

(1992) 12 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 958, 962, 1222, 1280, 1281, 1811, 1823, 1824, 1825, 2380, 2381, 2382, 2719, 2840 4115 4737 and 5864 of 1991 and 1992

Bina M. Cherian and Others

APPELLANT

Vs

State of Raj. and Another

RESPONDENT

Date of Decision : 09-12-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19

Citation : (1992) 2 RLW 533 : (1993) 1 WLC 391 : (1992) 2 WLN 255

Hon'ble Judges : Jas Raj Chopra, J

Bench : Single Bench

Judgement

Jas Raj Chopra, J.—Petitioners by the aforesaid writ-petitions some filed individually and some jointly, challenge refusal of admission to them in the training course conducted by the State of Rajasthan for training in Multi-purpose Health Workers, for short "M.H.W.". The State Government issued an advertisement on 30.3.1991 inviting applications for twenty seven districts keeping sixty seats in each training centre from lady candidates, who had passed secondary examination and condition No. 1 of that Notification is that person applying for getting training as M.H.W. should be a bonafide resident of Rajasthan, which is a course of eighteen months duration. The training will be imparted to lady health workers who will have to work in rural areas and will have to independently look after the health, family planning, nutrition, child health, family welfare and rural organisational activity in the villages. They have not to work under the Doctors as nurses but they will have to independently travel the villages for the aforesaid purposes. Not only this, it was also provided in the notification that for the training centres, established at Jaisalmer, Barmer and in the backward districts of Dungarpur, Sirohi and Banswara, the traninees will be selected only from those very districts and persons from other districts who are bonafide residents of Rajasthan will only be accommodated if requisite number of candidates from those very districts, are not available for training and

after imparting training, they will be given employment in those very districts. One has only to apply for getting training at one centre and those who apply for more than one centres, their applications will be rejected. It was also provided that if anybody has any grievance against his non-selection in the course, she may file an application before the Director, Medical & Health within one month of the publication of the selection list. On the basis of this notification, petitioners filled-up their forms for getting admission in the course. A notification also came to be issued on 17.5.91 in which it was provided that the candidates will have to abide by the conditions, mentioned in the notification dated 30.3.1991. The personnel of the Committee who will select the candidates for each centre was also nominated and it was claimed that the admissions will be finalised by 30.6.91. It has been claimed that this condition that one should be a bonafide resident of Rajasthan is unreasonable, unjust and arbitrary and, therefore, violative of Articles 14 and 16 of the Constitution and it results in denial of opportunity of employment and, therefore, it is violative of Article 19(1)(g) of the Constitution. It was claimed that the department itself has given permission to admit persons to the course by an order dated 24.10.1991 which has been filed as Annex. RJ/2 in the writ-petition, filed by Pennamma M.A. in the training centres of Pali, Samdari (Barmer), Sirohi, and Jaisalmer. It was further submitted that the department itself has permitted the transfers of trainees from one centre to another centre by relaxing the condition No. 10 of the Notification dated 30.3.1991 and has permitted transfers vide its order dated 16.12.91 marked as Annex. R.1/3 in the writ petition, filed by Pannamma M.A. bearing S.B. Civil Writ Petition No. 5864/91. Thus, when the department itself has issued orders for admission of the persons to the course in the month of October and has permitted the transfers to the candidates in the month of December, they cannot object to the admissions that have been granted under the orders of this Court. Certain instructions have been issued by the Chief Medical and Health Officer, Sirohi on 3.7.1991 copy whereof has been filed as Annex./4. The condition No. 12 of the Notification dt. 30/3/1991 is that during the training, requirements as regards attendance, leave etc. and other conditions of the training instructions that have been issued from time to time by the Rajasthan Nursing Council or by the department, will be applicable and accordingly by these instructions which have been issued by the Chief Medical and Health Officer, Sirohi, it was provided that during the entire training period, petitioners will be granted thirty days vacation and ten days" Medical Leave and the attendance in the lectures to the extent of seventy five percent will be compulsory otherwise petitioners will be debarred from taking up the examination. These instructions are general in nature and are applicable to every course to be run by every centre. While stating the general facts, it will be useful to give some individual details of the writ petitions. Petitioner Bina Cherian who filed her writ petition bearing No. 4734/91 on 12.9.1991, selected her centre as Sirohi. Petitioner K.P. Letha who filed her writ petition bearing No. 962/92 on 17.2.1992 on 25.4.92, selected her centre as Dnolpur. Petitioners namma Lokush Adomal P.T. who have filed their writ petition bearing No. 2381/92 on 24.5.92 selected their centre as

