction has specifically referred to the case of Smt. Lipasrani Parida in W.P.(C)

No.38200 of 2023 and Smt. Lori Hati in W.P.(C) No.38203 of 2023. In respect of other applicants in other writ applications in the present batch, the OSSSC has instructed the learned Additional Government Advocate that after verification of such applicaitons by the Health & Family Welfare department, a list of candidates who are eligible to get the weightage mark of 5% towards short-term Covid 19 health workers has been prepared and on such basis their cases have been recommended for appointment to the post of Nursing officer. The instruction dated 15th December, 2023 further reveals that 26 petitioners who are not eligible to get weightage as short term covid-19 healthcare worker, as per the report received from H & FW department, their cases have not been considered and they have not been awarded the weightage mark as has been prescribed under clause 3(A)(III) of the advertisement.

13. In course of his argument learned Additional Government Advocate referred to the gazette notification dated 29th November 2022, whereunder the 'Odisha grant of weightage in marks in the Recruitment for Short-Term COVID-19 Healthcare workers Rules, 2022' has been duly notified. Further, referring to Rule 2(C), learned Additional Government Advocate submitted before this Court that the words "short term Covid-19 health workers" has been defined in the aforesaid rules of the year 2022. The definition contained in Rule 2(C) provides that the persons specially engaged by Health and Family Welfare department as Nursing Officers, Pharmacists, Laboratory Technicians, Radiographers, MPH(M) MPH(F) for covid-19 duty, for a minimum period of 3 months are to be certified by family welfare department. In such view of the matter, learned Additional Government Advocate submitted that weightage as provided under Rule 3 of 2022 rules notified on 29th

November, 2022 by the GA & PG Department Govt. of Odisha applies to the persons who have been engaged by the Health and Family Welfare department as Nursing officers in different capacities as has been provided under Rule 2(c) of 2022 Rules.

Rule-2(c)- “Short-Term COVID-19 healthcare workers” means the persons specially engaged by the Health and Family Welfare Department as Nursing Officers, Pharmacists, Laboratory Technicians, Radiographers, Multipurpose Health Workers (Male) and Multipurpose Health Workers (Female) for COVID-19 duty for a minimum period of 3 months to be certified by the Health and Family Welfare Department.”

“Rule-3 – Notwithstanding anything contained in the relevant recruitment rules, the Short-Term COVID-19 healthcare workers who have been engaged in and performed COVID-19 duty for a minimum period of 3 months shall be allowed 5 per cent extra marks on the total marks of the recruitment examination under the said relevant recruitment rules subject to the award of marks upto the maximum marks for which recruitment is conducted, as an onetime measure only for the next one recruitment process to be conducted after commencement of these rules.”

Therefore, it was contended that petitioners having been engaged in private hospitals and their cases having not been recommended by the Health and Family Welfare department, they have not been awarded the 5% weightage mark that has been given to similarly situated other candidates who have been appointed by

the Government as short-term covid-19 healthcare workers. In such view of the matter, learned Additional Government Advocate submitted that in view of the aforesaid provision in the rules, the petitioners are not eligible to get such weightage mark.

14. In reply to the aforesaid contention raised by the learned Additional Government Advocate, learned senior counsels appearing for the petitioners in the above noted batch of writ petitions on the other hand, contended that the aforesaid Rules of the year 2022 have been formulated in exercise of the powers conferred upon the State Government by the proviso to Article 309 of the Constitution of India. They further contended that the definition contained in clause 2(C), which defines short-term covid-19 health workers, has been given a restrictive interpretation. In other words, by interpreting the rules in a restrictive manner, the Government has confined the benefit under Rule 3 to a particular class of persons, i.e. the short-term covid-19 healthcare workers specially engaged by the Health and Family Welfare department in different capacities as mentioned in Rule 2(C).

15. Moreover, such sub-classification within a broader class is unreasonable and the same has no nexus with the objects sought to be achieved through the Rules of the year 2022. Accordingly, learned senior counsel appearing for the petitioners submitted that creation of such a sub-class would not be protected under Article 14 and 16 of the Constitution of India as the same is not based on any sound principle and reasoning. Accordingly, learned senior counsels appearing for the petitioners further contended that the provision contained in Rule 2(C) cannot be interpreted in such a restrictive manner, so as the same would not pass the test of Article 14 and 16 of Constitution of India. In such background, it was also prayed that

the aforesaid rules should have been modified to include the short-term COVID-19 healthcare workers who have worked in any hospital of the state of Odisha during the Covid-19 pandemic as short term COVID-healthcare workers for more than 3 months, as the entire operation was being carried out under the direct supervision and control of the State Government with the help of the local bodies/local administration.

