

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.651 OF 2021

- 1 Sachin s/o. Dnyaneshwar Atram,)
Aged about 23 years, Occupation- Nil)
R/o. E.S.I.S Quarter, Near Tukdoji Putla)
Building No.9A, Nagpur.)
2. Rajkumar Eknath Chandrashekhar)
Aged about 23 years, Occupation- Nil)
R/o. E.S.I.S Quarter, Near Tukdoji Putla)
Building No.9A, Nagpur.) **... Applicants**

Versus

1. State of Maharashtra,)
Through its Secretary)
Public Health Department,)
G.T. Hospital Complex Building,)
10th floor, New Mantralaya,)
Mumbai 400 001.)
2. Director of Health Services Pune,)
Raja Bahadur Mill Road, Sangamwadi)
Pune, Maharashtra, 411 001.) **...Respondents**

Mr. Sachin Khandekar, learned Advocate for the Applicants.

Mr. S.A. Deo, learned Chief Presenting Officer for respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Mr. Shree Bhagwan, (Vice-Chairman) (A)

DATE : **20.08.2021**

PER : **Justice Mridula Bhatkar, Chairperson**

J U D G M E N T

1. In the present O.A. the applicants are aspiring to become Staff Nurses in the hospital coming under the Public Health Department pursuant to the advertisement dated 01.08.2021 published by the Respondent No.2 for the recruitment on various posts including the post of Staff Nurses.

2. The Applicants challenge the Rule 11 of the "Assistant Matron, Public Health Nurse, Psychiatric Nurse, Pediatric Nurse, Incharge Sister and Staff Nurse (Group C) in the Maharashtra Nursing Services in the Commissionerate of Health Services and Employees State Insurance Scheme, under Public Health Department of the Government (Recruitment) Rules, 2021 (hereinafter referred as 'The Rules, 2021' for brevity) to the extent wherein 90% seats of the posts of Staff Nurses are reserved for female candidates and only 10% posts are reserved for male candidates. The State of Maharashtra filed the affidavit-in-reply dated 20.08.2021 on behalf of the Respondents through Mr. Sunil Prabhakar Ghade, Chief Administrative Officer, office at Deputy Director of Health

Services, Nagpur, thereby refuting all the contentions raised regarding Rule 11 of The Rules, 2021.

3. The learned Advocate for the Applicants has submitted that the Government by Government Resolution (G.R.) dated 25.05.2001 has earlier reserved 30% of the posts to females in all Government, Semi-Government or Government aided offices, Colleges and Institutions as per the policy of the Central Government dated 01.04.1991. The learned Advocate has submitted that by way of Rule 11 of the Rules, 2021 the Government has declared that they are going to reserve 90% posts for females. He demonstrated that as per the advertisement as on today only 91 posts are shown vacant for Nagpur Circle and the bifurcation of the reservation is shown in the chart which discloses 30% of the reservation for female and 0% posts for male candidates and thus all the posts are kept reserved in the horizontal reservation only by appointing female candidates if this 90% quota is applied. Thus no male candidate can be recruited as Staff Nurse.

4. The learned Counsel further submitted that the Government has taken erroneous stand justifying the policy of reservation of 90% for female on incorrect information that the female nurses are required at Primary Health Center. He submitted, in fact, the Primary Health Centers which are mainly located in the distantly rural areas wherein the services of child care, delivery and vaccination are provided are entirely run under the National Rural Health Mission (NRHM) where male Nurses are employed in the field who are known as Community

Health Services and Auxiliary Nursing Midwifery. The learned Counsel submitted that the male Nurses are required at various places and they are actively rendered the services for orthopedic, physician, general surgeon, geriatric care etc. He further pointed out the observations laid down in the judgment of Hon'ble Supreme Court in ***Indra Sawhney Versus Union of India reported in 1992 Suppl. (3) SCC 217.*** He submitted that though the constitution does not lay down any specific bar however the principle of balancing equality in the reservation is to be applied and maintained and not to exceed 50%. He produced the chart of the curriculum disclosing the list of the subjects which are taught to the male nurses so that they can be suitable to the profession and the service. He further submitted that neither the Indian Medical Council nor the Maharashtra Nursing Council has made such discrimination. The learned Advocate further submits that no data is made available justifying 90% reservation.

