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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.274 of 2022

Date of decision: 28.10.2026

Sheela Devi and others **…..Petitioners**

Versus

State of H.P. and another **…..Respondents**

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.
The Hon'ble Mr. Justice Yogesh Jaswal, Judge.

Whether approved for reporting?[1] Yes

For the Petitioners **:** Mr. Ashwani Kumar Sharma, Advocate.

For the Respondents **:** Mr. Anup Rattan, Advocate General with Mr. Pushpender Jaswal, Additional Advocate General.

Ajay Mohan Goel, Judge (Oral)

By way of this writ petition, the petitioners have, inter alia, prayed for the following reliefs:-

> "(i) Writ of Certiorari may kindly be issued for the quashment of R & P Rules, Clause 11 with a further direction to the respondents authorities for amending the same to the extent that all promotions from ANM to GNM under 25% quota prescribed in clause 10 be made on the basis of seniority or work experience as ANM in the Department of Ayurveda or in alternate by imparting them training for nominal period at the expenses of the Government in Government institutions.
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> (ii). That the respondents may be directed to provide promotional avenues to the petitioners on the basis of their seniority at par with their counterparts working in the

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

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> Department of Health & Family Welfare Department in the interest of justice and fair play."

2. The factual matrix involved in this case is in a very narrow compass. The petitioners before this Court are serving as Auxiliary Nurse Midwives (ANMs). The next promotion from the post of General Nursing and Midwifery is to the post of Staff Nurse, the Recruitment & promotion Rules whereof are appended with the petition as Annexure P-2. In terms of the said Recruitment & promotion Rules, the post of Staff Nurse is filled in 40% by way of direct recruitment, 35% by batch-wise recruitment and 25% by way of promotion. The promotion to the extent of 25% is to be made from amongst Auxiliary Nurse Midwives i.e. the post held by the petitioners subject to their possessing educational qualification prescribed against Column No. 7(a) of the Recruitment & Promotion Rules with 03 years regular service or regular combined with continuous adhoc service, if any, in the grade. In terms of Column No.7(a) of the Recruitment & Promotion Rules, the minimum educational qualification required for recruitment against the post of Staff Nurse is 10+2, preferably with science from a recognized Board of School Education or University and a fully qualified A-grade General Nursing and Midwifery or B.Sc. (basis) in nursing from a recognized institute. Besides this, candidate also has to be registered with Himachal Pradesh Nursing Council or any other recognized Nursing Council.

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3. The grievance of the petitioners is that because they do not possess the minimum qualification mentioned in Column No.7(a), this renders them ineligible to be considered for promotion against the post of Staff Nurse, and it is in this backdrop that they have approached this Court praying for the reliefs already enumerated by us hereinabove.

4. Learned counsel for the petitioners argued that Clause 11 of the Recruit and Promotion Rules is *ultra vires* for the reasons that it does not takes into consideration the considerable experience gained by the petitioners while working against the post of Auxiliary Nurse Midwives for promotion to the post of Staff Nurse. He argued that simply because the petitioners do not possess the minimum qualification which is required for direct recruitment against the post of Staff Nurse, this does not mean that they are not capable to man the post of Staff Nurse because the experience gained by them while serving against the post of Auxiliary Nurse Midwives, substitutes the non-possessing of qualification by them.

5. Learned counsel referred to the rejoinder filed by the petitioners and submitted that in certain Departments like Public Works Department, there exist post of Assistant Engineer which is filled in both by way of direct recruitment and promotion. He submitted that in order to be eligible for direct recruitment to the post of Assistant Engineer, the minimum qualification is graduation, yet

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for the purposes of promotion, even a diploma holder is eligible. He submitted that similarly in terms of Annexure E-2 appended with the petition for the post of Male Health Supervisor in the Department of Health and Family Welfare Department, which is a post filled in 100% by way of promotion, as far as the feeder category of male Multipurpose Health Workers is concerned, there is no condition attached therewith that such persons working in the feeder category should possess a qualification higher than the one which was required for their appointment against the post of Multipurpose Health Worker. On this count, learned counsel submitted that as Clause 11 of the Recruitment & promotion Rules was bad in law, it be quashed and set-aside. Learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in ***B.N Saxena versus New Delhi Municipal Committee and others, (1990) 4 SCC 205***, to substantiate this point.

