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W.P.No.2468 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2024

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.2468 of 2021

and

W.M.P.No.2780 of 2021

Jothy Dhanalakshmi
W/o Late T.G.Bharathi

... Petitioner

vs.

1. Indian Nursing Council
rep. by the Secretary,
8th Floor, NBCC Center,
Okhla Phase-1,
New delhi-110 020.
2. The Registrar,
Tamilnadu Nurses and Midwives Council,
Jayaprakash Narayan Maaligai,
Old No.140, New No.56,
Santhome Fourth Floor, Mylapore,
Chennai - 600 004.
3. The Registrar,
Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai, Guindy,
Chennai - 600 032.
4. The Principal, College of Nursing,
Madras Medical College,
Chennai - 600 003.

..Respondents

Prayer in W.P. : Writ Petition filed under Article 226 of the Constitution



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of India, to issue a Writ of Certiorari to call for the records of the impugned order of the 2nd respondent passed in Ref.No.134/NC/2020 dated 30.09.2020 and to quash the same.

For Petitioner : Mrs.Sudharshanasundar
for Mr.B.Raviraja

For Respondents : Mr.B.Deepak Narayanan for R1
Mr.A.R.Nixon for R2
Mr.Mohammed Ghouse for R3
Mr.E.Sundaram,
Government Advocate for R4

ORDER

This Writ Petition has been filed challenging the order passed by the 2nd respondent, by which, the petitioner's request to permit her to complete the P.B. B.Sc.,(Nursing) 2 years course under Mercy chance was rejected stating that Mercy chance is not applicable to candidates who discontinue and rejoin the course and are not able to complete the course within maximum prescribed time limit.

2. The brief facts of the case of the petitioner are as follows:

(i) The petitioner is a Diploma Holder in Nursing. She was appointed as a staff nurse in the T.B.Hospital in the year 2004. She worked in various hospitals under the 2nd respondent and presently working in Government Eye Hospital, Chennai. She got married in 1998



and due to her issues, she undergone fertility treatment and gave birth to a female child on 03.08.2010 i.e., 12 years after marriage. She got admission in the Post Basic B.Sc., Nursing in 2010 in the College of Nursing, Madras Medical College, Chennai and her Registration Number is 68101008.

(ii) The said course was from September 2010 to September 2012. She joined the course on 22.09.2010 and continued the course without any break. She cleared all the papers for the 1st year with First Class. The 2nd year classes commenced on 22.09.2011. In the meantime, she conceived, however upto 15.06.2012 she attended all the classes. She went on maternity leave from 15.06.2012 and gave birth to a female child on 17.06.2012 through Rpt.LSCS. She was on medical leave for 6 months from 15.06.2012 to 11.12.2012.

(iii) The petitioner could not attend the course from 16.06.2012 to 30.06.2012 which resulted in lack of attendance in Community Nursing Classes for about 60 hours. She could not sit for the 2nd year theory examination held in August, 2012. The other colleagues who joined in the Post Basic B.Sc., Nursing 2010-2012 along with the petitioner completed their 2nd year session on 18.09.2012 and were relieved from the course thereafter. Since she was on maternity leave, she was posted to Regional



Institute of Ophthalmic Hospital, Chennai by an order dated 11.12.2012.

Immediately, she joined the post on 12.12.2012.

(iv) On 08.10.2013 she made a request to Dr.M.G.R.Medical University, the 3rd respondent to permit the petitioner to complete her classes particularly in Community Nursing subject and to permit her to write the 2nd year examinations in February 2013 itself. Again, on 2.3.2013 the petitioner made representation reiterating the same to permit her to sit for August 2013 examination. The University officials orally informed the petitioner that she could appear for examination in August, 2013. Since the order was passed only in July 2013, she could not even write the examination in August 2013. The 2nd respondent informed the petitioner to get a fresh permission again to write the examination in February 2014. In January 2014, the Director stated that 6 months earned leave could be allowed to complete the course. The petitioner approached the Principal who promised to permit her to appear the examinations in February 2014. Again, no communication was received from the 2nd respondent in February 2014. Thereafter, on 10.03.2014 she made a request to enable her to sit for the examination atleast in August, 2014, to which, she did not receive any reply from the 3rd respondent.

(v) The petitioner lost her husband on 03.10.2016. She is having



two daughters aged 8 years and 6 years. Now, as a staff nurse, she has to undergo day and night shifts. Once, when she clears the 2nd year P.B.B.Sc.,(N)course, she will be posted in the teaching post as Tutor where there would not be any night duties and it would be more helpful to take care of her daughters.

