

(2022) 07 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1623, 1625 Of 2021, Civil Miscellaneous No. 5443, 5446 Of 2021

Hanifa Deva And Others Arshad Hussain And Others

APPELLANT

Vs

Director SKIMS

RESPONDENT

Date of Decision : 05-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(1)
Sheri- Kashmir Institute Of Medical Sciences Subordinate Services Recruitment Rules 1998 — Rule 5

Citation : (2022) 07 J&K CK 0010

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Arif Sikandar, M. A. Chashoo

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. Whether the classification made on the basis of educational qualification for promotion offends Article 14 and 16 of the Constitution of India, is the precise question that falls for consideration in these two writ petitions.

2. Briefly put, the facts leading to filing of these two writ petitions are that the petitioners are serving in the Sheri-Kashmir Institute of Medical Sciences Soura, Srinagar (SKIMS) as Staff Nurses. They claim to have rendered their services as Staff Nurses for last 27 years. Admittedly, all of them, at the time of their appointment, were matriculates and possessing three years diploma in General Nursing and Midwifery. It is the case of the petitioners that right from the date of their appointment till 1998, there were no recruitment rules issued by the respondent Institute. It was only on 22.05.1998, that the respondents promulgated the Sheri- Kashmir Institute of Medical Sciences Subordinate Services Recruitment Rules 1998 (for short "Rules of 1998").

3. As per Rule 5 of the Rules of 1998, no person was eligible for appointment or promotion to any post in any class, category or grade in the service unless he possessed the qualification as laid down in Schedule "II" of the Rules. Intentionally or for the reasons best known to the petitioners, Schedule II appended with the Rules of 1998 is not annexed with the writ petitions.

4. Be that as it may, the grievance of the petitioners is now directed against Government order No.75-SKIMS of 2014 dated 24.10.2014 by virtue of which in partial modification to Government orders issued from time to time, sanction was accorded to the modification of recruitment rules for various categories of staff working in the Institute as detailed in the Annexure "A" appended with the aforesaid Government Order. So far as the post held by the petitioners is concerned, the same figures at S.No.7 of Annexure "A". The post is now provided to be filled up 100% by promotion from Staff Nurse possessing B.Sc nursing/ M.Sc nursing from amongst persons having at least 05/02 years service respectively. The next promotion as per the amended recruitment rules is to the post of Senior Staff Nurse which figures at S.No.06 of the Annexure "A" appended to the impugned Government Order. It provides the post of Senior Staff Nurse is to be filled up 100% by promotion from Staff Nurses possessing B.Sc Nursing or M.Sc Nursing. For facility of reference, the relevant extract of the impugned Government order alongwith annexure "A" is reproduced hereunder:-

"GOVERNMENT ORDER NO.75-SKIMS OF 2014 DATED: OCTOBER 24,2014

In partial modification of Government Orders referred to above, and any other order issued regarding the subject, sanction is hereby accorded to the modification of recruitment rules for various categories of staff (Gazetted/Non-Gazetted/Technical and Supportive) as detailed in Annexure-A to this order.

It is further ordered that the Selection Committee while considering the selection of the eligible employees for promotion to the next higher posts shall recommend the eligible employees on the basis of Grading of APR'S and, Performance in interview besides the Selection Committee for selection of promotional staff for Gazetted positions shall be assisted by two external experts.

Annexure "A"

S.No.

Name of the post

Recruitment Criteria

06.

Sr. Staff Nurse

9300- 34800+4600

100% by promotion from staff Nurse (9300- 34800+4300) possessing B.Sc Nursing/M.Sc from amongst persons having 05/02 years service respectively.

Staff Nurse 9300-34800- 4300/9300- 34800+4260

100% by direct recruitment in the grade of 9300-3400+4260 from amongst persons possessing B.Sc Nursing/Post Basic Nursing.

Higher grade of 9300-34800+4300 to be released after 5 years service in the grade of 9300-43800+4260

5. It is this prescription of minimum qualification of B.Sc Nursing provided for promotion to the post of Sr. Staff Nurse, the petitioners are aggrieved of and have challenged the same inter-alia on the ground that the classification made by the respondents between a Staff Nurse possessing three years Diploma in General Nursing and Midwifery and a Staff Nurse possessing the qualification of B.Sc Nursing for the purpose of making promotion to the post of Sr. Staff Nurse, falls foul of Article 14 and 16 of the constitution and therefore, the same is not permissible.

