
(2021) 12 TEL CK 0017
In the Telangana High Court
Case No : Writ Petition No. 15609 Of 2019

Jannu Sujana

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 07-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16, 21, 309

Citation : (2021) 12 TEL CK 0017

Hon'ble Judges : Satish Chandra Sharma, CJ;N. Tukaramji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

The petitioners before this court have filed this writ petition claiming for the following relief:-

"For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ, or order preferably in the nature of Writ of Mandamus and after calling for records pertaining to the impugned order vide Impugned Amendment issued vide GOMs No.232, Health, Medical and Family Welfare Department, dated 14-10-09 passed by the 1st Respondent and consequently Declare that portion of the Amendment in Annexure I, Table Column-2 against the post of Dietician at SI No.12 for item (1) issued to the Andhra Pradesh Medical Education Service (as adopted by the State of Telangana)/Telangana Medical Education Service thereby excluding qualified candidates from Andhra Pradesh Nursing Sub-Ordinate Services (as adopted by the State of Telangana as Telangana Nursing Subordinate Services and confining it to only Head Nurses from the said services as illegal, arbitrary, discriminatory, and unconstitutional as being violative of Articles 12,14,16 and 21 of Constitution of India and consequently declare that all the qualified candidates from Telangana Nursing Subordinate Services are eligible to be considered for promotion to the post of Dietician and consequently direct the Respondents to consider and promote the petitioners to the above said post with retrospective

effect on par with other candidates so promoted with all consequential benefits like seniority, arrears of pay etc and pass such order or orders may deem fit and proper in the circumstances of the case."

The contention of learned counsel for the petitioners is that for the purpose of promotion to the post of Dietician, the Andhra Pradesh Medical Education Service Rules, issued vide G.O.Ms.No.154, Health, Medical and Family Welfare (A2) Department, dated 04.05.2002, provides for the procedure and qualifications and the aforesaid Rules were amended vide G.O.Ms.No.232, Health, Medical and Family Welfare (M1) Department, dated 14.10.2009. The Notification amending the aforesaid Rules is reproduced as under:-

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

The Andhra Pradesh Medical Education Service Rules - Certain Amendment - Orders - Issued.

HEALTH, MEDICAL AND FAMILY WELFARE (M1) DEPARTMENT

G.O.Ms.No.232 Dated: 14-10-2009

Read the following:-

1. G.O.Ms.No.154, HM&FW (A2) Dept., dt. 4-5-2002
2. From the DME, A.P., Hyd., Lr.No.29861/E3C/2006, dt. 19-5-2009.
3. From the Secretary, APPSC, Hyd., Lr.No.1027/RR/09, dt. 29-9-09.

ORDER:-

The Director of Medical Education, Andhra Pradesh, Hyderabad in her letter 2nd read above has reported that, the qualified candidates of Andhra Pradesh Medical Subordinate Services, Andhra Pradesh Public Health Sub-Ordinate Services, Andhra Pradesh Nursing Sub-Ordinate Services may be considered for promotion to the post of Dietician taking the length of their service as criterion. She has requested to issue necessary orders amending the service rules issued in G.O.Ms.No.154, Health Medical and Family Welfare (A2) Department, dated: 04-05-2002.

2. The Government after careful examination of the matter have decided to amend the Andhra Pradesh Medical Education Service Rules issued in G.O.Ms.No.154, Health Medical and Family Welfare (A2) Department, dated : 04-05-2002.

3. Accordingly, the following Notification shall be published in the Andhra Pradesh Gazette.

NOTIFICATION

In exercise of the powers conferred by the provision to article 309 of the constitution of India and all other powers hereunto enabling, the Governor of Andhra Pradesh hereby makes the following Amendment to the Andhra Pradesh Medical Education Service Rules issued in G.O.Ms.No.154, Health Medical and Family Welfare (A2) Department, dated: 04-05-2002 as subsequently amended from time to time.

AMENDMENT

In Annexure-I of the said rules, in the table in column (2) against the post of Dietician at Sl.No.12, for item (1) the following shall be substituted, namely:

"(i) By appointment by transfer of qualified Head Nurses from the Andhra Pradesh Nursing Sub-Ordinate Services and qualified candidates from any of the categories in Andhra Pradesh Medical Sub-ordinate Services and Andhra Pradesh Public Health Sub-Ordinate Services".