Chittorgarh. Petitioner Lija Jhon who has filed her writ petition bearing No. 2380/92 on 25.4.1992, selected her centre as Banswara. Petitioner T. Sindhu who has filed her writ petition bearing No. 4115 of 1992 on 4.8.92, selected her centre as Bikaner. Petitioners Miss. Rajni, Miss Jeeji K.G. and Miss Sojmol Kurian who have filed their writ petition bearing No. 2840 of 1992 on 18.5.1992, selected their centre as Bikaner. Petitioner Pennamma M.A. who has filed her writ petition bearing No. 5864/91 on 21.10.1991, selected her centre as Sirohi. Petitioner Rebecar who has filed her writ petition bearing No 1811/92 on 24.3.1992, selected her centre as Banswara. Petitioners Baby Mathew and Annama P.C. who have filed their writ petition bearing No. 958/1992 on 17.2.92, selected their centre as Sirohi. Petitioner Lissy T.V. who has filed her writ petition bearing No. 1222/92 on 28.2.1992, selected her centre as Sirohi. Petitioner Bindu K.S. who has filed her writ petition bearing No. 1281/92 on 3.3.92, selected her centre as Banswara. Petitioner Anama Kurian who has filed her writ petition bearing No. 1280/92 on 3.3.1992, selected her centre as Nagaur. Since they are Keralitees and not bonafide residents of Rajasthan but are living here, therefore, they have not been given admission in the course. Petitioner Sushila who is a resident of Ajmer, filed her writ petition bearing No. 2719/92 on 11.5.1992 selecting her centre as Jalore for her admission. Petitioners Narendra Kaur, Pavinder Kaur, Bhupendra Kaur and Sarabjeet Kaur, all residents of Ganganagar, have filed their writ petition bearing No. 1823/92 on 24.3.92 selecting their centre as Ganganagar but in the T.I. granted in their favour on 3.4.92, they have been allocated Jaisalmer centre. Likewise Neeta who has filed her writ petition bearing No. 1824/92 on 24.3.1992 is a resident of Salumber and has applied for admission in Udaipur centre. She has not given the total marks, obtained by her or percentage of marks but she states that she is at merit No. 2 in the selecte list. By T.I. dated 3.4.92, she has been admitted in Udaipur centre. Petitioners Manjula Vaishnav, Beena Gehlot and Praveena belonging to Banswara and Bagidogra have filed a joint petition bearing No. 1825/92 claiming that they stand in merit at Nos. 6, 1 and 7 respectively but inspite of the fact that they are meritorious, they have been denied admission. Likewise Smt. Usaha Devi who has filed her writ petition bearing No. 2382 of 1992 on 25.4.92, belongs to Bhagakot Distt. Banswara and she has selected her centre at Banswara but she has been refused admission and in her case, a T.I. was granted on 4.5.92 granting admission in the course at Jaisalmer.

2. Petitioner Bina M. Cherian in her writ petition bearing No. 4734/91 has claimed that although she got more marks than the last person, admitted but she has been refused admission simply because she belongs to Kerala whereas admission has been given to Lija Jhon who also belongs to her native place and, therefore, admission should not have been refused to her. In reply on behalf of the State Govt., it has been claimed that Lija Jhon had produced a certificate of bonafide resident of Rajasthan and, therefore, she was given admission and admission to Bina M. Cherian has been refused because she is not a bonafide resident of Rajasthan. However, she was given provisional admission on