16. Having heard learned senior counsels and other advocates appearing for the parties, on a careful examination of their contentions as well as the materials on record, this Court found that the petitioners who are eligible for being appointed as Nursing officers, pursuant to advertisement under Annexure-1, satisfy all the requirements/eligibility criteria as provided under clause 3 of the aforesaid advertisement. Further, it is not disputed that they have worked as short-term covid-19 healthcare workers at different hospitals and healthcare centers in the State of Odisha. In recognition of their service during a difficult time for the entire humanity, the State Government formulated the Rule of the year 2022 in exercise of the power conferred by the proviso to Article 309 of Constitution of India.

17. On a careful analysis of the submissions and arguments advanced by learned Additional Government Advocate, this Court observes that the Health and Family Welfare department, Government of Odisha has given the rule a restrictive interpretation, thereby extending the benefit under Rule 3 only to the persons engaged as short-term covid-19 healthcare workers by the Health and Family Welfare department in different capacities as mentioned Rule 2(C). While extending the benefit to the aforesaid category of persons, the petitioners in present batch of writ applications, who

have rendered their services during such covid-19 pandemic by putting their life in great danger, have been discriminated against and they have not been extended the benefit of Rule 3 of the 2022 Rules. As a result of which they have not been awarded the 5% weightage mark, as has been done in the case of their counterparts who had worked in Government hospitals during those days. Furthermore, on a careful analysis of the materials on record and instructions received by the learned Additional Government Advocate, taking into consideration the submissions advanced by the learned Additional Government Advocate, this Court finds absolutely no valid ground and justification for creation of such a sub-class amongst the short-term COVID-19 healthcare workers. Moreover, it is not that the healthcare workers employed in private hospitals during COVID-19 were immune to such pandemic and such workers did not die due to COVID-19 during such pandemic.

18. Additionally, on perusal of records of the writ application, and while considering the instructions provided by the OSSSC to the effect that two of the candidates namely Lipsarani Parida and Lori Hati have not claimed such benefit and thereby they have not been provided with such certificate, this Court on a careful examination of the records of those writ applications found that they have annexed the copies of the online application form claiming such benefit along with supporting certificates. In fact, in almost all the cases the petitioners have claimed such additional weightage mark of 5% and such claims have been supported by medical certificate issued by the authorities, where they have worked.

19. While considering the validity of Rule-2(c) of the Rules, 2022, this Court is required to examine the source of power conferred upon the State to enact such a rule. On a careful reading of

Gazette Notification dated 29th November, 2022, it appears that the Rule, 2022 has been formulated in exercise of power conferred by the proviso to Article-309 of the Constitution of India. The preamble of the rule reveals that the Hon'ble Governor of Odisha is pleased to make the rules to provide one time weightage to short-term COVID-19 Healthcare Workers engaged by the Health & Family Welfare Department in the recruitment to the post of Nursing Officer. It is not disputed that service condition of the employees including the process of recruitment can be regulated by the appropriate Government by bringing appropriate legislation in exercise of the power conferred upon the competent legislature by the Constitution to enact the rules and the laws. Moreover, the power conferred under Article-309 of the Constitution of India is subject to other provisions of the Constitution of India, as has been reflected in the opening words used in Article-309. Thus, it is needless to mention here that in the law/rules framed under Article-309 in violation of the provisions contained in the Constitution of India, including the provisions of Part III of the Constitution, i.e. Article 14, 16, 19 and 21, then in such eventuality, the constitutional guarantee in the shape of aforesaid Articles will prevail over every rules/laws enacted by the State.

