IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1384 OF 2024

| | | CT: Mumbai Seniority List | | |
|----|---|-------------------------------------|--|--|
| | Smt. Grace S. Mane Age 57 Years, Occu: Clinical Instructor/ Tutor, Institute of Nursing Education, Having office in the campus of Sir J. J. Group of Hospitals, Byculla, Mumbai 400 008. |))))))Applicant | | |
| | V/s | | | |
| 1. | The State of Maharashtra, Through the Principal Secretary, Medical Education & Drugs Dept., 9th floor, G.T. Hospital Campus, Government of Maharashtra, Mantralaya, Mumbai. |)))) | | |
| 2. | The Director of Medical Education & Research, having office at Government Dental College and Hospital Building, 4th floor, St. George's Hospital Compound, Mumbai 400 001. |)))) | | |
| 3. | The Commissioner, Directorate of Medical Education and Drugs Dept., G. T. Hospital Campus, L. T. Marg, Mantralaya, Mumbai. |) | | |
| 4. | Varsha M. Shrikhande, Clinical Instructor, Tutor, College of Nursing Government Medical College & Hospital, Nagpur. | /))) | | |
| 5. | Jyoti Govind Perke, Clinical Instructor/ Tutor, Maharashtra State Board of Nursing and Paramedical Education, St. George Hospital Campus, College of Nursing Building, CSMT, Fort, Mumbai 400 001. |))))) | | |
| б. | Poonam Kharate, Clinical Instructor/Tutor College of Nursing, Government Medical College, Nagpur. | ·))) | | |
| 7. | Krishna S. Ukirde, Clinical Instructor/ Tutor, Institute of Nursing Education, J. J. Hospital Campus, Byculla, |))) | | |

8. Rupali Sardar, Clinical Instructor/)
Tutor, Training College of Nursing,)
Govt. Medical College and Hospital,)
Akola.

9. Sarika Sunil Kadam, Clinical)
Instructor/Tutor, College of Nursing)
Chatrapati Pramila Raje Hospital,)
Kolhapur.)....Respondents

Shri Sanjay Kulkarni, learned Advocate for the Applicant.

Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondent Nos.1 to 3.

Shri S. S. Dere, learned Advocate for the Respondent No.5.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman.

Hon'ble Shri Debashish Chakrabarty,

Member (A)

Reserved on : 27.01.2025.

Pronounced on : 10.02.2025.

Per : Hon'ble Shri M. A. Lovekar, Vice-Chairman.

JUDGEMENT

Heard Shri Sanjay Kulkarni, learned Advocate for the Applicant, Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondent Nos.1 to 3 and Shri S. S. Dere, learned Advocate for the Respondent No.5.

2. Case of the Applicant is as follows –

On 13.10.1988, the Applicant joined as 'Staff Nurse'. In April, 1994 she acquired qualification of P.B.Sc. (Nursing) and became eligible for the post of Tutor/Clinical Instructor. As on 25.05.2024 the Applicant was the senior most person having eligibility for the post of Clinical Instructor. However, contrary to G.R. dated 07.05.2021 which reiterates that there will be no reservation in promotions, the Respondents 4 to 9 were promoted as 'Clinical Instructors' ahead of the Applicant because