6. It is contended by Mr. Arif Sikandar, learned counsel for the petitioners that petitioners having served the respondent institute as Staff Nurses for about 27 years have entertained legitimate expectation that they would be promoted to the next higher post of Sr. Staff Nurse in course but because of the impugned Government Order, laying down modified criteria for various posts including the post of Sr. Staff Nurse, the petitioners have been deprived of their right to promotion to the post of Senior Staff Nurse for all times to come. In support of his argument, Mr. Arif, relies upon the following judgments:-

(i) Col. A.S. Iyer and others Vs. Balasubramanyam & Others (1980) 1 Supreme Court Cases 634.

(ii) Punjab State Electricity Board Patiala & another Vs Ravinder Kumar Sharma & Others (1986) 4 Supreme Court Cases 617.

(iii) Union of India and Others vs. Atul Shukla and Others (2014) 10 Supreme Court Cases 432.

7. Per contra, Mr. M.A. Chashoo, learned counsel for respondents submits that classification on the basis of higher qualification is permissible under law and this was so settled by the Hon"ble Supreme Court way back in the year 1974 in the case of State of Jammu & Kashmir Vs. Triloki Nath Khosa 1975 SC I.

8. Having heard learned counsel for the parties and perused the record, I am of the view that issue raised by learned counsel for the petitioners and set out in the beginning of this judgment is no longer Res-Integra. It is well settled that Article 14 and 16 of the Constitution does not permit the State to treat un-equals as equals, for that is not the spirit of the principle of equality envisaged under Article 14 & 16 of the Constitution. What Article 14 prohibits is class legislation and not the reasonable classification. To pass the test of Article 14, classification needs to meet only two requirements: one that there is intelligible differentia

between those grouped together and others who are kept out of the group; second that there exists a rational nexus between the intelligible differentia and object of the classification sought to be achieved. In short, though permissible, the classification must not be arbitrary and irrational. It must be only based on some quality and characteristics which are found in all the persons grouped together in contra-distinction of those who are left out but such quality and characteristics should bear reasonable nexus with the object sought to be achieved by such classification.

9. Hon^{ble} Supreme Court in the case titled E. P. Royappa Vs State of Tamil Nadu 1974 (4) SCC 3 examined the extent and sweep of Article 14 of the Constitution at reasonable length. Para 85 of the judgment authored by Justice P.N.Bhagwati beautifully delineates the concept of permissible classification under Article 14 in the following words:-

"85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of 14 and 16. Art. 16 embodies the fundamental guarantee that Arts. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art.

14. In other words, Art. 14 is the genus while Art 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so Would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on relevant principles applicable alike to all similarly situated and it must not be guided by any

extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would :amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the matter comprehends the former. Both are inhibited by Arts. 14 and 16.”

10. The question as to whether there could be classification on the basis of educational qualification in the matter of promotion, was set at rest by Constitution Bench of Supreme Court in the case of State of Jammu & Kashmir Vs. Triloki Nath Khosa 1974 AIR (1974 SCR (1) 771) in which the Constitution Bench considered the issue whether persons recruited from different sources and integrated into one class can be classified on the basis of their educational qualification for promotion. The question was answered by the bench in affirmative and it was held that the Rules which provide that the graduate engineer alone shall be eligible for higher promotion to the exclusion of diploma holders does not violate articles 14 and 16 of the Constitution. Strong reliance was placed on the earlier Constitution Bench judgement of the Supreme Court rendered in the case of State of Mysore & Anr. Vs. P.Narsinga Rao AIR 1968 SC 349 in which the Supreme Court had categorically held that Article 16 (1) of the Constitution does not bar the reasonable classification of employees or reasonable test for their selection. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down the qualifications for the post in question.

11. Close on the heels is a three judge bench judgment of the Hon”ble Supreme Court rendered in the case of Ashok Kumar and Others Vs State of J&K and Others 2021 SCC online SC 24.

12. In the aforesaid case before Supreme Court, the appellants had assailed a Division Bench Judgment of this Court, whereby the judgment passed by writ court [”Single Bench”] filed by matriculate Senior Assistants had been allowed holding that the prescription of minimum qualification of graduation for promotion to the post of Head Assistant by the High Court was violative of Article 14 and 16 of the Constitution of India, in that, the High Court was not competent in law to make classification between those Senior Assistants who were possessing graduation qualification and those who were only matriculates and were not possessing such qualification. The writ court allowed the writ petitions and quashed the order of the Chief Justice dated 24.10.2008, primarily on the ground that all the persons working as Senior Assistants constituted a homogeneous group, hence, there could be no differentiation among them on the basis of educational qualification.

