

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.887/2012.

Smt. Mrudula Mukund Andhare,
Aged about 40 years,
Occ-Service,
R/o C/o Shri Atul Deo, Flat No.58,
Nand Apartment, Swawlambi Nagar,
Nagpur-22.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Medical Education and Drugs,
Mantralaya, Mumbai-32.
2. The Director of Medical Education and Research,
Govt. Dental College & Hospital Building,
St. Georges Hospital Compound,
Mumbai-1.
3. The Jt. Director of Medical Education and Research,
Govt. Dental College & Hospital Building,
St. Georges Hospital Compound,
Mumbai-1.
4. The State Nursing Superintendent,
Govt. Dental College & Hospital Building,
St. Georges Hospital Compound,
Mumbai-1.
5. The Dean,
Govt. Medical College, Nagpur.
6. College of Nursing,
Govt. Medical College, Nagpur.
Through its Principal.

7. The Maharashtra Nursing Council,
Through its Registrar,
ESIC Hospital Compound, 2nd floor,
Nurses' Hostel, Lal Bahadur Road,
Mulund (W), Mumbai-80.
8. The Indian Nursing Council,
Through its Registrar,
Combined Council's Building,
Kotala Road, Temple Lane,
Opp.Matasundari College,
Near I.T.O., New Delhi-2.

Respondents.

Shri Shantanu Ghate, the Ld. Advocate for the applicants.
Shri A.P. Sadavarte, the Ld. P.O. for the respondents 1 to 7.
Mrs. Gauri Venkatraman, Ld. Counsel for respondent No.8.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 19th August, 2014.

Order**Per: Member (J)**

The short question that arises in this O.A. is, whether the applicant possesses requisite qualification for the post of Tutor / Clinical Instructor as per the norms laid down under Maharashtra Nursing Council Rules, 1971.

2. In the year 1993, the applicant passed diploma in General Nursing and Midwifery from Indira Gandhi Government Medical College and Hospital, Nagpur and enrolled herself with Maharashtra Nursing Council. On 24.11.1999, she came to be appointed as Staff Nurse at Swami Ramanand Tirth Rural Medical College and Hospital, Ambejogai. In December 2006, she obtained Post Basic B.Sc. (N) degree from Indira Gandhi National Open

University (in short IGNOU) as an additional qualification. In the year 2007, she came to be transferred to the Government Medical College and Hospital, Nagpur. Her services including the services of the similarly situated Staff Nurses were borrowed on the establishment of College of Nursing, Government Medical College and Hospital, Nagpur as Tutor / Clinical Instructor. Till the year 2013, the respondents continued to avail the services of the applicant as well as other similarly situated Staff Nurses on the establishment of College of Nursing, Government Medical College and Hospital, Nagpur (R.6). On the basis of some communication received from the Indian Nursing Council, New Delhi and the University Grants Commission, New Delhi, the respondents were of the view that the Post Basic B.Sc. (N) the qualification acquired by the applicant from IGNOU is not equivalent to regular B.Sc. (N) for the purpose of teaching. In this connection, it is clarified by the applicant that, the applicant passed Post Basic B.Sc. (N) from the recognized study centre of IGNOU i.e. Institute of Nursing Education, IGNOU Study Centre, Sir J.J. Group of Hospitals Compound, Byculla, Mumbai. This qualification is recognized by Indian Nursing Council, New Delhi as well as State Nursing Council and on that basis, the applicant has obtained admission to a regular M.Sc. (N) and is pursuing her studies in post graduation. It is further stated that as per the Nursing Council Rules, 1971, she is qualified to

act as Tutor / Clinical Instructor on the establishment of the respondent No.6.

3. The respondents Nos. 1 to 3 submitted reply. In para 3, it is categorically admitted that the State Government has given recognition to the courses conducted by open Universities which are established under the University Grants Commission Act, 1956. Thus, the degree and diploma obtained from such open Universities are recognized for service except for the teaching post. The stand that the Post Basic B.Sc. (N) qualification obtained from IGMOU is not recognized by the Indian Nursing Council which is an apex body, is reiterated.

4. Contrary to this, the Indian Nursing Council, New Delhi, respondent No.8 herein filed reply. Para 5 in the reply being relevant and having direct bearing on the issue involved in this O.A. is reproduced below:

“That in this connection it is respectfully submitted that the answering respondent as a statutory body is concerned with the recognition of qualifications awarded by Universities and Boards and this recognition is granted on the basis of inspections conducted under section 13 of the Indian Nursing Council Act, 1947. Insofar as the nursing qualifications recognized by the answering respondents are concerned, it is submitted that the Indian Nursing Council has recognized 23 study centres run by IGNOU for the purpose of grant of Post Basic B.Sc. (Nursing) qualification. The candidate qualifying the

Post Basic B.Sc. (Nursing) course from recognized study centres only can be considered as holding recognized Post Basic B.Sc. (Nursing) Qualifications for being eligible for higher posts or for that matter for admission to post graduate nursing courses. The list of recognized study centres by IGNOU which have been recognized by the answering respondent are annexed and marked as Annexure A-1”.

