

(2010) 10 MAD CK 0222

In the Madras High Court

Case No : Writ Petition (MD) No. 12971 of 2009

I. Amala Praba, M. Jeyanthi and A. Initha

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Apprentices Act, 1961 — Section 22(2)
Constitution of India, 1950 — Article 14, 16, 309
Tamil Nadu Medical Code, 1959 — Section 2

Citation : (2010) 10 MAD CK 0222

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Lajapathi Roy, for the Appellant; R. Janakiramulu, Spl. G. P . for Respondent Nos. 1 and 2 and A.R. Nixon, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The three writ Petitioners are pressing for a declaration that the method of selection conducted for the post of Nurses in the Government Hospitals in Tamil Nadu, as per the Tamil Nadu Medical Subordinate Service Rules as unconstitutional and ultra vires of Articles 14 and 16 of the Constitution of India.

2. It is needless to state that the Nurses were recruited from the Government Nursing Colleges run by the Government and the appointments are made based on communal rotation and performance and also an agreement is entered into guaranteeing their continuing in service in the Government Hospital.

3. In this context, it is necessary to refer to the earlier Division Bench judgment of this Court in M. Elumalai, P. Mallika, V. Selvi and S. Kalaiselvi Vs. M. Bhuvaneswari and Others, , wherein recruiting the stipend nurse in the regular employment of Staff nurse was attacked by the candidates who had undergone training in the private nursing institutions. The Division Bench, by its order, negated the contentions raised by such Petitioners. In paragraphs 11, 23 and

24, the Division Bench had observed as follows:

11. The entry into the category of nurses starts with the admission into a Government Training School. It is a composite scheme of recruitment, training and absorption exclusively for Government institutions. According to the State, if a person wants a posting in a Government Hospital, the entry point is an admission in the training institution run by the Government and there is no scope for any lateral entry. The candidates who succeed in the examination and are given training in Government institutions enter into an agreement to serve the Government for a minimum period of three years after completion of their training. Therefore, the Government provides these candidates rent-free quarters, free supply of electricity, paid stipend, which includes uniform allowance and therefore, public money is spent on them. The prospectus for admission also says "nursing students who have successfully completed their training and obtained their diplomas will be eligible for appointment as nurses. The appointment cannot be guaranteed to all or any of the successful candidates. Recruitment will be made in accordance with the Tamil Nadu Medical Subordinate Services Rules." Every year, 1795 candidates successfully come out of these Government institutions and there are more than enough candidates waiting for appointment in nurse posts. The Government is bound to protect these trainees and as observed in *Kripa Shankar Chatterji Vs. Gurudas Chatterjee and others*, , having spent public money on them, the absorption of these trainee students cannot be said to be unreasonable.

...

23. It is open to the Government to take a decision and in fact, the learned advocate General fairly acknowledged that this Code came into effect at a time when there were not many nursing institutions, at any rate, there were hardly any private institutions. Now where there is a clamour for admission to nursing courses, the Government will have to take into account the changes that have taken place in the last 100 years. We cannot direct the State to make an amendment in this regard. However, the State may consider making a provision which will ensure that the opportunity to be appointed as a Government Nurse is not foreclosed to students who have pursued their studies in private institutions, while safeguarding the position of Government Nurses. Many documents were also produced to show that the private institutions were all registered and recognised.

24. The selection process was not initiated. It is the categorical statement of the Government that there was no advertisement. It is also their case that these students who had been trained for Government service are still waiting in queue and therefore, the appointment would be given to those on whom public money has been spent.

This course is not strictly akin to apprentices. According to the State, this is an integrated, composite course of education and it starts when the student passes

the entrance examination. The judgment in *Anant Madaan V. State of Haryana* (supra), also clearly says that the two classes are different. Therefore, the finding that the Private Nurses are entitled to be treated as equal and therefore entitled to a mandamus cannot be accepted, especially since even those who are trained are not entitled to a mandamus for as a matter of right.

4. Mr. T. Lajapathi Roy, learned Counsel appearing for the Petitioner, contended that, in the aforesaid judgment itself liberty was granted to attack the statutory rule and it was declared by the Bench that the observation made therein have no bearing if any Rule is impounded and hence, the Petitioners have come forward to file the present writ petition.

5. However, this Court is not inclined to entertain the writ petition only because of the observations made by the Division Bench. On the other hand, there are wealth of legal proceedings to uphold the distinction between the nurses, who are trained in Government School and the Nurses who got trained from self financing private Colleges. In fact, when similar question came up before this Court in W.P.(MD) No. 23721 of 2008, the Government had filed a common counter affidavit in which it was stated as follows:

The Respondents have filed a common counter affidavit, dated Nil (2009). In the counter affidavit, it was stated that the appointment of Staff nurse on contract basis is made among candidates, who had completed training in the Government Medical institutions having regard to the communal rotation and on the basis the ranks obtained by them as per the register maintained by the Director of Medical Education. The rank list is prepared by the Director of Medical Education batch-wise. As per the Tamil Nadu Medical Code Volume I, Chapter XII, Section 2 Rule 225(3), candidates admitted for training by the Regional committee appointed by the State Government after undergoing the course of Training and passing the final examination, should serve in the Government hospital as Nurses for a period of three years if so required by the Government. These candidates will complete their course in the Government Medical Institutions at the cost of the Government exchequer. Their services are utilized in the Government Medical Institutions after completion of their course.

6. Further, in the very same judgment, this Court has held that, if there is an agreement to re-employ such a trained Nurses, the other persons, who are not trained in Government School cannot compare themselves to those persons and in paragraph 11, it was observed as follows:

11. If there is an agreement to retain a trainee for regular employment then such an agreement is valid. It cannot be attacked on the ground that it violated Articles 14 or 16 of the Constitution.

Therefore, it is necessary to refer to the judgment of the Supreme Court in *Narinder Kumar and Others Vs. State of Punjab and Others*, . Though the said case arose under the interpretation of Section 22(2) of the Apprentices Act, 1961, the principle laid down thereon will squarely apply to the facts of the case

on hand. Therefore, it is necessary to refer to paragraph 9 of the said judgment, which is as follows:

9. We are also of the opinion that, apart from the implications arising out of Section 22(2) of the Apprentices Act, para 2 of the letters of appointment creates a binding obligation upon the employer to absorb the apprentices in the department on the successful completion of the training period, provided there is a vacancy in which the apprentices can be appointed. It would be contrary both to the letter and spirit of para 2 of the letters of appointment to hold that, even if there is a vacancy in which an apprentice can be appointed after the successful completion of his training, the employer is free not to appoint the apprentice and fill that vacancy by appointing an outsider. Such a reading of the assurance contained in para 2 will also frustrate the very object of the provision made by the Legislature in Section 22(2) of the Act. The object of that provision is to guarantee, to the extent of the existence of vacancies, that the apprentices will not be rendered jobless after they complete their training.

7. With reference to the power of the Government to frame service Rule in terms of Article 309 Rule with 12 Article 16, this Court in paragraph 13 has observed as follows:

The Supreme Court has held in *Sanjay Kumar Manjul Vs. The Chairman, UPSC and Others*, that qualifications for recruitment to the posts are laid down in terms of statutory rules and that statutory authority is entitled to frame rules. The following passage found in paragraph 25 reads as follows:

25. The statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned which can take ultimate decision therefor.

8. In the light of the same, the challenge made to the Government Rule is misconceived and hence, the writ petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.