20. In the present case, the Rule of the year 2022 having been framed in exercise of the power conferred by the proviso to Article-309, such Rules and laws shall have to conform to the underlying principles of Article-14 and 16 of the Constitution of India. Furthermore, the President of India or the Governor of the State, as the case may be, may notify an appropriate rule to regulate the relevant service conditions of Government servants. However, notifications of such rules are transitional in nature. In other words,

the rules framed by the executive and notified in the aforesaid manner shall remain in force till the appropriate legislature enacts the law on the subject matter. The aforesaid analysis finds support from the judgment of the Hon'ble Supreme Court in *A.K. Krishna Vs. State of Karnataka* reported in AIR 1998 SC 1050.

21. It is also a well-settled proposition of law that the rules framed under Article-309 of the Constitution of India may be struck down by a court of law on any of the grounds that may invalidate a legislative measure. Thus, if the rules framed under Article-309 of the Constitution of India are not in conformity with Articles 14 and 16 of the Constitution of India, which are a part of the basic structure of the Constitution of India, then such rules are liable to be struck down by a Court of law in exercise of power contained under Article-226 of the Constitution of India. Therefore, in the event and on the basis of the materials on record, if this Court holds that, in view of the Rules in question, the present Petitioners have been discriminated against without any reasonable ground and without any legal justification, then such rules would be considered to have been in contravention of the provisions contained in Article-14 and 16 of the Constitution of India and, as such, they are liable to be struck down. Furthermore, taking into consideration the factual background of the present case, this Court observes that the short-term COVID-19 Healthcare Workers, who were engaged in treatment of COVID-19 infected patients during the pandemic, were engaged by various hospitals including the Government Hospitals, as is evident that the entire Health Care Operation during COVID-19 pandemic and the same was being carried out under the active and direct supervision of the State Government.

22. Moreover, such Health Care Operations were being actively supervised by the local administration and they were conferred with power to take remedial measures under the guidelines. Additionally, the guidelines issued by the State Government in this regard provides the procedure to be followed by all hospitals without any discrimination which includes engagement of Healthcare Workers. It is also a fact that such Healthcare Workers, by putting their life in danger, have rendered their service in such hospitals for the betterment of the humanity. As such, this Court found there is no difference between the class of Health Workers engaged in either Government Hospitals or by the Health and Family Welfare Department and the ones who are engaged either in private hospitals or pursuant to the guidelines issued by the Government for management of the COVID-19 pandemic. Therefore, this Court found no justification in creating a sub-class by the executive by putting the Healthcare Workers, who have been engaged by the Health & Family Welfare Department in a different category altogether. Such classification, according to this Court, would be in contravention of the fundamental principles as enshrined in Article 14 and 16 of the Constitution of India.

23. Even assuming for a moment that the rule in question is based on a policy decision of the Government or a scheme prepared by the State Government to provide benefit to a certain class of persons, such policy/scheme must pass the test of Article 14 and 16 of the Constitution of India. In other words, the policy decisions taken by the executives are not immune to the test of Article 14 and 16 of the Constitution of India.

24. Having said that, this Court is aware of the scope and authority of the Government to change any policy decision keeping

in view the larger public interest. Such policy decision, even if creates a sub-class within a class, if it is done keeping in view a definite objective which is sought to be achieved by the Government, then it would definitely be protected within the purview of the exceptions to Article 14 and 16 of the Constitution of India. On a careful examination of the factual background of the present case this Court observes that such reasoning/justification for creation of such sub-class within a class is conspicuously absent in the present case. Even in course of the argument, neither could the learned Additional Government Advocate justify the same, nor any reasoning is come forth from the side of the Government to defend the classification under Rule-2(c) of the Rules, 2022. The State Government and its authorities while taking a policy decision or preparing a scheme, under its authority, are required to adhere to the principles contained in Article 14 and 16 of the Constitution of India and they must act fairly, and provide equal opportunity to all in the matters of public employment. Such an objective is nothing but to transform the goal of social justice, which is enshrined in the preamble of the Constitution of India and casts and obligation on the State to ensure that equal opportunity is provided to all persons coming under the same category without any discrimination on any of the grounds which are not acceptable under the law and the provisions of the Constitution. In the aforesaid context, this Court would like to refer to the judgments of the Hon'ble Supreme Court in the case of *Distt. Registrar v. M.B. Koyakutty* reported in AIR 1979 SC 1060 and *S.L. Sachdev v. Union of India*, reported in AIR 1981 SC 411.