they belong to 'Reserved' category. The Applicant was promoted as 'Clinical Instructor' on 02.11.2007. In the year 2005, two posts of 'Clinical Instructor' were upgraded to the post of 'Lecturer'. The Applicant completed her M.Sc. (Pediatrics Nursing) which is the qualification for the post of 'Lecturer', in November, 2010. The Applicant had joined as 'Staff Nurse' earlier and acquired qualification of B.Sc. and M.Sc. earlier than the Respondents 4 and 6 to 9. The Respondent No.5 completed her M.Sc. in Nursing in June, 2010. She was initially appointed from 'ST' category and was given promotional appointment in 'OBC' category. Inspite of these facts, the Respondents 4 to 9 were placed above the Applicant in seniority list of 'Clinical Instructors/Tutors as on 01.012024 (Exhibit 'A'). By virtue of order dated 19.11.2019 (Exhibit 'B'), the Applicant was working as 'Lecturer'. Approval (Exhibit 'C') was accorded by MUHS, Nashik whereby the Applicant was guiding Post Graduate Students. The Applicant made representations (Exhibit 'D' collectively) that she be placed at Serial No.1 in seniority list. These representations went unheeded. The respondents 4 to 9 were given the post of 'Clinical Instructor' earlier though they were junior to the Applicant. These Respondents were infact promoted to the post of 'Clinical Instructor' though there could be no reservation in promotions. To get over this legal hurdle, the orders posting them as 'Clinical Instructor' were termed as 'Orders of Appointment'. Hence, this Original Application seeking reliefs that seniority list as on 01.01.2024 for the post of 'Lecturer' be corrected and name of the Applicant be shown in it at Serial No.1, and by virtue of G.R. dated 25.11.2005 upgrading the post of 'Tutor' to 'Lecturer', she be directed to be appointed as 'Lecturer' from November, 2010 (when she acquired qualification of M.Sc.).

3. Stand of the Respondent Nos. 1 to 3 is as follows:

The Applicant was appointed from 'Open' category and the Respondents 4 to 9 were appointed from 'Reserved' category. At the relevant point of time promotional post for 'Open' category was not vacant. Therefore, the Applicant could not be promoted as 'Clinical Instructor/Tutor'. The Applicant was subsequently promoted whereas

the Respondents 4 to 9 were appointed earlier, to the post of 'Tutor/Clinical Instructor'. With covering letter dated 26.09.2024, the proposal in respect of the Respondent No.5 has been forwarded to the Respondent No.1. After two posts of 'Clinical Instructor/Tutor' were upgraded to 'Lecturer', promotions were given on the basis of overall seniority.

4. On 03.07.2024, the Respondent No.3 informed the Respondent No.1 as follows –

" प्रधान सचिव, वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, नवीन मंत्रालय, गोतेरु, आवार, मुंबई

विषय: परिचर्या महाविद्यालयातील पदोत्रतीच्या कोट्यातील सहायक प्राध्यापकांची पदे भरण्याबाबत आक्षेप...

संदर्भ : श्रीमती ग्रेस माने, पाठयनिर्देशिका यांनी मा. मंत्री महोदय, वै.शि यांना सादर केलेले निवेदन दि.१३.०५.२०२४

उपरोक्त विषयाच्या संदर्भीय अर्जान्वये, श्रीमती ग्रेस माने, पाठ्यनिर्देशिका यांचा मानीव दिनांक मंजुरी बाबतचे निवेदन प्राप्त झालेले असून, सदरील प्रस्तावानुषंगाने खालीलनमुद प्रमाणे सादर करण्यात येत आहे.

- 9) श्रीमती ग्रेस माने (खुलावर्ग) यांचा शासन सेवेतील प्रथम नियुक्ती दि.१३.१०.१९८८ असा असून, त्यांनी बी.एस्सी. (नर्सिंग) अभ्यासक्रम एप्रिल १९९४ साली उत्तीर्ण केले आहे. तद्गंतर त्यांना दि.०२ नोव्हें. २००७ च्या आदेशानुसार अधिपरिचारीका पदावरुन पाठ्यनिर्देशिका पदावर पदोन्नती देण्यात आलेली आहे.
- २) श्रीमती माने यांनी सादर केलेल्या निवेदनानुसार त्यांच्यापेक्षा शासन सेवेत अधिपरिचारीका पदावर किनिष्ठ असलेल्या तसेच त्यांच्या नंतर बी.एस्सी. नर्सिंग अभ्यासक्रम उत्तीर्ण केलेल्या अधिपरिचारीकांना त्यांच्या आधी पाठ्यनिर्देशिका पदावर नियुक्ती/पदोन्नती देण्यात आलेली आहे.
- ३) सोबत पाठ्यनिर्देशिका पदाची दि.१.१.२०२४ रोजीची अंतिम ज्येष्ठतासूची जोडली असून, सदरील ज्येष्ठतासूचीतील श्रीमती माने यांनी सादर केलेल्या निवेदनात आक्षेप घेतलेल्या त्यांच्या नंतर अधिपरिचारीका पदावर नियुक्ती दिलेल्या व बी.एस्सी/पी.बी.बी.एस्सी. नर्सिंग अभ्यासक्रम उत्तीर्ण केलेल्या अधिपरिचाकांचा तपशिल खालील प्रमाणे सादर करण्यात येत आहे.