6. On the other hand, learned Advocate General argued that there was no merit in this petition. He submitted that it was settled law that the framing of the Recruitment & promotion Rules, including carrying out any amendment therein or mentioning the conditions or the educational qualifications therein was the domain of the employer and the Courts are not to interfere with the said domain of the employer until and unless the Courts find that the Rules infringe the constitutional parameters.

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7. Learned Advocate General submitted that in the present case, the post of Staff Nurse is not filled in 100% by way of promotion. Said post is filled in 40% by way of direct recruitment and 35% by way of batch-wise recruitment and in order to be eligible for direct recruitment, the minimum qualification besides 10+2, preferably with science background, is a qualified A-grade General Nursing and Midwifery or B.Sc (basis) in nursing from a recognized institute. Learned Advocate General submitted that the department in its wisdom has provided 25% quota of promotion to Auxiliary Nurse Midwives but subject to their possessing educational qualification which is otherwise required for direct recruitment to the post of Staff Nurse. He submitted that this condition is neither arbitrary nor discriminatory, nor it violates Article 14 of the Constitution of India. Learned Advocate General submitted that in the light of the duties which a Staff Nurse has to perform, the qualification which is prescribed for direct recruitment is the essential qualification which is required to be possessed by an incumbent who seeks to be recruited against the post of Staff Nurse, be it by way of direct recruitment or promotion. He submitted that in the light of the nature of the duties of the post, the possession of experience against the post of Auxiliary Nurse Midwives is not sufficient and therefore, while giving 25% promotional quota to Auxiliary Nurse Midwives, it is mentioned in the Recruitment and Promotion Rules

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that in order to be eligible to gain promotion, the Auxiliary Nurse Midwives must possess the educational qualifications which are otherwise to be possessed for direct recruitment.

8. In support of this contention, learned Advocate General has referred to the judgment of the Hon'ble Supreme Court in ***P.U. Joshi and others versus Accountant General, Ahmedabad and others, (2003) 2 SCC 632*** & ***Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh versus Usha Kheterpal Waie and other, (2011) 9 SCC 645***.

9. We have heard learned counsel for the parties and we have also carefully gone through the pleadings as well as the documents.

10. The moot issue which this Court has to answer is as to whether the condition contained in the impugned Recruitment & Promotion Rules for the post of Staff Nurse that in order to be eligible for promotion to the said post, the candidate from the feeder category i.e. Auxiliary Nurse Midwives must possess the educational qualification which is prescribed for direct recruitment, is sustainable in law or is an arbitrary condition or not. It is not in dispute that the petitioners before this Court were recruited against the post of Auxiliary Nurse Midwives on the strength of the qualification which was possessed by them for promotion for appointment to the post of Auxiliary Nurse Midwives. As far as the post of Staff Nurse is

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concerned, the Department of Ayurveda has framed the Recruitment & Promotion Rules, Annexure P-2, in terms whereof, in order to be eligible for appointment to the post in issue by way of direct recruitment either through a process initiated by Recruiting Agency or on batch-wise basis, the minimum and essential qualification required is 10+2, preferably with science and A-grade General Nursing and Midwifery or B.Sc (basis) in nursing from a recognized institute. There is no challenge in the petition to the educational qualification so prescribed for Direct Recruitment.

11. It is not in dispute that this qualification which has been prescribed as the minimum qualification in order to be eligible for appointment against the post of Staff Nurse is completely different from the qualification which is possessed by the petitioners on the basis whereof they were recruited against the post of Auxiliary Nurse Midwives.