19.9.1992 as an interim measure by this Court. Petitioner K.P. Letha has not stated that how many marks she has got and what is her percentage of marks but she has stated that she obtained requisite percentage of marks and her name finds place in the merit list but she has been denied admission because she did not belong to Rajasthan. This condition is only a guideline and it is not a rule and, therefore, she ought to have been given admission. However, she was granted provisional admission in the centre of Dholpur by an interim order dated 18.2.1992. In reply, it has been claimed that she was lower in merit and, therefore, she was ineligible to be admitted for training and she has been refused admission because she is not a bonafide resident of Rajasthan. It has further been claimed that the condition that one should be bonafide resident of Rajasthan to get admission to the course, is a reasonable condition because the persons who are poor and below the poverty line in this backward area have to be helped in granting admission to the training course because they cannot compete with educated people of other States and, therefore, there is no violation of Article 19(1)(g) of the Constitution. A reply has been filed in writ petition No. 2381/92 wherein to the claim of the petitioners Anamma Lukosh and Adamol P.T. that they secured requisite marks and their names appeared in the merit list, the State has taken a plea that this is highly belated petition which has been filed after one year. A Division Bench of this Court in Meena Kumari v. State and Ors. D.B.Civil Appeal No. 23/91 decided on Jan. 1, 1991 has observed that in a course of duration of 18 months, one cannot be admitted after eight months. As the writ petitions are highly belated, admission should be refused because training has got a meaning and it is not an empty formality. It was further claimed that there is no vacancy and condition of bonafide resident of Rajasthan can be imposed by the State Govt. In reply to this writ petition, it was also claimed that the State Govt. has a right to give preference to the residents of Rajasthan and that it is not violative of Articles 14 and 16 of the Constitution or of Article 19(1)(g) of the Constitution of India. It may be stated here that although the State has taken the plea that it can give preference to the persons belonging to Rajasthan but so far as notification dated 30.3.91 is concerned, it is not a case of giving preference to the persons belonging to Rajasthan. There is an exclusive reservation for the bonafide residents of Rajasthan. Nobody else can be given admission in this training course and, therefore, it is a case of total exclusion of others who are not bonafide residents of Rajasthan. It is not a case of giving preference to the persons belonging to the Rajasthan. Miss Lija Jhon has also claimed that she secured requisite marks and her name existed in the select list but she has been refused admission because she is not a bonafide resident of Rajasthan. In reply, it was claimed that she is much below in merit at No. 197. Her name does not even appear in the waiting list. Persons higher in merit than her i.e. Loji George having her merit at No. 182, Harinder Kaur standing in merit at No. 183, Usha standing in merit at No. 184, Mithilesh standing in merit at No. 185, Veer Kaur standing in merit at No. 186 and Ts.S.A. standing in merit at No. 187, have not been given admission and, therefore, person standing in merit at No. 197 could not have been given admission. This

condition of bonafide resident has been imposed to bridge the pool of Language and to provide the stable service who are accustomed to the atmosphere, conditions & climate of this place. A reply has also been filed in the case of Pennamma M.A. but that has not been tagged with the record. A rejoinder to the reply has also been filed by Mr. Kall on behalf of Pennammaz M.A. in which it has been claimed that admissions have been given upto 24.10.1991 and 16.12.1991 and the last person admitted is Narayan Singh securing 31.18% marks whereas petitioner has obtained 35.5% marks.

3. It is no doubt true that all these petitioners who have filed the aforesaid writ petitions, have obtained higher marks than the person last admitted to the course and it has been checked-up from the documents that have been filed by the State Govt. wherein lists of persons who have been admitted to the course, have been given. It has also been stated on behalf of the State that even after giving admissions to the persons under the orders of this Court, the vacancies still exist in different centres. There are still two vacancies in Sirohi, four in Jodhpur, fourteen in Jaisalmer, 14 in Jalore, 15 in Barmer, 4 in Udaipur, five in Banswara, four in Chittorgarh, four in Kota, five in Bundi, twenty in Jhalawar, four in Ganganagar, 7 in Bharatpur, 4 in Alwar, 29 in Dholpur & 13 in Jhunjhunu. The details of the persons admitted and the vacancy position have been furnished by the State in detail in joint statement, filed in all the writ petitions, under the orders of this Court. It was, therefore, claimed by the learned "counsel for the petitioners that even if these persons are allowed to continue in the course, it is not going to affect anybody because vacancies still exist and the bonafide residents of Rajasthan are not available to fill-up those vacancies and, therefore, their admission ought not to be cancelled simply on the ground that they are not bonafide residents of Rajasthan. Moreover, it was claimed that such a wholesale reservation for the residents of Rajasthan is against the spirit of Article 14 of the Constitution. It can at the most be seventy percent. The petitioners themselves have claimed that in such course, preference can be given to the bonafide residents of Rajasthan but keeping the entire seats reserved wholesale for the residents of Rajasthan is arbitrary, unjust and unreasonable and to that extent, this condition deserves to be declared as unconstitutional. It was also claimed that it is against the Nursing Council Rules that have been framed. Reference in this respect was made to the earlier rules of 1990 in which it was provided that preference will be given to the bonafide candidates from Rajasthan.

