

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.402 OF 2024**

**DISTRICT : PUNE**

Dipali Vishwnath Darkonde )  
R/a – Padmavati Mata Road, )  
Nilekar Nivas, Alandi, Alandi Rural, )  
PO- Alandi Devachi, Dist. Pune. )

**....APPLICANT**

**VERSUS**

1. State of Maharashtra, )  
Through Additional Chief )  
Secretary, Public Health )  
Department, G.T. Hospital )  
Compound, Mantralaya, )  
Mumbai 400 032 )
2. Commissioner, Public Health )  
and Director, National Health )  
Mission, G.T. Hospital )  
Compound, Mantralaya, )  
Mumbai )
3. Deputy Director, Public Health )  
Pune Circle, New Administrative )  
Building, 3<sup>rd</sup> floor, Room No.301 )  
Opposite Vidhanbhavan, )  
Pune 411 001 )

**...RESPONDENTS.**

Ms. Purva Pradhan holding for Mr. D.B. Khaire, learned Counsel for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM** : **Justice Mridula Bhatkar (Chairperson)**  
**Mr. Debashish Chakrabarty (Member-A)**

**RESERVED ON** : **21.03.2024**

**PRONOUNCED ON** : **28.03.2024**

### **J U D G M E N T**

1. Applicant has prayed that she be declared eligible for the post of Staff Nurse as being most meritorious candidate from the S.T. (General) Category and the order dated 27.02.2024 thereby declaring her ineligible is to be quashed and set aside.

2. Learned Counsel for the Applicant has submitted that Advertisement dated 28.08.2023 was published by Respondent No.2 for various posts including 'Staff Nurse'. Learned Counsel has further submitted that after publishing first Advertisement, the Respondent made changes in the Advertisement. As per the earlier Advertisement, 2 separate Educational Qualifications were prescribed for Staff Nurse Government (50% quota) and Staff Nurse Private (50% quota). Thus, as per the said Advertisement, candidates possessing General Nursing and Midwifery Diploma (GNM) qualification were not eligible to apply for 50% quota to be filled in from 'Private' nursing college. Only candidates possessing B.Sc (Nursing) Degree were eligible to apply for 50% quota to be filled in from 'Private' nursing college. As the Applicant possessed GNM qualification, she was eligible to apply only for 50% quota to

be filled in from Government College. Hence, she applied in Government quota. Learned Counsel has submitted that later on Respondent published revised Advertisement and clarified that candidates possessing GNM qualification and B.Sc. (Nursing) Degree are eligible to apply for 50% quota to be filled in from Private Nursing College and 50% Government quota on the basis of Institution through which they have obtained their educational qualification namely GNM & B.Sc.

3. Learned Counsel for the Applicant states that Advertisement was amended without there being any notice, corrigendum was issued to that effect. As per the new Advertisement, the separate educational qualification for Government and Private quota was changed and same educational qualification i.e. GNM or BSc (Nursing) for both the quota was made applicable. The educational qualification as per earlier and new Advertisement dated 28.08.2023 reads as under :-

Particulars	Educational Qualifications	
Earlier advertisement (1 <sup>st</sup> Release)	अधिपरिचारिका (शासकीय टक्के ५०)  Staff Nurse Govt. ५०% Pay Matrix- S-13 : 35400-112400	Possess General Nursing and Midwifery Diploma from recognized institute.  भारतीय परिचर्या परिषदेच्या निकषानुसार, दूरस्थ शिक्षणाद्वारे कोणत्याही मुक्त विद्यापीठातून या पदाची अर्हता धारण करणारा तसेच दूरस्थ शिक्षणाद्वारे कोणत्याही मुक्त विद्यापीठातून या पदाची अर्हता प्राप्त केल्यानंतर ज्याने मान्यता प्राप्त