13. The order of writ court was challenged by the aggrieved parties before the Division Bench of this Court by filing a set of Letters Patent Appeals. These

appeals were dismissed by the Division Bench. The Division Bench order was assailed by the graduate Senior Assistants before the Hon^{ble} Supreme Court in the case of Ashok Kumar (Supra). Hon^{ble} the Supreme Court, after deliberating upon the issue and considering the question raised by the appellants, in paras 33, 34 and 35 held thus:-

"33. Way Back in 1968, the Constitution Bench of this Court held in the State of Mysore & Anr. vs. P. Narasinga Rao, that Article 16(1) does not bar a reasonable classification of employees or reasonable test for their selection. It was further held that the provisions of Article 14 or Article 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down qualifications for the post in question. Despite the fact that the competing parties who were before this Court in the said case were employed as Tracers, carrying out the same duties and 1 AIR 1968 SC 349 responsibilities, the Bench held in that case that the classification of Tracers, into two types with different grades of pay, on the basis that one type consisted of matriculates and the other non matriculates, is not violative of Articles 14 and 16. Again in State of Jammu & Kashmir vs. Triloki Nath Khosa & Ors., another Constitution Bench considered the question whether persons drawn from different sources and integrated into one class can be classified on the basis of their educational qualifications for promotion. The Constitution Bench answered the question in the affirmative holding that the Rule providing for graduates to be eligible for promotion to the exclusion of diploma holders is not violative of Articles 14 and 16 of the Constitution.

34. In T.R. Kothandaraman vs. Tamil Nadu Water Supply and Drainage Board, the legal position in this regard was summarised as follows: (i) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances; (ii) Higher educational qualification can 2(1974) 1 SCC 19 3(1994) 6 SCC 282 be the basis not only for barring promotion, but also for restricting the scope of promotion; (iii) restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion.

35. As pointed out in T.R. Kothandaraman (supra), the Court shall have to be conscious about the need for maintaining efficiency in service, while judging the validity of the classification. Though the High Court took note of these decisions, the High Court fell into an error in thinking that in the facts and circumstances of the case, the High Court could not establish the necessity for higher qualification for the efficient discharge of the functions of higher posts. It is apparent from the facts and circumstances of the case that the non graduates have had opportunities to qualify themselves, which they have also done. Therefore, the prescription of graduation as a qualification for promotion to the post of Head Assistant cannot be held as violative of Articles 14 and 16."

14. From the aforesaid judgment, there should be left no doubt in the mind of anybody that the classification on the basis of educational qualification for

promotion is permissible in law and does not offend Article 14 and 16 of the Constitution of India. The prescription of higher qualification like in the instant case, the qualification of B.Sc Nursing/M.Sc Nursing for promotion to the post of Senior Staff Nurse from the post of Staff Nurse is essentially for efficient discharge of duties of higher post. Therefore, nothing prevents respondents to prescribe higher technical qualification for the purpose of promotion to the next higher post.

15. The plea of learned counsel for the petitioners that classification made by the respondents in the instant case does not have any rational nexus with the object sought to be achieved, cannot be accepted on the face of settled legal position and also having regard to the nature of duties a Senior Staff Nurse or higher Technical posts in the Health Sector, are required to perform.

16. The judgments relied upon by learned counsel for the petitioners are besides the point and cannot be understood laying down prohibition on making classification on the basis of "Educational Qualification" for promotion in any service. The judgment of the Supreme Court in the case of Col. A.S. Ayer (supra), which is a Constitution Bench judgment, clearly lays down that the mandate of Article 14 and 16 of the Constitution is not to treat unequals as equals.

17. Admittedly, the Staff Nurse possessing qualification of three years Diploma in General Nursing and Staff Nurses possessing qualification of B.Sc Nursing, cannot be at par and therefore, are unequal because of their qualification. It would, therefore, not be obligatory for respondents to treat these two unequals as equals. Similar plea, as raised by the learned counsel for the petitioners herein, has been negated by the Supreme Court in case Ashok Kumar (Supra) where a similar argument was raised on behalf of the respondents that all the persons working as Senior Assistants whether graduate or undergraduate constitute a homogeneous group, therefore, there cannot be any differentiation amongst them on the basis of educational qualification. The plea found favour with the High Court but the same has been rejected by the Supreme Court relying upon the Constitution Bench judgment of the Supreme Court in the case of Triloki Nath Khosa (supra) and followed by judgement in the case of T.R.Kothandaraman Vs Tamil Nadu Water Supply and Drainage Board (1994) 6 SCC 282. The judgment relied upon by the petitioners in the case Atul Shukla (supra) does not lay down any different proposition of law much less the proposition that supports the argument of Mr. Arif Sikandar Mir, learned counsel for the petitioners.

18. For the foregoing reasons, I find no merit in these petitions and the same are accordingly dismissed alongwith all connected CMs.