12. In our considered view, the petitioners cannot challenge the condition which is there in the Recruitment & Promotion Rules vis-a-vis 25% promotion quota simply because they do not possess the qualification which is necessary for promotion to the post of Staff Nurse. The contention of the learned counsel for the petitioners that the experience which has been gained by them as Auxiliary Nurse Midwives is good enough to substitute the minimum educational qualification prescribed for recruitment against the post of Staff

Nurse, does not convince us. This is for the reason that it it has not been substantiated before us by placing any material on record that the duties of Staff Nurse are akin to that of Auxiliary Nurse Midwives. Otherwise also, in the light of the fact that the post of Staff Nurse is a promotional post from the post of Auxiliary Nurse Midwives, this itself is suggestive of the fact that this being a superior post, it requires something more, be it by way of educational qualification or otherwise, as compared to the post of Auxiliary Nurse Midwives.

13. Coming to the analogy which has been given by the learned counsel for the petitioner to demonstrate discrimination i.e. the Recruitment & Promotion Rules which relate to the post of Assistant Engineer, according to us, simply because the Public Works Department or any other Department wherein there are posts of Assistant Engineer deem it proper to reserve certain promotional quota in favour of diploma holders or those who are not possessing the qualification which is necessary for direct recruitment against the post, this does not mean that every other Department in the State of Himachal Pradesh has to follow the same analogy only. In our considered view, every Department has the right to fix the educational qualifications necessary for appointment against a post be it by way of direct recruitment or promotion, depending upon the nature and duties of that particular post. Similarly, as far as the analogy given by the petitioners of the post of Male Health

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Supervisor is concerned, the same also according to us does not come to the rescue of the petitioner for the reason that a perusal of the rules demonstrates that the post of Male Health Supervisor is to be filled in 100% by way of promotion and it is not as if this post is to be filled in by way of direct recruitment as also batch-wise basis as is the case vis-a-vis the post of Staff Nurse in the Ayurveda Department. Because the Health and Family Welfare Department does not deem it necessary that there should be any additional qualification for male Multipurpose Health Worker to be eligible for promotion to the post of Male Health Supervisor, this does not mean that on that analogy the Ayurveda Department can also not have a condition that Auxiliary Nurse Midwives for promotion to the post of Staff Nurse should possess the minimum educational qualification which is necessary for direct recruitment to the post of Staff Nurse.

14. Now coming to the judgments relied upon by the learned counsel for the parties, firstly, we refer to the judgment relied upon by the learned counsel for the petitioner. In ***B.N Saxena versus New Delhi Municipal Committee and others, (1990) 4 SCC 205***, Hon'ble Supreme Court was dealing with the issue of the petitioner therein who was appointed as a Junior Draftsman and subsequently re-designated as Senior Draftsman and was claiming promotion to the post of Head Draftsman in the New Delhi Municipal Committee and had approached the Hon'ble Supreme Court in the

light of the fact that his prayer stood rejected by the learned Courts though including the Hon'ble Delhi High Court.

15. In the backdrop of the factual matrix which existed in the case, the Hon'ble Supreme Court was pleased to give relief to the petitioner, but it was after taking into consideration the Rule position as it existed in New Delhi Municipal Committee. For ready reference, we are quoting paras 4 to 7 of the said judgment:-

> "4. For the first time, the NDMC by a policy decision dated February 2, 1973 redesignated Junior Draftsmen in the scale of Rs. 110-200 as Senior Draftsmen in the scale of Rs. 150-240. The Resolution, in effect, validated the recruitment of the petitioner and others similarly situated.
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> 5. By the same Resolution, the NDMC has revised the qualifications for the post of Head Draftsman as under:
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> > "Head Draftsman:- From Senior Draftsman on seniority-cum- selection basis. However, the minimum qualification should be a Diploma with a minimum of 3 years service as Senior Draftsman in the grade of Rs. 250-400 or a total of 6 years service as Senior and Junior Draftsman. The question of outside recruitment docs not arise."
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> 6. The question is whether the petitioner possesses the prescribed qualification. The revised rules provide alternate qualifications for the post of Head Draftsman. The first part of the rule prescribes a diploma with a minimum of three years service as Senior Draftsman in the scale of Rs. 250-400. The second limb of the revised rule refers to the service rendered by the candidate. It provides for six years of service as Senior and Junior Draftsman. The first part of the rule is almost similar to the qualification prescribed prior to the amended rules. The old rule provided:
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> > "Matric with Diploma/certificate in Draftsmanship from a recognised institution with 3 years experience in preparation of Engineering Drawings in an Electric supply undertaking or an engineering manufacturing organisation"
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> 7. The second limb of the rule was evidently to benefit all those persons who have gained sufficient experience as Senior and Junior Draftsmen without possessing any qualification. Experience gained for a considerable length of