		विद्यापीठाची पदव्युत्तर पदवी धारण केली आहे असा उमेदवार या पदाकरिता नियुक्तीसाठी पात्र असणार नाही
	अधिपरिचारिका (खाजगी ५० टक्के) Staff Nurse Private ५०%  Pay Matrix-S-13: 35400-112400	Possess a Basic Bachelor of Science (Nursing) degree.  भारतीय परिचर्या परिषदेच्या निकषानुसार, दूरस्थ शिक्षणाद्वारे कोणत्याही मुक्त विद्यापीठातून या पदाची अर्हता धारण करणारा तसेच दूरस्थ शिक्षणाद्वारे कोणत्याही मुक्त विद्यापीठातून या पदाची अर्हता प्राप्त केल्यानंतर ज्याने मान्यता प्राप्त विद्यापीठाची पदव्युत्तर पदवी धारण केली आहे अस उमेदवार या पदाकरिता नियुक्तीसाठी पात्र असणार नाही
New Advertisement (Corrigendum) (2 <sup>nd</sup> Release)	अधिपरिचारिका (शासकीय टक्के ५०) Staff Nurse Govt. ५०%  Pay Matrix-S-13: 35400-112400	Possess General Nursing and Midwifery Diploma from recognized institute or Possess a basic Bachelor of Science (Nursing) degree
	अधिपरिचारिका (खाजगी ५० टक्के) Staff Nurse Private ५०%  Pay Matrix-S-13: 35400-112400	भारतीय परिचर्या परिषदेच्या निकषानुसार, दूरस्थ शिक्षणाद्वारे कोणत्याही मुक्त विद्यापीठातून या पदाची अर्हता धारण करणारा तसेच दूरस्थ शिक्षणाद्वारे कोणत्याही मुक्त विद्यापीठातून या पदाची अर्हता प्राप्त केल्यानंतर ज्याने मान्यता प्राप्त विद्यापीठाची पदव्युत्तर पदवी धारण केली आहे अस उमेदवार या पदाकरिता नियुक्तीसाठी पात्र असणार नाही टीप- अधिपरिचारिक संवर्गातील पदे भरताना खाजगी

		<p>नर्सिंग महाविद्यालयातून उत्तीर्ण झालेले उमेदवार आणि आरोग्य सेवा संचानालय / वैद्यकीय शिक्षण व संशोधन संचानालयाच्या शासकीय परिचर्या महाविद्यालयातील उत्तीर्ण झालेलं उमेदवार यांच्यामधून ५०:५० या प्रमाणात भरण्याची स्पष्ट तरतूद सेवा प्रवेश नियमात असल्याने सादर कोटा अदलाबदल करून भरण्यात येणार नाही. करीत उमेदवारांनी अर्ज योग्य कोट्यातून भरावा. याबाबत कुठलाही बदल अर्ज भरल्यानंतर विचारात घेतला जाणार नाही.</p>
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4. Learned C.P.O., while opposing this O.A., has submitted that the first Advertisement was published on 28.08.2023 wherein as per the Recruitment Rules 50% quota was given to the Government and 50% quota was to be kept for the Private recognised Institutions and Colleges. She has submitted that in the said Advertisement Clauses 13 and 14 are the Annexures of Chart of Educational Qualification details required for the 50% Private Quota for the post of Staff Nurse,

“For Government quota a candidate who possesses General Nursing of Midwifery Diploma from recognised Institute there is a specific mentioned that candidate who has secured this qualification in any distinct learning course is not recognised in 50% Government quota.

In Clause 14 the basic educational qualification for filling up the 50% quota for Staff Nurse,

A candidate possesses the basic Bachelor of Science (Nursing) Degree and against it is mentioned that the candidate securing such Degree by distinct learning is not eligible.”

She has submitted that on the same day the Respondent-Department has released the same Advertisement again with some changes in Clauses 13 and 14 of the Annexures of Educational Qualification details. In this 2<sup>nd</sup> release of the same Advertisement the Staff Nurse applying in Government quota or Private quota are required to possess the following educational qualifications:

General Nursing of midwifery Diploma from recognised Institute  
OR  
Possesses Basic Bachelor of Science (Nursing) Degree.

And it was explained that any candidate securing such Degrees from such distinct learning are not eligible. Further additional note was mentioned that the candidates who have obtained the above Educational Qualifications either from Private Nursing Colleges OR the Government Colleges or Institutes are to be taken by 50 : 50 percent quota and therefore there will be no exchange in the quota and therefore candidates were asked to fill up the application form in the respective quota as there will not be any change.

5. Learned C.P.O. has submitted that it was the duty of the applicant to go through this second release on the same day and as she has completed General Nursing of Midwifery Training from Private Nursing Institute and applied for the Government Quota is

an error committed by her and therefore Applicant is rightly held ineligible in view of this second release dated 28.08.2023. Learned C.P.O. has further pointed out letter dated 23.04.2023 issued by the Under Secretary, Public Health Department where she has specifically clarified that the lacunae in the said Advertisement was clarified within two days from the date of the Advertisement and therefore candidates who have taken Education in the Institute coming under the local bodies, they are to be accommodated in the quota either in the Government or in the Private establishment at the time of counselling. Learned C.P.O. has submitted that the Advertisement was issued on 28.08.2023 and she filled-up her form on 11.09.2023, i.e. not within two days from the date of Advertisement and therefore she is expected to fill up the application form in the correct quota after reading the clarificatory note. Learned C.P.O. has relied on the judgment of Hon'ble Supreme Court in the case of ***Bedanga Talukdar Versus Saifudaullah Khan & Ors., I.A.No.5-8 in Civil Appeal Nos.8343-8344 Of 2011, dated 28.09.2011.***