(vi) The 2nd respondent vide letter dated 12.08.2020 addressed to the 1st respondent's Principal to consider her request to appear for the final year P.B. B.Sc., (N) examination. After receiving the letter from the 3rd respondent, the petitioner made representation dated 21.09.2020 to permit her to participate in the qualifying examination. After receiving her request, the 1st respondent has taken a fresh stand that mercy chance is not applicable to candidate who discontinued and rejoined the course and not able to complete the course within maximum prescribed time limit. The rejection of the 1st respondent is without application of mind, that too, even though the 3rd respondent had already considered her mercy/relaxation of maximum period. Hence, the present writ petition is filed challenging the impugned rejection order passed by the 2nd respondent.

3. (i) Learned counsel for the petitioner would state that the discretion vested with the 2nd respondent to accommodate the petitioner



has not been exercised in a proper and justified manner. The Central Government has repeatedly stated that widows having minor children must be shown maximum accommodation and indulgence.

(ii) The petitioner was acclaimed as one amongst the frontline Covid-19 workers who discharged their duties with utmost sincerity. The 3rd respondent had already instructed the 4th respondent, the methodology and procedure whereby the petitioner will be enabled to undertake the exam and to complete the refresher course. The 2nd respondent, rejecting the claim of the petitioner and once again directing her to approach the 1st respondent is improper. Hence, he would pray to set aside the order of the 2nd respondent and to permit the petitioner to write the exam.

4. (i) Per contra, the learned counsel appearing for the 2nd respondent would state that the 2nd respondent did not receive any communication from the University. When the petitioner approaches the Tamil Nadu Nurses and Midwives Counsel, the 2nd respondent has not received any guidelines from Indian Nursing Council. The 2nd respondent replied to the petitioner that the 2nd respondent is awaiting to receive the guidelines from Indian Nursing Council to conduct Mercy



chance examination.

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(ii) The 2nd respondent is not aware of the communication between the College of Nursing, Madras Medical College Chennai and also the petitioner's representation to the Indian Nursing Council and the responses received by the petitioner. Mercy Chance will only be applicable to those candidates who have completed the Nursing program/course in the prescribed time limit and the candidate was not able to clear the final year examinations of the respective programme/course within the prescribed maximum duration.

(iii) As per Indian Nursing Council norms, 80% of attendance is mandatory to appear for theory and practical examination and to complete the course, 100% attendance is mandate in both theory and practical. As per the Indian Nursing Council guidelines, the petitioner does not fall under the purview of Mercy Chance Examination to take up the University Examination due to lack of attendance and incompleteness of theory and practical requirements as laid down by the Indian Nursing Council and University to complete the course. Therefore, the learned counsel would pray to consider the merits of the writ petition and to pass suitable orders.



5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The petitioner was appointed as staff nurse and worked in various hospitals under the 2nd respondent and presently, working in Government Eye Hospital, Chennai. It is not in dispute that the petitioner cleared all the papers in the 1st year examination of Post Basic B.Sc. Nursing course. The 2nd year classes commenced on 22.09.2011 and in the meantime, she conceived. Even then, she attended all the classes without any leave upto 15.06.2012.

7. The petitioner went on maternity leave from 15.06.2012 and gave birth to a female child on 17.06.2012. This is the second female child. The first female child was born on 03.08.2010. The petitioner went on medical leave for 6 months from 15.06.2012 to 01.12.2012 as she gave birth to a female child on 17.06.2012 through Rpt.LSCS(Lower Segment Caesarean Section). The last working day for 2nd year Post Basic B.Sc.(N) course was on 30.06.2012. She could not attend the course from 16.06.2012 to 30.06.2012. It resulted in lack of attendance in Community nursing classes for about 60 hours.



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8. The other colleagues completed their 2nd year session on 18.09.2012 and were relieved from the course. The petitioner also lost her husband on 03.01.2016. The Mercy Chance examination was not considered by the respondents. The 2nd respondent, despite the recommendation of the 3rd respondent has merely sent the matter back to the 1st respondent which is not proper.

9. The absence of the petitioner is not purpose, but beyond her control. The reasons adduced by the petitioner is bonafide. The widowed petitioner, who is bringing up two minor female children in all fairness has to be accommodated atleast to write the examination. Even the present Maternity Benefit Act grants upto 12 months leave with pay. It is seen that the petitioner had discharged her duties with sincerity as frontline workers during Covid-19 pandemic period also. The service of the nurses like the petitioner is very much necessary to the general public. The petitioner is ready to pay the necessary fees for the examination to complete her P.B. B.Sc.,(N) course.

10. In view of the above, this Court is of the view that one more



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chance shall be given to the petitioner to complete the P.B.

B.Sc.,(Nursing) course. Therefore, the impugned order dated 30.09.2020

passed by the 2nd respondent is hereby set aside. The respondents are

directed to permit the petitioner to write the 2nd year/final year of Post

Basic B.Sc.(Nursing) course and to complete the said course.

Accordingly, the Writ Petition is allowed. No costs. Consequently,

connected miscellaneous petition is closed.

26.03.2024

Index :yes/No

Speaking /Non speaking order

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To

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J.NISHA BANU, J.



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