4. I will deal-with that aspect of the matter a little later but presently I am dealing-with the argument of the learned Counsel for the petitioners as regards the wholesale reservation of the seats. Education is a fundamental right but training is not. This is a specialised training, imparted for special purposes and, therefore, it was claimed by Mr. Bhati that in such courses or training, wholesale reservation is possible and it is neither unreasonable nor unjust nor arbitrary. In reply to this submission, Mr. P.P. Chaudhary, assisted by others, submitted that such a wholesale reservation is against the spirit of Article 14 of the Constitution

of India and in this respect, reliance has been placed on a decision of their lordships of the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, . That was a case of admission to the Medical College which has now been considered to be a fundamental right, although earlier it was not. Getting education in an institution is a fundamental right as has been held by their lordships of the Supreme Court recently but getting training is not fundamental right. Be that as it may, their lordships observed in the said decision that residence requirement for admission to college in a State is not violative of Article 16(2) of the Constitution. That article prohibits discrimination on the ground of place of birth and not on the ground of residence and, therefore, if any reservation is made on the ground of bonafide resident of Rajasthan, it cannot be struck down as unconstitutional or being violative of Article 14 of the Constitution. However, such a reservation may attract the vice of Article 14 of the Constitution i.e. equality before law and equal protection of law and in this respect, their lordships observed as under:

Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment.... The concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. In a heirarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, infact, legal equality always tends to accentuate it. Equality in law must produce real equality; de jure equalityed facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas.

5. Their lordships further observed that however such reservation should in no event exceed the outer limit of 70 percent of the total number of open seats after taking into account other kinds of reservations validly made. Accordingly, wholesale reservation made by some of the State Governments on the basis of domicile or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the University or the State excluding all students not satisfying these requirements, regardless of merit was held to be unconstitutional and void as being in violation of Article 14 of the Constitution. Although this is decision as regards the admission to the College and not to training course which is not anybody's fundamental right but when their lordships observed that for admission to any secular educational course for cultural growth, training facility etc., Article 14 is

attracted and, therefore, to that extent, the wholesale reservations of seats for bonafide residents of Rajasthan it was argued, appears to be unjust and arbitrary. After making reservations for all Scheduled Caste candidates, Scheduled Tribe candidates, handicapped and other persons, 70% seats of the general quota should be reserved for the bonafide residents of Rajasthan and rest of the seats should have been kept open for admission to the other candidates. The earlier notification that preference will be given to the bonafide residents of Rajasthan, was quite proper. Keeping it reserved entirely for the bonafide residents of Rajasthan has resulted in keeping number of vacancies unfilled because woman candidates are not available. There is no unreasonableness or unjustness if a provision is kept that in imparting such training by the State Govt., preference will be given to the bonafide residents of Rajasthan. If sufficient number of bonafide residents of Rajasthan are not available then admission can be given to others but refusing admission to others even when seats are vacant and sufficient number of persons who are bonafide residents of Rajasthan, are not available, it serves no purpose. In a training course at each centre, the vacancies, which cannot be filled-up by the bonafide residents of Rajasthan, should be allotted to others who may take advantage of it. I have already said earlier that training is not a fundamental right and, therefore, even if such a clause is there that preference will be given to the bonafide residents of Rajasthan then the same cannot be treated to be unjust and arbitrary and if sufficient number of persons are available who are bonafide residents of Rajasthan, such a course can be adopted but if they are not available then suitable candidates from other States who possess requisite merit, should be admitted to the course so that they may also take advantage of this facility. It is not a case of employment. It is only a training which may and may not result in employment and, therefore, to that extent Article 14 of the Constitution may not be applicable in the letter and spirit but still as observed by their lordships of the Supreme Court, the care should be taken because when suitable persons from Rajasthan are not available, others should not be denied the facility of training when seats are vacant. It was claimed by the petitioners that this notification dated 30.3.1991 which has been approved by a notification dated 17.5.1991 is against the Nursing Training Course Rules which have been filed as Annex. 10 in the writ petition filed by Pennamma M.A. Rule 6.3 of those rules provides that preference shall be given to the candidates who are bonafide residents of Rajasthan and, therefore, this provision that only bonafide residents of Rajasthan will be given admission is against the rules that have been framed by the Rajasthan Nursing Council. This submission cannot be countenanced. This rule pertains to the nursing course. This course is not a nursing course. It is different from a nursing course because in the nursing course, the training period is three years and those nurses work under the guidance of the Doctors. Here, they have to be trained in multi purpose course and its training period is one and half years. The minimum qualification for admission to this course is secondary with no preference to subjects like Physics, Biology and Chemistry whereas in the notification dated 16.1.1991, issued by the Govt. of Rajasthan in exercise of the