6. We have considered the submissions of both the parties. It is admitted error that though the Applicant has secured Degree in General Nursing of Midwifery Diploma from recognised Institute; while selecting the quota the Applicant instead of 'Private Quota' tick marked the column of 'Government Quota'. The judgment of ***Bedanga Talukdar (supra)*** the issue was pertaining to the belated submissions of certificate of disability along with the

application or before appearing the Preliminary Examination as mandatory was addressed. At that time, the Hon'ble Supreme Court in unambiguous language held that there can be no relaxation in terms and conditions contained in the Advertisement. Paragraph 31 reads as below :

*“31. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of respondent No.1 on the basis of identity card submitted after the selection process was over, with the publication of the select list.”*

In the present case, the Respondents who published the Advertisement by 1<sup>st</sup> and 2<sup>nd</sup> release with variations not significantly noticeable are basically responsible for this confusion. If the case of the Applicant is accepted then the basic requirement of the Educational Qualifications, the merit, the method of Recruitment, the Quota everything remains same, thus we find the entire fault cannot be attributable to the applicant.

On the background of ratio laid down in the case of ***Bedanga Talukdar (supra)*** while assessing the nature of the error committed by any candidate we are of the view that the following facts are required to be taken into account :-



- (a) Reason and the situation under which the error is committed in filling up the application form.
- (b) Whether the applicant is meritorious.
- (c) Whether the Respondent is at fault to certain extent.
- (d) Any deliberate intention of the applicant with a view to avail of the benefit on account of error, if error is not revealed.
- (e) Adverse effect of condoning error in Selection Process.

7. In the present case, admittedly there were two releases of the Advertisement along with Annexures of Educational Qualification details. There is no change in the body of the Advertisement in both releases dated 28.08.2023 so also same is the case with the details provided in both the Annexures regarding the Educational Qualification, except Clauses 13 and 14 in the chart of Annexures except pertaining to Staff Nurse. The comparison of Clauses 13 and 14 on these two Annexures discloses that in the first Advertisement the Educational Qualification for the Government quota was given as "General Nursing of Midwifery Diploma from recognised Institute" and for Private Quota "Basic Bachelor of Science (Nursing) Degree" was mentioned. Thus, they were shown as a separate distinct Educational Qualifications for two different quotas. However, in the second release the Government modified the Educational Qualifications of these two releases and combined both the Educational Qualifications by putting 'OR' for both the quotas. After going through these two notes, we have no hesitation to hold

that this is likely to create confusion in the minds of the candidates. Moreover, some candidates after going through the second release upto the body of Advertisement may find that there is no such change and may skip the details of the Educational Qualifications, especially in Clauses 13 and 14. We need to understand the object of maintaining quota as per the Recruitment Rules.

8. Undoubtedly 50 : 50 percent quota as per the requirement of Recruitment Rules for Staff Nurse (Exhibit-D) as per the Rule 4 of the Recruitment Rules dated 15.04.2015 of Staff Nurse from which College or Institute i.e. Government or Private the candidate has taken Education is determinant for the entry of the candidate in the respective quota. Applicant has mentioned that she has secured Diploma in General Nursing of Midwifery. It is true and correct information as per the first release and she tick marked for Government quota which is the correct option of quota as per Clause 13 of the Annexure of the first release. The letter of Under Secretary, Public Health Department of February 2024 reveals the fact of confusion as to the Institutes under local bodies are to be treated as Government Institutes for which the Government has taken decision that at the time of counselling the candidates can be accommodated as per the respective quota given by them.

9. Thus, when there is no compromise in respect of basic qualification and also on the point of merit as the applicant is topper in Government as well as Private quota. For the reasons above discussed above, the Applicant cannot be disqualified on the ground of tick marking the Government quota instead of Private quota. When the Government has accommodated other candidates who have given options as per their understanding in absence of clarification about Institutes coming under local bodies then the denial of the Applicant is against the principles of natural justice and arbitrary and hence, illegal. There is no violation of maintaining 50% quota if the applicant is accommodated on the basis of type of the Institute where she has taken Education wherein the applicant can be accommodated as per the second release in the Private quota.

10. In view of above, as interim relief is allowed with reasons nothing remains in this O.A. and the same stands disposed of as allowed.

Sd/-

**(Debashish Chakrabarty)**  
**Member(A)**

prk

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**