25. In view of the aforesaid analysis, this Court would be well within its jurisdiction to test the rules with the touchstone of Article

14 and 16 of the Constitution of India. In the event the impugned legislation/rules or the policy fails to pass such tests, this Court would be justified in interfering with the rules/policies/schemes and may pass a suitable direction with regard to adoption of the principles of fairness by the State and for providing equal opportunity to the citizens in the matter of public employment. It is also not disputed that the principle enshrined in Article 14 of the Constitution of India applies to cases of appointment by whatever mode to public offices/posts and Government jobs. Therefore, the conduct of the Opposite Parties in restricting the benefit under Rule-3 to a certain class of persons without any valid and justifiable reason is definitely in violation of Article 14 and 16 of the Constitution of India. It is not disputed at bar that the Petitioners along with similarly situated many other persons have rendered services to the COVID-19 patients during the COVID-19 pandemic by putting their life in great danger. Therefore, the State Government was under a constitutional obligation to treat the Petitioners on par with persons who were engaged in Government Hospitals or by order of the Health and Family Welfare Department, Government of Odisha. More so, when both categories of persons were engaged as short-term COVID-19 Healthcare Workers. In such background, this Court is of the considered view that the definition in Rule-2(C) would not pass the test of judicial scrutiny by this Court while weighing he same in the scale of Article 14 and 16 of the Constitution of India.

26. In the present case, this Court would like to refer to the judgment of Hon'ble Supreme Court in *National Highway Authority of India Vs. Madhukar Kumar* (Civil Appeal No.11141 of 2018) decided on 23.09.2021 wherein by following the ratio laid

down by the earlier constitutional Bench judgment of the Hon'ble Supreme Court in *Ajay Hasia Vs. Khalid Mujib Sehravardi* reported in AIR 1981 SC 487, the constitutional Bench of the Hon'ble Supreme Court has held that every state action must be fair, failing which, it was found to be violative of the mandate of Article-14 of the Constitution of India. Moreover, Article 14 of the Constitution of India strikes at arbitrariness because, an action that is arbitrary must necessarily involve negation of equality. Whenever, therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive, Article 14 immediately springs into action and strikes down such action.

27. The Hon'ble Supreme Court has also taken similar views in *E.P. Royappa Vs. State of T.N.* reported in AIR 1974 SC 555 and *Maneka Gandhi Vs. Union of India* reported in AIR 1978 SC 597. The word "arbitrariness" has been defined in a judgment of the Hon'ble Apex Court in *Sharma Transport Vs. Govt. of A.P.* reported in (2002) 2 SCC 188. The Hon'ble Supreme Court has defined arbitrariness by observing that in order to describe an action as arbitrary, a party has to satisfy that such action was not reasonable and was manifestly arbitrary. The expression "arbitrarily" means an act done in an unreasonable manner, or as fixed or done capriciously or at pleasure without adequately determining the principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. Such view has also been reiterated in *Bombay Dyeing & Mfg. Co.Ltd Vs. Bombay Environmental Action Group* reported in (2006) 3 SCC 434.

28. In *Bidhannagar (Salt Lake) Welfare Assn. Vs. Central Valuation Board* reported in AIR 2007 SC 2276 and in *Grand*

Kakatiya Sheraton Hotel and Towers Employees and workers union Vs. Srinivasa Resorts Ltd. reported in (2009) 5 SCC 342, the Hon'ble Supreme Court has observed that a law cannot be declared ultra vires on the ground of hardship. However, the same can be done on the ground of total unreasonableness. The piece of legislation can be challenged and questioned as arbitrary and ultra vires under Article 14. Before declaring the act ultra vires under Article 14, the Court must be satisfied in respect of substantive unreasonableness in the statute itself. Similarly, in *A.P. Dairy Development Corpn. Federation Vs. B. Narasimha Reddy* reported in (2011) 9 SCC 286, the Hon'ble Supreme Court has held that it is a settled legal proposition that Article 14 of the Constitution of India strikes at arbitrariness because an action that is arbitrary must necessarily involve negation of equality. Furthermore, such doctrine of arbitrariness is not restricted only to executive action, but also applies to the legislature. Thus, an action of the legislature, which is violative of Article 14 of the Constitution, should ordinarily be manifestly arbitrary. There must be case of substantive unreasonableness in the Statute itself for declaring the Act ultra vires to Article 14 of the Constitution of India.