| 3₹. | पाठयनिर्देशिकेचे नाव | जात प्रवर्ग | प्रथम | <u></u> बी.एસ્સી | पाठयनिर्देशिका | प.निर्देशिका | શેરા |
|-----|-----------------------|-------------|----------|------------------|---------------------|--------------|-----------------|
| क्. | | | नियुक्ती | (न) / पी.बी. | नियुक्ती/पदोन्नती | दि.१.१. | |
| | | | दिनांक | बी.एस्सी | दिनांक | २०२४ ज्ये. | |
| | | | | उत्तीर्ण वर्ष | | सूचीतील | |
| | | | | | | क. | |
| 9 | श्रीमती ज्योती पेरके | इमाव | 99.00. | मे, २००३ | ०४.०२.२००६ | 60 | नियुक्तीचे |
| ′ | ઝાળાતા ખ્યાતા વસ્ત્ર | રૂગાવ | | ग, २००२ | | 06 | આદેશ |
| | | | 9९९७ | | (नियुक्ती) | | આવશ |
| 5 | श्रीमती पुनम खराटे | इमाव | 99.00. | जून/जूलै | ०४.०२.२००६ | o8 | नियुक्तीचे |
| | | | १९९६ | २००१ | (नियुक्ती) | | आदेश |
| | | | | | | | |
| 3 | श्री.क्रिष्णा उकीर्डे | इमाव | 9६.०७. | एप्रिल | २१.०४.२००६ | оч | नियुक्तीचे |
| | | | १९९६ | १९९९ | (नियुक्ती) | | आदेश |
| | | | | | | | |
| 8 | श्रीमती भारती | खुला | 98.99. | एप्रिल | १४.०८.२००६ | 90 | नियुक्तीचे |
| | पिंपळकर | | 98८८ | १९९३ | (नियुक्ती) | | आदेश |
| ·у | श्रीमती रूपाली | अजा | રદ્દ.૧૨. | जून २००६ | રૂ ૧.૧૨.૨૦૦૬ | 9२ | आरोग्य |
| ′ | सरदार | | 9886 | , , | (नियुक्ती) | | सेवेतू <i>न</i> |
| | Cicaic | | ///C | | (ાનવુવતા) | | नियुक्ती |
| | | | | | | | ાગવુવલા |
| ξ | श्रीमती सरिता कदम | अजा | 09.09. | जून २००६ | 99.09.२००७ | 93 | आरोग्य |
| | | | 9999 | | (नियुक्ती) | | सेवेतून |
| | | | | | | | नियुक्ती |
| 10 | श्रीमती ग्रेस माने | | 03.00 | | 02.00.2006 | 98 | पदोन्नतीचे |
| (9 | શ્રામતા ગ્રસ માન | खुला | 93.90. | एप्रिल | 02.99.2000 | 78 | |
| | | | 98८८ | १९९४ | (पदोन्नती) | | आदेश |
| | | | | | | | |