> time is itself a qualification {See the observation in State of U.P. and Ors. v. J.P. Chaurasia and Ors.(1989) 1 SCC 121}. It would be unreasonable to hold that in addition to this considerable experience, one must also have the diploma qualification prescribed under the first part. It could not have been the intention of the rule making authority that persons who were designated as Senior Draftsmen without any Diploma qualification should acquire such diploma qualification for further promotion. Such a view would not be consistent and coherent with the revised rule and its object. We have no doubt that the second limb of the revised rule is independent of the first. The High Court seems to have erred in this aspect of the matter."

16. Thus from the perusal of the judgment of the Hon'ble Supreme Court we find that relief was given to the petitioner therein in the peculiar facts of the case taking into consideration the earlier Rules which existed for promotion to the post of Head Draftsman as well as the educational qualifications contained therein and the subsequent amendment which was carried out and also the second limb of the revised rules which finds mention in the above quoted paras of the judgment of the Hon'ble Supreme Court. Therefore in our considered view, as the judgment of the Hon'ble Supreme Court was in the light of the Rule position as it existed therein and it was on the interpretation of the Rules that relief was granted to the petitioner therein, the said judgment is of no assistance to the petitioners.

17. On the other hand, Hon'ble Supreme Court of India in ***P.U. Joshi and others versus Accountant General, Ahmedabad and others, (2003) 2 SCC 632*** has been pleased to hold in para-10 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 competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction 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."

18. Hon'ble Supreme Court thereafter in ***Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh versus Usha Kheterpal Waie and other, (2011) 9 SCC 645*** has been pleased to reiterate the legal position enunciated by it in ***P.U. Joshi's case*** as under:-

> "22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Courts and Tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is

> reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules. [See J. Rangaswamy vs. Government of Andhra Pradesh -1990 (1) SCC 288 and P.U. Joshi vs. Accountant General- 2003 (2) SCC 632]. In the absence of any rules, under Article 309 or Statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of PhD is unreasonable."

19. Thus it is apparent and evident from the said two judgments of the Hon'ble Supreme Court that it is for the rule-making Authority or the Appointing Authority to prescribe the Board of Selection and minimum qualification for any recruitment and the Courts and Tribunals can neither prescribe the qualification nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provisions of the constitution.

20. On part of the petitioners, there is no challenge to the essential qualifications, which stand prescribed for direct recruitment to the post of Staff Nurse, which means that even the petitioners do not have any qualms that as far as the post of Staff Nurse is concerned, the same indeed has to be manned by person who possesses the qualification as is prescribed in Column 7 (a) of the Recruitment & Promotion Rules. That being so, the act of the Department of providing in the Recruitment and Promotion Rules to the post of Staff Nurse that in order to be eligible for promotion to the

said post, the candidate from the feeder categories must possess the minimum qualification prescribed in Column No.7(a) of the Recruitment and Promotion Rules, cannot be said to be arbitrary, discriminatory or unconstitutional.

21. Therefore, in the light of the above discussion as we do not find any merit in the present petition, the same is dismissed. At this stage learned counsel for the petitioners submits that the rejection of the petition should not come in the way of the petitioners in otherwise approaching the Authorities in terms of Clause-18 of the Recruitment & Promotion Rules. Observed accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

28th October, 2026.
(**yogesh**)