5. The learned Presenting Officer for the Respondents while opposing the submissions of the learned Advocate for the Applicants submitted that the Government has in fact filled up all the 10% of the posts in Nagpur Circle. Out of 1459 Nurses in Nagpur region, 149 posts are for the Male Nurses but out of them 19 posts are diverted towards Director of Medical Education and Research and on remaining 130 posts are occupied by all the male candidates. The learned P.O. while defending the policy of the State and keeping 90% reservation for female argued that the female Nurses are very much required in the rural areas for the

purpose of delivery, child care, to look after the mother and child health, vaccination etc. and so per the requirement and management of each hospital female nurses are required in majority. The learned P.O. further submitted that the State has power to frame the Recruitment Rule under Article 309 of the Constitution which cannot be challenged by the applicants.

6. Considered the submission of learned Advocate for the Applicants and learned Presenting Officer for the Respondents. Perused the relevant Government Resolutions and Rule 11 of the Rules, 2021. The Rule No.11 reads as under :-

“The ratio for female and male for the posts mentioned in rules 4, 6, 7, 8 and 10 by nomination shall be 90:10 respectively.”

7. The Central Government has laid down the National Policy giving 30% reservation to women in the various Institutions, Government employment or Government aided schools and colleges etc. However, the State has power to deal with the subjects like Education, Public Health which are entirely within the ambit of the State and the State of Maharashtra while framing the Rules for the recruitment and promotions of Nurses in February, 2021 have come out with the policy of keeping 90% of the posts reserved for the female candidates while appointing the Staff Nurses in Public Health Department. Nobody will dispute that the male can perform many functions such as nursing, mother and child caring etc. and the male nurses can work as efficiently as the female nurses after acquiring proper training and education.

However, it also cannot be disputed that the females have certain inborn qualities which are innately related to the motherhood and therefore females are working in the nursing field since beginning prominently. They are working and performing their duties in the medical field satisfactorily and successfully. Thus, 90% reservation though is appearing on the higher side it cannot be labeled and perceived as a gender inequality with unjustified disproportion. The Article 15 (3) of the constitution empowers the State to make Rules which reads as follows :-

Nothing in this article shall prevent the State from making any special provision for women and children.”

Thus keeping 90% posts reserved for females in the appointment of staff nurses is not against gender equality, but it is the positive gender discrimination, in view of the inborn biological as well as psychological qualities which are more useful for nursing.

8. On query made by us in respect of the employment of the Male Nurses in Primary Health Centers, the learned P.O. informs that the male nurses are very much required in orthopedic or mental health Department and the ratio of 10% is sufficient in those Departments. However the Centers which are coming under the Public Health Department mainly are child and mother care, vaccination, gynecology wherein female nurses are more suitable and hence needed.

9. Secondly, we further state and make it clear that in certain situation in some services it is not the capacity or ability of the person who renders the service matters but the requirement of the receiver

matters more. Despite the area may be urban or rural the women and children or the old patients need the service from women and are more comfortable with the nurse if she is a female. A male nurse can be equally competent and dedicated to handle the situation in a very satisfactory manner, however in given situation the patient may have comfort zone in accepting the services of caretaking, nursing from only a female nurse. The requirement or perception of the patient is a very important factor in the medical care because the patient is a center of the medical care and the profession. For example the litigant is the subject of the center of the entire legal system. In the Criminal trial the Section 327 of the Criminal Procedure Code (CrPC) states that the Court are open for all. However, the proviso of Section 327 states about in camera proceedings wherein the issue of sexual assault against women is involved. Thus, what the victim woman thinks and her comfort zone matters more than the right of the public or other to come to court. Thus, certain reservations are created in some professions only with a view to give better service, suitability and to create comfort for the subject i.e. patient in the medical profession. Thus, we do not find the substance in this challenge.

10. In view of above, Original Application is hereby dismissed.

SD/-

**(Shree Bhagwan)
Vice-Chairman (A)**

SD/-

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