श्रीमती ग्रेस माने यांनी त्यांच्या निवेदनात नमुद केलेल्या अ.क्र.१ ते २ चे कर्मचारी इमाव प्रवर्गातील असून, त्यांना पाठयनिर्देशिका पदावर नियुक्ती देण्यात आलेली आहे. तसेच अ.क्र.५. व. ६ चे कर्मचारी अ.जाती प्रवर्गातील असून, त्यांची प्रथम नियुक्ती व पाठ्यनिर्देशिका पदावरील नियुक्ती आरोग्य सेवा संचालनालयाच्या मार्फत करण्यात आलेली आहे. त्या पाठ्यनिर्देशिका पदावर कार्यरत असताना अनुक्रमे अकोला व कोल्हापूर येथे कार्यरत असताना वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, दि.११ सप्टेंबर, २००७ च्या शासन निर्णयानुसार आरोग्य सेवा संचालनालयाच्या अधिपत्याखालील कोल्हापूर, लातूर व अकोला येथील जिल्हा सामान्य रुग्णालय व लातूर येथील श्री रुग्णालय व नेत्र रुग्णालय, पै.शि.व संशोधन, संचालनालयाकडे पुर्णतः हस्तांतरीत करण्यात आले आहे. सदर शासन निर्णयान्वये, आरोग्य सेवा संचालनालयातील

कर्मचाऱ्यांची सेवाज्येष्ठता अबाधित ठेवण्यात आलेली आहे. त्यामुळे श्रीमती रुपाली सरदार व श्रीमती सरिता कदम हया श्रीमती माने यांना पाठ्यनिर्देशिका पदावर सेवाज्येष्ठ ठरलेल्या आहेत.

उर्विरत अ.क्र.४ श्रीमती भारती पिंपळकर हया खुल्यावर्गातील कर्मचारी असून, त्यांचा अधिपरिचारीका पदाचा नियुक्ती दिनांक हा श्रीमती ग्रेस माने (१३.१०.१९८८) यांच्या नंतरचा १४.११.१९८८ असा आहे. तथापि त्यांनी बी.एस्सी/पी.बी.वी.एस्सी. नर्सिंग अभ्यासक्रम श्रीमती माने (एप्रिल १९९४) यांच्या एक वर्ष आधी एप्रिल १९९३ साली उत्तीर्ण केलेला आहे. त्यामुळे श्रीमती पिंपळकर यांना श्रीमती माने यांच्या आधी अभ्यासक्रम पूर्ण केल्यामुळे श्रीमती माने यांच्या एक वर्ष आधी दि.१४.०८.२००६ रोजी पाठयनिर्देशिका पदावर नियुक्ती देण्यात आल्याचे निदर्शनास येते.

श्रीमती ग्रेस माने यांनी साप्रवि.शा.नि.दि.७ मे, २०२१ मधील तरतुदीनुसार पदोन्नतीमधील आरक्षणाचा लाभ घेवून सेवाज्येष्ठता यादीत वरचा क्रम देण्याबाबत विनंती केली असून, त्यानुषंगाने सादर करण्यात येते की, आरोग्य सेवा विभागाच्या दि.१० जाने. १९६४ च्या सेवाप्रवेश नियमानुसार सदरील पदे सरळसेवेने भरावयाची तरतूद करण्यात आलेली आहे. तथापि पाठ्यनिर्देशिकांची पदे भरताना या संचालनालयाच्या अधिनस्त संस्थेतील शैक्षणिक अर्हतेनुसार पात्र ठरत असलेल्या अधिपरिचारीकांना पदोन्नतीची कार्यप्रणाली वापरुन नियुक्तीचे आदेश देण्यात आल्याचे निदर्शनास येते व श्रीमती ग्रेस माने यांना पाठ्यनिर्देशिका पदावर पदोन्नती दिल्याचे निदर्शनास येते. त्यामुळे श्रीमती ग्रेस माने यांना पाठ्यनिर्देशिका पदावर त्यांच्या पेक्षा ज्येष्ठ असलेल्या दि.१.१.२०२४ च्या ज्येष्ठतासूचीतील कर्मचाऱ्यांना नियुक्तीचे आदेश दिलेले असल्याने, सदरील जात प्रवर्गातून नियुक्ती दिलेल्या कर्मचाऱ्यांना दि.७ मे, २०२१ मधील तरतुदी लागू होणार नाहीत. यास्तव श्रीमती ग्रेस माने, पाठ्यनिर्देशिका यांनी सादर केलेला विनंती अर्ज शासनाचे माहिती व पुढील कार्यवाहीस्तव सविनय सादर करण्यात येत आहे."

