

(1986) 07 MAD CK 0033
In the Madras High Court

A. Ramaswamy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 13-07-1986

Acts Referred:

Citation : (1987) 2 MLJ 362

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The only question involved in this appeal relates to the constitutional validity of the proviso to Rule 2 in the entry in Column (2) against Category 2 Nursing Tutors II Grade in Branch II of the Special Rules for the Madras Medical Service. The said proviso was introduced by CO. Ms. No. 2998 H.E. and L.A. dated 10th October, 1957, whereby appointments to the Post of Nursing Tutors II Grade from among Women and Men were directed to be made in the ratio 3:1.

2. The appellant was appointed as a Nurse in the Year 1957 in the Madras Medical Subordinate Service, Branch III Category and after completion of probation he was confirmed on 1-4-1960. Alleging that because of the ratio fixed by the proviso referred to above, he lost his chances of being appointed as Nursing Tutor II Grade by transfer from the Category of Nurses in the year 1976, the appellant filed a Writ Petition in this Court for the issue of Mandamus directing the respondent to consider his name for being appointed as Nursing Tutor II grade without any reference to the proviso referred to earlier. The appellant challenged the validity of the said proviso on the ground that it violated the provision of Articles 14 and 16 of the Constitution India. The said Writ Petition was contested by the respondent and after hearing the parties, Justice Mohan dismissed the same by his judgment dated January 7, 1980 This appeal is preferred against the said judgment.

3. Mr. K.V. Sankaran, learned Counsel for the appellant submitted that the provision makes a discrimination against men on the ground of sex only and

consequently it is hit by Articles 14 and 16 of the Constitution of India. Learned Counsel relief upon a passage in Basu's Commentary on the Constitution of India, 5th Edn. Vol. at P. 538 which reads thus:

It is to be noted that there is no provision in Article 16 corresponding to Clause (3) of Article 1. The result is, that for purposes of employment under, the State though reservation in favour of backward classes is permissible under Clause (4) of Article 16, no such reservation is possible in favour of women.

4. Mr. Sankaran also relied on the decision of a single Judge in *Walter Alfred Baid Vs. Union of India and Others*, where a provision in the recruitment rules for the post of Senior Nursing Tutor in the School of Nursing, Irwin Hospital, New Delhi whereby males were made ineligible for the post was struck down as unconstitutional. In that case the relevant rule designated the post of Senior Tutor "Senior Tutor (female)" and the eligible category was "Sister Tutor (Female)". The validity of the rule was challenged by qualified "A" Grade male nurse who was appointed as "Sister Tutor". The learned Judge took the view that as Article 16 (sic) the Constitution of India operates in narrow field of employment or appointment to any office under the State, and the too among the Citizens of India, no classification is permissible unless it is save by Clauses (3), (4) and (5) of Article 16. The learned Judge further held that the Classification made by the impugned Rule (sic) that case was based on the only ground of sex and it was hit by Article 16(2). The learned Judge dissented from the decisions (sic) rendered by the Punjab High Court in *Shamsher Singh Hukam Singh Vs. The Punjab State and Others*, and *Raghubans Saudagar Singh Vs. The State of Punjab and Others*, .

5. In our view it is unnecessary to consider the correctness of the decision of the Delhi High Court in this case. We must however point out that the report of the decision does not show whether the Administration (sic) placed before the Court any circumstances - ground in support of the Classification other than the Sex. We propose to rest our conclusion in this case on the facts placed before us and on the language of Article 16(2) of the Constitution as interpreted this Court and the Supreme Court. Article 16(2) of the Constitution of India runs thus:

(sic) no citizen shall, on grounds only of religion, (sic) race, caste, sex, descent, place of birth, (sic) residence or any of them, be eligible for, discriminated against in respect of any employment or office under the State.

6. In *Srimathi Champakam Dorairajan and Another Vs. The State of Madras, (sic) B.*, *Somasundram, J.* while interpreting Article 15(1) of the Constitution, which couched in almost the same terms, observed as follows:

The word "only" in the Oxford Dictionary (sic) the following meanings : Solely, merely, exclusively, by or of itself alone, without anything else". "Only" in the context there-(sic) means solely or for this reason alone. (sic) construed, the Articles mean that the (sic) discrimination or denial should not be on (sic) ground of religion, race, caste or language alone. It follows therefore that one (sic) the

grounds of discrimination or denial any be on the basis of religion, race, caste, language but it should not be the sole ground.

7. The same view is expressed by Chagla, J. IN *Dattatraya Motiram More Vs. State of Bombay*, in the following terms:

It must always be borne in mind that the discrimination which is not permissible under Article 15(1) is a discrimination which is only on one of the grounds mentioned in Article 15(1). If there is a discrimination in favour of a particular sex, that discrimination would be permissible provided it is not only on the ground of sex or in other words, the classification on the ground of sex is permissible provided the classification is the result of other considerations besides the fact that the persons belonging to that class are of a particular sex.

8. Recently, the Supreme Court consider the matter in *AIR India Vs. Nergesh Meerza and Others*, and expressed the same view. Dealing with Article 15(1) and Article 16(2) together, it is observed as follows:

Even otherwise, what Articles 15(1) and 16(2) prohibit is that discrimination should not be made only and on the ground of sex. These Articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other consideration. On this point, the matter is no longer res integra but is covered by several authorities of this Court. In *Yusuf Abdul Aziz Vs. The State of Bombay and Husseinbhoj Laljee*, , sex was held to be a permissible classification. While dealing with this aspect of the matter this Court observed thus (at page 322 of A.I.R.),

Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two articles read together validate the impugned clause in Section 497 of the Indian Penal Code.

9. The same view was taken by this Court in a later decision in *Miss C.B. Muthamma v. U.O.I.* (1979) Lab. S.C. 1307 : AIR 1979 S.C. 1868 where Krishna Iyer, J. speaking for the Court made the following observations (at page 18 70 of A.I.R.),

We do not mean to universalise or dogmatise that men and women are equal in ail occupations and all situations and do not exclude the need to pragmatise where the REQUIREMENTS OF PARTICULAR EMPLOYMENT, the sensitivities of sex or the peculiarities of societal Sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern.

10. In our case we are concerned with the job of a Nursing Tutor. The nature of the job is such that Women are more suited therefore than men.

11. The learned Government Pleader has pointed out that the reasons for

introducing the impugned rule have been set out in extenso in the counter affidavit and supplemental counter affidavit in the Writ Petition. The learned Single Judge has extracted them in full in the judgment under appeal. It is unnecessary for us to repeat them herein. We are convinced that the classification, or discrimination contained in the impugned proviso is based on several grounds and not on the ground of sex alone. Hence the same is not hit by Article 14 or Article 16(2) of the Constitution of India.

12. We agree with the conclusion of the learned Single Judge and dismiss this appeal as one without any merit, there will be no order as to costs.