powers conferred by Sub-section (1) of Section 33 of the Raj. Nurses, Midwives, Health Visitors and A.N.M. Registration Act, 1964, a copy of which has been produced as Annex. 4 in the writ petition bearing No. 2840/1992 filed by Miss Rajni and Ors. by which the rules called as General Nursing Training Course, 1990, have been introduced, even the condition of bonafide residence of Rajasthan has no connection with this course. That is a three years" course where the age limit is between 17 to 28 years in the case of male and 17 to 34 in the case of female whereas here as per notification dated 30.3.1991, the maximum age limit is 32 years and the qualification for M.H.W. course is matriculation i.e. secondary pass whereas in three years" course, one must have passed either 10 + 2 examination i.e. Senior Higher Secondary examination with Physics, Chemistry and biology or first year course of three years" degree course in the old scheme from any University, established by law. Thus, the training period, eligibility etc. of the two courses are different. The conditions in which they work, are also different and, therefore, that notification has no concern with this course which is eighteen months course of a specialised type for training M.H.Ws.

6. It was next claimed by Mr. Kalla as also by Mr. Anand Purohit, learned Counsel appearing for the petitioners that when the State Government itself has admitted certain persons in the training course vide its order dated 24.10.91 and has transferred certain persons vide its order dated 16.12.91, it cannot be claimed on the strength of the decision, rendered in Meena Kumari's case (supra) that the admissions given should be struck down. In this course, it has been made compulsory that there should be 75# of attendance and, therefore, if any admission has been granted by the month of October in the course which has started on 3.7.91, one can fulfil 75% of her attendance. So far as the order dated 16.12.1991 is concerned, it is a case of transfer from one centre to another. Persons have been admitted in one centre and for their convenience by relaxing the rule, they have been transferred and. therefore, they cannot be equated with admissions, granted to most of the petitioners in the months of Feb., April, May etc. in the year 1992 because by that time, almost nine to eleven months have already elapsed and persons cannot complete their 75% attendance by joining the course. Notification dated 30.3.1991 provides that if anybody is aggrieved by her non-selection in the merit list, she must file her representation before the Director within one month of the publication. They have not availed that facility and have filed their writ-petitions much later except Bina M. Cherian who has filed her writ petition on 12.9.1991 and Pennamma M.A. who has filed her writ petition on 21.10.91 i.e. within the aforesaid period of four months and rest of them have not availed that facility within the aforesaid period and they all have filed their writ-petitions between February 1992 to May 1992 and therefore, as per Meena Kumari's decision (supra), they are not entitled to any relief. However, so far as the petitioners Sushila, Narendra Kaur, Pavinder Kaur, Bhupendra Kaur, Sarabjeet Kaur and Neeta are concerned, they are bonafide residents of Rajasthan. Petitioner Sushila got 47.27% of marks and