5. As per annexure R-1, two centres viz. Institute of Nursing Education, IGNOU Study Centre, Sir J.J. Group of Hospitals Compound, Buculla, Mumbai and Temi Grant Institute of Nursing Education, Ruby Hall Clinical Grant Medical Foundation, 13, Tadiwara Road, Pune-1, are run by IGNOU in the State of Maharashtra. Admittedly, the applicant has passed from one of these study centres.

6. The Maharashtra Nursing Council Rules, 1971 lays down the qualification for Tutor or Clinical Instructor as under:

“(a) Master degree of a recognized university in Nursing, OR

(b) B.Sc. degree of a recognized university in Nursing (basic or post basic) OR;

(c) Post Basic diploma in Nursing with eight years’ experience in teaching.

Preference may be given to a candidate having administrative experience.

7. Mrs. Gauri Venkatraman, the learned counsel appearing for the respondent No.8, to a specific query whether the Post Basic B.Sc. (N) qualification obtained by the applicant from

IGNOU is a requisite qualification as per the Maharashtra Nursing Council Rules, 1971, answered in affirmative.

8. The learned counsel for the applicant relied upon the decision in case of **Vishwajit V/s State of Maharashtra 2013 (1) ALL M R 732.** In that case, the Staff Nurses who were serving under the State Government wanted to pursue M.Sc.(Nursing) course. The Director of Medical Education refused them permission to proceed on study leave on the ground that the petitioners had not completed five years of service as prescribed by the State Government. It was noticed that the regulations prescribed by the Indian Nursing Council requires minimum one year work experience for admission to M.Sc. (Nursing). In that premise, it was held that the State Government was not justified in insisting upon five years' work experience. Relying upon the decision in case of **State of Tamilnadu and another V/s Adhiyaman Educational and Research Institute and others (1995) 4 SCC 104,** it was held that,

“In the present case, once the Indian Nursing Council has prescribed the norms of eligibility for admission to the M.Sc. (Nursing) Course, it was not open to the State Government to prescribe conditions at variance with those prescribed by the authority acting under the central legislation enacted with reference to Entry 66 of the Union List”.

9. We find that there is no need to delve deep into the various provisions of the Indian Nursing Council Act, 1947, Rules framed thereunder etc. for the simple reason that there is a categorical admission on the part of the respondent No.8 that the qualification acquired by the applicant is the requisite qualification as prescribed under the Maharashtra Nursing Council Rules, 1971 for the post of Tutor / Clinical Instructor. In that view of the matter, the impugned communication dated 22.2.2013 (Annexure A-17) cannot be sustained.

10. The learned P.O. has rightly contended that the services of the applicant and other similarly situated Staff Nurses were borrowed on the establishment of the respondent No.6 on deputation basis and, therefore, they have no right to claim continuation of their deputation on the said post. There cannot be two opinions over this proposition. What seems to be unjust and illegal is the repatriation of the applicant merely on the ground that the Post Basic B. Sc. (N) degree obtained by her from the IGNOU is not recognized by the Indian Nursing Council, New Delhi (Annexure A-14). The reason for repatriation of the applicant to her parent department can be gathered by reading communication dated 22.2.2013 (Annexure A-17). The same is reproduced below:

“वरील विषयास अनुसरून संदर्भिय पत्राच्या अनुषंगाने संचालनालयाच्या यापूर्वी वेळोवेळी निर्गमित केलेल्या आदेशानुसार ज्या उमेदवारांची इग्नो मार्फत पी.बी.बीएस्सी (न) कोर्स उत्तीर्ण

झालेल्या उमेदवारांना संचालनालयाच्या विविध पत्रानुसार परिचर्या महाविद्यालयात शैक्षणिक कामकाजास्तव प्रतिनियुक्ती देण्यात आलेली होती. यापुर्वी संचालनालयाने काढलेले प्रतिनियुक्ती आदेश या आदेशान्वये रद्द करण्यात येत असून इग्नो मार्फत पी.बी.बीएस्सी (न) कोर्स उत्तीर्ण झालेल्या उमेदवारांना त्यांच्या मुळ पदावर हजर होण्यासाठी कार्यमुक्त करून तसा अनुपालन अहवाल आजच संचालनालयास फॅक्सने सादर करावा. संस्था प्रमुखांनी वरील परिच्छेदात नमुद केलेली कार्यवाही कोणतीही सबब पुढे न करता आजच पुर्ण करावी. अन्यथा इग्नो मार्फत पी.बी.बीएस्सी (न) कोर्स उत्तीर्ण झालेल्या उमेदवारांच्या न्यायालयीन प्रकरण उदभवल्यास त्यास संस्थाप्रमुख जबाबदार राहतील’.

11. From the above, it is crystal clear that the repatriation is not on any other ground, but only on the ground that the applicant possesses Post Basic B. Sc. (N) degree from IGNOU and this being unsustainable, the said communication is liable to be quashed.

12. In the result, the O.A. succeeds.

Communication dated 22.2.2013 (Annexure A-17) is quashed and set aside.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman

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