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

J. SATYANARAYANA,

PRINCIPAL SECRETARY TO GOVERNMENT"

The constitutional validity of the amended Rules is under challenge to the extent only the Head Nurses from the Andhra Pradesh Nursing Sub-Ordinate Services are eligible for appointment to the post of Dietician. It has been argued that so far as other categories are concerned, every person holding qualifications is entitled to be considered for appointment and the exclusion is in respect of other nursing staff, as only Head Nurses are eligible for appointment.

During the pendency of the writ petition, the State Government has looked into the grievance of the petitioners and an Amendment has been issued, vide GO.Ms.No.134, Health, Medical and Family Welfare (H) Department, dated 04.09.2021. The Amendment is also reproduced as under:-

"GOVERNMENT OF TELANGANA

ABSTRACT

RULES - The Telangana Medical Education Service Rules - Amendment-Notification - Orders- Issued.

HEALTH, MEDICAL AND FAMILY WELFARE (H) DEPARTMENT

G.O.Ms.No134 Dated: 04-09-2021

Read the following:-

1. G.O.Ms.No.154, HM&FW (A2) Department dated : 04.05.2002.

2. G.O.Ms.No.232, HM&FW (M1) Department dated : 14.10.2009.

3. From the Director of Medical Education, Hyderabad Lr.No.42770/ G1/2016, Dated: 08.12.2020 & 06.05.2021, 18.08.2021, 26.08.2021.

ORDER :-

The Director of Medical Education, Telangana, Hyderabad in his letters 3rd read above, has reported that certain employees have acquired additional qualifications which are not in accordance with the existing service rules, which were framed during the year 2002 & 2009 and needs to be amended from time to time as per the latest courses which are being offered/provided by the various Universities/Institutions, so as to provide better services to the poor and needy patients. He has therefore requested to issue appropriate orders for amending services rules issued in G.O.Ms.No.154, Health Medical and Family Welfare (A2) Department, dated:04.05.2002 read with G.O.Ms.No.232 Health, Medical and Family Welfare (M1) Department dated:14.10.2009.

2. After careful examination of the matter, Government have decided to amend the Telangana Medical Education Service Rules issued in G.O.Ms.No.154, Health Medical and Family Welfare (A2) Department, dated:04.05.2002 and as amended from time to time.

3. Accordingly, the following notification shall be published in the Telangana Gazette:

NOTIFICATION

In exercise of the power conferred by proviso to article 309 of the constitution of India and all other powers hereunto enabling, the Governor of Telangana hereby makes the following amendment to the Telangana Medical Education Service Rules issued in G.O.Ms.No.154, Health, Medical and Family Welfare (A2) Department, dated:04.05.2002 and as subsequently amended from time to time.

AMENDMENT

In the said rules:-

1) In Annexure - I to rule - 3, in the table thereunder, in column (2), against the post of Dietician at serial No.12, for item (i), the following shall be substituted, namely:

"(i) By appointment by transfer of qualified candidates from any of the categories from the Telangana Nursing Sub-ordinate Services, Telangana Medical Sub-ordinate Services and Telangana Public Health Sub-ordinate Services".

2) In Annexure-II to rule-5, in the table thereunder, in column (3), against the post of Dietician at Sl.No.12, for item (i) & (ii), the following shall be substituted, namely;

"(i) Must possess a B.Sc degree of a University in India established or

incorporated by or under a Central Act, Provincial Act or a State Act or an Institution recognized by the University Grants Commission or an equivalent qualification AND Must have possessed Diploma in Applied Nutrition and Dietetics (or) Diploma in Nutrition and Dietetics from a recognised University of India

(OR)

(ii) B.Sc in Applied Nutrition & Dietetics (or) B.Sc Nutrition & Dietetics from any recognised University of India

(OR)

(iii) M.Sc in Applied Nutrition & Dietetics (or) M.Sc Nutrition & Dietetics from any recognised University in India".

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

S.A.M. RIZVI

SECRETARY TO GOVERNMENT"

In the light of the aforesaid, as now all categories of qualified candidates from the Telangana Nursing Sub-ordinate Services are entitled to be appointed as Dietician, the grievance of the petitioners has certainly been redressed.

At this stage, learned counsel for the petitioners has argued before this court that the Amendment dated 04.09.2021 should be made applicable with retrospective effect.

In the considered opinion of this court, as the petitioners have approached this court with inordinate delay and large number of appointments have been made from 14.10.2019 to 04.09.2021, the question of giving retrospective effect in the absence of any such provision in the Statute does not arise.

The writ petition stands dismissed.

Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.