applied for Jalore centre where the last woman admitted is Sulochna who got 34.18% of marks. It is not known why her admission has been refused because no reply has been filed. As regards the petitioners Narendra Kaur, Pavinder Kaur, Bhupendra Kaur and Sarabjeet Kaur, it was submitted that they secured 64.62%, 62.33%, 40.62% & 54.33% of marks respectively and the last woman admitted in Ganganagar centre is Beena who got 34.87% marks. Admissions have also been given to Rosali Vargese who got 38.3%, Mst. Kujomal K.K. who got 35% marks and Mst. Vijayamma who got 35% marks. Thus, the petitioners getting more marks, have been refused admission and, therefore, it cannot be known why inspite of the fact that they are bonafide residents of Rajasthan, they have been refused admissions. However, they were given admission in Jaisalmer centre on 3.4.92 under the interim orders of this Court. Petitioner Neeta says that her name exists at S. No. 2 in the merit list but she has not been given admission in Udaipur centre. She has been given admission in Udaipur centre only on 3.4.92 under the interim order of this Court. She did not give her exact marks but being a resident of Salumber, she was entitled to be admitted to the course when as per the list, furnished by the respondents, Udaipur still has four more seats vacant after giving admissions to two persons under the orders of this Court and, therefore, there was no reason to refuse her admission. So far as the petitioners Manjula Vaishnav, Beena Gehlot and Praveena arc concerned, although they claim that they stand in merit at No. 6, 1 and 7 respectively but from certain documents, filed by Mr. Anand Purohit, it is clear that Praveena's name finds mention in the waiting list and from the letter dated 20.9.1991 which has been issued by the Addl. Director, Training, Medical and Health Department, Jaipur, it is clear that Manjulla Vaishnav and Beena Gehlot stand at Nos. 107 and 111 respectively in the merit list and, therefore, they were not included in merit list and, therefore, they were not included in the reserve list also. However, they were informed that if their Certificates show that they have passed their higher secondary examination from M.P, Board with English, they should be given admission. It appears that that letter has not been acted upon and, therefore, they had to file a writ petition, therefore, these three candidates are also entitled to get admission because their names appear in the reserve list or in the aforesaid letter dated 20.9.1991. They have been given provisional admission in Jaisalmer centre under the interim order of this Court on 3.4.1992. They were even otherwise eligible and entitled to be admitted to the course. Likewise the petitioner Ushadevi who is resident of Bahagkot District Banswara, filed her writ petition bearing No. 2382/92 on 25.4.92 claiming that her name finds place in the merit-list but she has been granted admission in the Jaisalmer centre under the interim orders of this Court on 4.5.92. She has not disclosed her marks and, therefore, it was difficulat to find out whether persons, lower in merit than her, have been admitted to the course but when the seats are vacant, she being a candidate of Rajasthan was entitled to be admitted, if others were not ready and willing to join the course. So far as the rest are concerned, they don't belong to Rajasthan and are not entitled to be admitted to the course and moreover, they have filed their writ-petitions with great delay but this being the first year in

which the course has been started, I take a compassionate view and order that their admission also, be regularised. However, these persons having filed the writ petitions after great delay, will not be entitled to any stipend. They will prosecute their studies at their own cost and they will have to complete 75% of the attendance and will have to perform all other legal formalities for being entitled to be admitted to the examination of M.H.W. to be conducted by the Rajasthan Nursing Council. If their training period is to be extended, it be extended so far as this particular course is concerned. They cannot claim as of right that their training course should be extended. The Institution is not obliged to extend their course to help such persons who come to the Court much late but most unfortunate aspect of the matter is that the learned Single Judge who gave the decision in Manjulata's case that such an indulgence should not be granted, granted ad-interim stay orders in favour of the petitioners and that is what has been claimed by the learned Counsel for the petitioners that the very Bench which rendered the judgment in Manjulata's case has granted this stay order and, therefore, it should be ignored. When there is a D.B. decision that no body is entitled to undergo a course after a delay of eight months when the entire course is of 18 months and where a person is required to compulsorily fulfil the attendance of 75% then neither such writ petition should be admitted nor any stay order should be granted in their favour. As said earlier, it is a special type of course where training is much material because these workers will go to the field and work independently and not under the active guidance of Doctors who can cover-up their mistakes and, therefore, the period of training is very material in such course and so in future if the State wants to admit anybody else from outside the State, it should amend its rules keeping in view the decision of the lordships of the Supreme Court in Dr. Pradeep Jain's case (supra) and should consider the applications of the outsiders on merits accordingly but in no case in future, such belated writ petition should be admitted and no facility of interim stay orders should be granted to those who file such belated writ petitions.