29. In the context of the present case, this Court would like to specifically refer to the finding of the Hon'ble Supreme Court in *Krishnan Kakkanth Vs. Govt. of Kerala* reported in (1997) 9 SCC 495. In para-36 of the said judgment, which is relevant for the purpose of our case, is quoted herein below:-

“36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the state government. It is immaterial whether a better or more comprehensive could have been taken. It is equally immaterial if it can

be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid “embarking on uncharted ocean of public policy”.

In the aforesaid context, it would also be apt to refer to some of the other land mark judgments of the Hon’ble Supreme Court, i.e. in the case of *S. Nagaraj Vs. State of Karnataka* reported in (1993) Supp. 4 SCC 595 and *Shrilekha Vidyarthi (Kumari) Vs. State of U.P.* reported in (1991) 1 SCC 212.

30. In the ultimate analysis of the factual background of the present case, which is apparent from the materials on record and further keeping in view the analysis of law made hereinabove, this Court is of the considered view that the provision contained in Rule-2(c) of the 2022 Rules is not in compliance with the principles mandated by Article 14 and 16 of the Constitution of India. Therefore, this Court has no hesitation in coming to a conclusion that the discrimination meted out to the Petitioners would be hit by the principles enshrined in the Article 14 and 16 of the Constitution of India. However, before striking down the rule, this Court, by applying the golden rule of interpretation, would make an attempt to bring the said rule in conformity with Article 14 and 16 of the Constitution of India. Furthermore, in the event such interpretation is possible, this Court would first opt for reading down the rule to bring the same in conformity with Article 14 and 16 of the Constitution of India before striking down the same by holding that

the same is ultra vires of Article 14 and 16 of the Constitution of India.

31. By applying the aforesaid proposition to the facts of the present case, particularly Rule-2(c) of the Rules, 2022, this Court is of the considered view that by reading down the provisions contained in Rule-2(c) of the Rules, 2022, the same can be brought in conformity with Articles 14 and 16 of the Constitution of India. Therefore, this Court is of the considered opinion that by removing the words “by health and family welfare department” and reading down such provision in Rule-2(c), the same can be made compliant of Articles 14 and 16 of the Constitution of India. Accordingly, this Court, by reading down the aforesaid words, directs the Opposite Parties to bring an end to the disparity or discrimination between the two classes of Healthcare Workers, who had rendered their services during COVID-19 pandemic. As a result, the aforesaid words in Rule-2(c) are hereby struck down. Further, the Opposite Parties are directed to consider the case of the Petitioners. Further, this Court directs the Opposite Parties to interpret Rule-2(c) in a manner which would include all categories of persons, who have rendered their services as Short-Term COVID-19 Healthcare Workers for a period of more than three years as has been provided in the Rules. The eligibility criteria with regard to their rendering service as Short-Term COVID-19 Healthcare Workers for three months can very well be verified from the local administration, who were keeping record of such healthcare workers during COVID-19 pandemic and such healthcare workers were working under the active and direct control of the local administration.

32. Lastly, subject to verification of the aforesaid fact, the Opposite Parties are directed to consider the case of the Petitioners

by granting them the weightage of mark as has been provided under Rule-3 of Rule-2022 and subject to Petitioners eligibility, the case of the Petitioners shall be considered for appointment as Nursing Officer pursuant to the advertisement under Annexure-1 to the writ petition. The Opposite Parties are further directed to carry out aforesaid exercise within a period of two months from the date of communication of a copy of this judgment by the Petitioners. Furthermore, in view of the aforesaid direction, the rejection list in respect of the Petitioners in the batch of writ application dated 08.08.2023 is hereby quashed. It is also directed that while examining the cases of the Petitioners, the Opposite Parties shall provide opportunity to the Petitioners to furnish their respective certificates in support of their claim and thereafter, it is open to the Opposite Parties to verify such certificates from the local administration. Subject to satisfaction of the aforesaid criteria, the cases of the Petitioners if found eligible for such appointment shall be recommended by the OSSC to the Government by including their name in the merit list for appointment as Nursing Officer against the vacant post of Nursing Officers.

33. Accordingly, the batch of writ petitions stand allowed. However, in the facts and circumstances of the present case, there shall be no order as to costs.

(A.K. Mohapatra)
Judge