5. Stand of the Respondent No.5 is as follows –

She was appointed to the post of 'Tutor' vide order dated 04.02.2006. She satisfactorily completed probation period of one year. In seniority list dated 29.09.2020 the Applicant was shown below the Respondents 4 to 9. She did not object to it. Law is well settled that settled seniority cannot be unsettled. Assuming that irregular procedure was followed while appointing her (to the post of 'Tutor'), that will not create any right in favour of the Applicant. The application is barred by limitation. The orders of posting of the Respondents 4 to 9 as 'Clinical Instructor/Tutor' state at the outset that thereunder Private

Respondents were appointed. However, Clause 10 of these orders states –

"प्रस्तूत आदेशात उल्लेखिलेल्या मागासवर्गीय जातीतील उमेदवारांना तात्पुरत्या स्वरूपात पदोन्नती देण्यात येत असून.....

These orders state that the Appointees were to undergo probation period of one year. In communication dated 03.07.2024, it is stated -

"तथापि पाठ्यनिर्देशिकांची पदे भरताना या संचालनालयाच्या अधिनस्त संस्थेतील शैक्षणिक अर्हतेनुसार पात्र ठरत असलेल्या अधिपरिचारीकांना पदोन्नतीची कार्यप्रणाली वापरुन नियुक्तीचे आदेश देण्यात आल्याचे निदर्शनास येते"

- 6. The seniority list of 'Tutor/Clinical Instructor' as on 01.01.2024 shows that the Respondents 4 to 9 were working on the post since prior to 02.11.2007 when the Applicant was promoted to the post. We have referred to the orders issued to Respondents 4 to 9. It may be reiterated that these orders initially state that the same were of appointment. Clause No.10 in these orders indicates that those were orders of promotion. The orders also state that the Appointees were to undergo probation period of one year. Communication dated 03.07.2024 states that the appointments of Respondents 4 to 9 were made by adopting procedure of promotions. Thus, there are contrary stands/indications as to whether the Respondents 4 to 9 were appointed or promoted to the post of 'Clinical Instructor/Tutor'.
- 7. The main hurdle in the way of the Applicant is one of limitation. If her contention is to be accepted, starting point of her grievance can be taken to be the date/s on which the Respondents 4 to 9 were given posting as 'Clinical Instructor/Tutor'. After they were so posted, the Applicant was promoted to the post of 'Clinical Instructor' on 02.11.2007. Earlier orders passed in favour of the Respondents 4 to 9 were not challenged by the Applicant. On the basis of these orders inter-se seniority was fixed and it continued. Cause of action for the Applicant to approach this Tribunal for her proper placement in seniority

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list arose in 2006/2007. Thus, the instant Original Application is clearly barred by limitation. In these facts, stand of the Applicant that publication of latest seniority list on 19.04.2024 gave rise to the cause of action to approach this Tribunal, cannot be accepted. It would be anomalous to revise the latest seniority list without effecting revision of earlier seniority lists which provided the foundation.

8. The Original Application is thus liable to be dismissed on the ground of limitation. It is accordingly dismissed with no order as to costs.

Sd/-(Debashish Chakrabarty) Member (A) Sd/-(M. A. Lovekar) Vice-Chairman

Place: Mumbai Date: 10.02.2025.

Dictation taken by: V. S. Mane

 $\textit{D:} \\ VSM \\ VSO \\ 2025 \\ \textit{Judgment 2025} \\ \textit{Division Bench} \\ \textit{O.A.1384 of 2024 Seniority List.doc}$