7. I have already stated that this training course is a specialised type of training course and it has nothing to do with the rules that have been framed to govern the nursing course and, therefore, it is for the State Govt. to re-frame these rules in a manner where preference should be given to the bonafide residents of Rajasthan and if some vacancies still remain unfilled then the same be filled-up by the general category of candidates. Such a direction is possible as per the decision of their lordships of the Supreme Court in Chandigarh Administration and another Vs. Manpreet Singh and others, and, therefore, the State Government is accordingly directed to re-consider a change in the rules in the light of the aforesaid observations.

8. An ancillary argument was developed by the learned Counsel for the petitioners that the petitioners have not concealed any facts and, therefore, if any admission has been granted by the Institution then the candidates cannot suffer. Here, no admission has been granted by the Institution i.e. the training Centre. All the petitioners have been admitted to the course under the orders of

this Court and, therefore, the authorities cited by the learned Counsel for the petitioners which lay down that if wrong admission has been given by the Institution and when the candidate is not guilty of suppression of facts, the admission cannot be cancelled have no application.

9. It was also claimed by the learned Counsel for the petitioners that the State Govt. cannot lay down any conditions for eligibility over & above those which are provided by the Rajasthan Nursing Council Rules. This argument has no substance. It has been held by their lordships of the Supreme Court in *Ombir Singh and Ors. etc. etc. v. The State of U.P. and another etc. etc.* reported in JT 1992 (4) SC 576 that the State Govt. can lay down eligibility qualifications for admission in addition to the eligibility criteria laid down by the Medical Council. Thus, it cannot be canvassed that the State Govt. cannot further lay down any criteria over and above the one which has been laid down by the Rajasthan Nursing Council Rules or Indian Nursing Council Rules.

10. It was pointed-out that the Director, Medical and Health Services, has also written to the Chief Medical Officer that the vacant posts which are reserved for S.C. and S.T. should be filled-up by general category of candidates. That argument does not help the petitioners because the Director, Medical and Health does not refer to the general category of the candidates who are not bonafide residents of Rajasthan. He has only informed the Chief Medical Officer that if S.C. and S.T. candidates are not available against the reserved quota, these posts should be filled-up by the general category of candidates who are bonafide residents of Rajasthan. Thus, to that extent, this argument is not available to them.

11. Some other authorities have been cited by Mr. Bhati to show that the wisdom of the academian should not be interfered by the Court but they have no application to the facts of the present case. Here, it is not a case of super-imposing the will of the Court over the academic bodies or sitting as an Appellate Court over the decision of the academic bodies. The fact of the matter is that adequate number of candidates are not available according to the criteria, fixed by the State Govt. and inspite of giving admissions to the candidates under the interim orders of this Court, still number of posts are lying vacant in different centres as mentioned herein before and, therefore, the criteria of Rajasthan Nursing Rules should be adopted wherein it has been provided in Rule 6.3 that preference shall be given to the bonafide residents of Rajasthan and if they are available, then select them and if they are not available, then they should be filled-up by general category of candidates. No hardened attitude should be adopted in such matters to debar the candidates from outside totally when bonafide residents of Rajasthan are not available to fill up the vacancies which exist in different centres of training of M.H.W. course.

12. In the result, keeping in view all these facts and circumstances of the case, the writ petitions, filed by the petitioners are allowed. Petitioners be allowed to continue the course at their own costs except Bina M. Cherian and Pennamma

M.A. who will be granted stipend only upto the end of the course of 18 months which started on 3.7.1991 and thereafter they will study at their own cost to make them eligible for appearing in the examination and so far as the rest of the candidates are concerned, they have not come to the Court in right time and, therefore, they are disentitled to the stipend. They will undergo this course at their own cost and they should be made entitled to appear in the M.H.W. examination only when they complete the required attendance and other formalities which will render them eligible to appear in the said examination, held by the Rajasthan Nursing Council. This decision is per incuriam i.e. on its own facts and will not confer any right on any of the candidates in future. However, a direction is given to the State Government to consider a change in the rules to the extent that the admissions should not be limited only to the bonafide residents of Rajasthan but it may be so modified as to give preference to the bonafide residents of Rajasthan and this is also the stand, taken by the State Govt. in its reply to the writ petition bearing No. 4734/91 filed in Bina M. Cherian and Ors. and, therefore, when the State itself is taking the plea to grant the admissions to bonafide residents of Rajasthan on preferential basis, total exclusion of other candidates should be avoided.

13. All these writ petitions are decided accordingly with no orders as to costs.