



CWP-20390-2016 (O & M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Reserved on 01.10.2024

Pronounced on: 14.10.2024

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SUKHWINDER KAUR AND ORS

...PETITIONERS

VERSUS

STATE OF PUNJAB AND ORS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Jagdish Manchanda, Senior Advocate with
Mr. Devyansh, Advocate for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

SUDEEPTI SHARMA, J.

1. The challenge in the present petition is to the notification dated 14.06.2016 issued by the Department of Medical Education and Research, Government of Punjab, whereby, Rule 6 as specified in Appendix 'B' of the Punjab Health and Family Welfare Technical (Group C) Service Rules, 2016 has been amended. As per the amendment, the qualification for the appointment and promotion to the post of Tutor in Appendix 'B' has been upgraded from B.Sc. (Nursing) to M.Sc. (Nursing).

2. Brief facts of the case are that the services of the petitioners were earlier governed by the Punjab Health and Family Welfare Technical (Group C) Service Rules, 2007 (now Repealed) and later governed by

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Punjab Health and Family Welfare Technical (Group C) Service Rules, 2016. The Cadre Controlling Authority was Director, Department of Health and Family Welfare, Punjab, Chandigarh i.e. respondent No.2 and 4. After the Government of Punjab upgraded two Schools of Nursing at Patiala and Amritsar to College of Nursing in the year 2004 and placed the same under the administrative control of Department of Medical Education and Research. Punjab Nursing Education Service (Group B) Rules, 2016 for these posts were framed and notified on 14.06.2016. Before finalizing the said rules the same were uploaded on the Department's website www.punjabmedicaleducation.org on 21.05.2015. After finalization of the said rules, the same were uploaded on department's website. In view of the said proposal to start new M.Sc. Nursing course in the upgraded college of Nursing, the minimum qualification for the Nursing Faculty was kept as M.Sc. (Nursing), as required for higher post of Lecturer, Associate Professor and Professor under the norms of Indian Nursing Council. The respondents had fixed the minimum qualification as M.Sc. Nursing at the entry level i.e. cadre. Hence the present petition.

SUBMISSIONS OF COUNSEL FOR THE PARTIES

3. Learned counsel for the petitioners submits that the petitioners are B.Sc. sister(s) having experience of more than 15 years and by amending the rules and making the qualification as M.Sc.(Nursing) from B.Sc, they are debarred from the promotion to the post of Tutor. Since, they are B.Sc and as per 2007 rules were eligible for promotion to the post of Tutor, therefore, they contends that the Rules are unconstitutional and the same be struck down as violative of Articles 14, 16 and 19 of the Constitution of India.



4. Per contra, learned State counsel contends that the entry into faculty took place at the level of Tutor and there was stagnation. If Tutor with B.Sc. (Nursing) qualification is appointed, he cannot be promoted as Assistant Professor or above. This would have resulted in lack of staff and lead to de-recognition of Nursing Colleges of Punjab in due course of time. Therefore, the amendment in the rules by increasing the minimum qualification for the Nursing faculty as M.Sc. (Nursing) was required.
5. We have heard the learned counsel for the parties and perused the whole record of the case.
6. The relevant portion of the reply filed by the State and the status given to this Court of the petitioners in the present case is reproduced hereunder:-

<i>Sr.No.</i>	<i>Petitioner Name</i>	<i>Current Status</i>
<i>1.</i>	<i>Sukhwinder Kaur</i>	<i>Retired as Staff Nurse</i>
<i>2.</i>	<i>Santosh Sodhi</i>	<i>Move to her parent cadre DHS, Punjab (Respondent No.4)</i>
<i>3.</i>	<i>Sarabjit Kaur</i>	<i>Working under Respondent No.3 as Staff Nurse (functioning as acting Tutor)</i>
<i>4.</i>	<i>Jaspinder</i>	<i>Resigned</i>
<i>5.</i>	<i>Vijay Laxmi</i>	<i>Retired as Sister Tutor</i>

It is respectfully submitted that at present appointment of Tutor in the Nursing College of Government of Punjab are governed by Punjab Nursing Education Group 'B' Rules. As per the rules the service procedure is mentioned in Appendix 'A'



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and the eligibility criteria etc. for the post of Tutor are at appendix 'B'. As per the rules there are 40 posts of Tutors out of which 25% are to be appointed by direct appointment and 75% are to be appointed by promotions from amongst the staff nurses, Public Health Nurses, Nursing Sisters and Sister Tutors working on regular basis under the control of Director, Health and Family Welfare, Punjab and Director, Research and Medical Education, Punjab who have done M.Sc. (Nursing) in the concerned speciality preference shall be given to those candidates who have one year of teaching experience in nursing education.

It is further submitted that at the time of filing of this CWP, these petitioners did not fulfil the essential qualification for the post of Tutor i.e. M.Sc. (Nursing). Therefore, they were not considered for the promotion. That now the only one petitioner is working under this answering respondent i.e. petitioner No.3 and has completed her M.Sc. Nursing now and is eligible for this post of Tutor.

It is further submitted that petitioner has now applied for the post of Tutor demanded as per the letter No.2ME 2.Pb.2023/11262-11315 dated 18.08.2023 issued by this Department and her (petitioner no.3) application has been admitted as she now fulfils the criteria of having essential qualification to apply for the post Tutor. This promotional process is under consideration.”



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7. After perusing the notification dated 14.06.2016, we do not find that it requires any interference by this Court.

8. The only reasoning given by the petitioners in the writ petition for the challenge to the amendment in notification dated 14.06.2016 is that all the petitioners are B.Sc. (Nursing) and with the amendment, the qualification has been upgraded to M.Sc. (Nursing) for the post of Tutor.

9. It is within the domain of the executive to prescribe qualification for recruitment/promotion. Further it is settled law that it is the prerogative of the Government to upgrade its institutions by prescribing the qualification which is rather in public interest. The Hon'ble Supreme Court in **P.U. Joshi and others versus Accountant General, Ahmedabade and others**, 2003 (2) SCC 632 held as under:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the



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competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

10. As held by Hon’ble Supreme Court in **P.U. Joshi’s case** **(supra)** that it is open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as



the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even existing service.

11. Therefore, the notification dated 14.06.2016 upgrading the qualification for the appointment and promotion to the post of Tutor in Appendix ‘B’ has been upgraded from B.Sc. (Nursing) to M.Sc. (Nursing) holds good.

12. In view of the settled law as referred to above, the present writ petition is dismissed being devoid of any merit.

13 . Pending application(s), if any, stand disposed of.

(SURESHWAR THAKUR)

JUDGE

(SUDEEPTI SHARMA)

JUDGE

14.10.2024
A.Kaundal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No