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**(2012) 01 SHI CK 0097**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 1846 of 2011**

Kaushalya Rathour

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

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**Date of Decision :** 11-01-2012

**Acts Referred:**

**Citation :** (2012) 01 SHI CK 0097

**Hon'ble Judges :** Deepak Gupta, J

**Bench :** Single Bench

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## Judgement

Deepak Gupta, J.—The petitioner by means of this petition has prayed that the notification dated 26.3.2011, whereby the petitioner has been reverted from the post of Professor-cum-Principal to the post of Professor-cum-Vice Principal and respondent No. 2 has been re-designated as Professor-cum-Principal may be quashed and set aside.

2. Both the petitioner and respondent No. 2 are Nurses. The petitioner was appointed as Staff Nurse at District Hospital, Solan, in the year 1984, after having completed her GNM course. She did B.Sc. Nursing from PGI Chandigarh in 1996. She was promoted as Sister Tutor in the year 1998 and posted at the Multi Purpose Health Workers Training Centre, Solan. The petitioner completed her Post Graduation degree i.e. M.Sc. from PGI, Chandigarh in 2005. In the year 2010, vide notification dated 27.2.2010, the State of H.P. established the Nursing Institute at the Indira Gandhi Medical College and Hospital, Shimla to run M.Sc. (Nursing), B.Sc. (Nursing), Post basic B.Sc. (Nursing) and GNM Courses. On 7.7.2010, the petitioner was designated as Professor-cum-Principal of the said Nursing College at Indira Gandhi Medical College and Hospital, Shimla and joined as such on the very next date i.e. 8.7.2010.

3. Vide impugned notification, dated 26.3.2011, the State superseded the earlier notification dated 7.7.2010 and the petitioner was re-designated as Professor-cum-Vice Principal and the private respondent was designated as Principal. According to the petitioner, it is only she who fulfills the eligibility criteria laid

down by the Indian Nursing Council for the post of Principal and according to her for this post the minimum qualification required is MSC and 14 years service after completion of M.Sc. Neither the petitioner nor respondent No. 2 is eligible as per these qualifications, but as per the petitioner she had passed her M.Sc in the year 2005 whereas respondent No. 2 had passed her M.Sc only in May 2010 and, therefore, also only the petitioner should have been appointed as Principal. It is also contended that the order dated 26.3.2011 had been passed at the back of the petitioner without affording her any opportunity and without disclosing the ground why she has been reduced in rank. According to the petitioner, only the experience obtained after obtaining the degree of Post Graduation in Nursing can be taken into consideration.

4. The qualifications for the post of Professor-cum-Principal as laid down by Indian Nursing Council are as follows:-

Sr. No. Post Qualification & Experience

1. Professor-cum-Principal Masters Degree in Nursing 14 years experience after M.SC.(N) in College of Nursing 3 years experience in administration (Years of experience is relaxable if suitable candidate is not available) (If a candidate is not available, minimum 5 years of experience in college of nursing, with an aggregate of 14 years teaching experience)

The stand of the State is that when the Government decided to set up a Nursing Institute at the Indira Gandhi Medical College and Hospital, Shimla to run various courses of nursing, teaching and other staff as per the norms laid by the Indian Nursing Council was required. Since there was no staff, the Government took a decision that Sister Tutors working in different GNM Schools in the State be deployed in the Nursing Institute. Respondent No. 2 joined as a Staff Nurse on 28.5.1982 and Sister Tutor on 26.3.1996 and therefore, is otherwise senior to the petitioner though the petitioner acquired the post Graduate degree in Nursing in 2005 much before respondent No. 2 who acquired the decree in May 2010.

5. According to the Government, after the petitioner was appointed as Professor-cum-Principal, a representation was received from respondent No. 2 that she was senior to the petitioner and being the senior most Nursing tutor. She also had a Post Graduate degree in Nursing and therefore, she should have been appointed as Professor-cum-Principal on stop gap basis till the regular appointment is made. As per respondent No. 2 she had filed CWP No. 1296 of 2011, titled as Krishna Chauhan vs. State of H.P. and others, challenging the appointment of the present petitioner but since in the meantime the State itself decided to rescind the earlier notification, the writ petition was withdrawn by her on 25.3.2011.

6. The trouble appears to have started because on 15.6.2010 the Principal of the Indira Gandhi Medical College and Hospital, Shimla sent a letter to the Principal Secretary (Health) to the Government of Himachal Pradesh stating that it was not feasible in a short time to fill up all the posts of teaching faculty as per the requirements of Indian Nursing Council and therefore, the recommendations

were made to fill in the post from staff available in the GNMs. In these recommendations Smt. Krishna Chauhan was shown at Serial No. 5 since she was to complete her M.Sc. in May 2010. It was proposed that she be appointed as Lecturer. In fact by the time this letter was issued Krishna Chauhan was already a Professor. The law is well settled that when the appointments have to be made as stop gap appointments on ad hoc or temporary basis, then it is not the merit of the candidates which has to be taken into consideration but only their seniority. Both the petitioner and private respondent have levelled various charges against each other that they do not have requisite experience in teaching. At this stage this Court is not going to this question since the appointment is only temporary in nature. It would be pertinent to mention that the Nursing Council itself has given the relaxation in the qualification for filling up the post of Professor-cum-Principal and the relaxed qualification criteria reads as follows:-

Processor-cum-Principal Masters Degree in Nursing 10 years of experience and minimum of 5 years of teaching experience Desirable: Independent published work of high standard/doctorate degree/M. Phil.

7. Both the petitioner and respondent No. 2 have a Master degree in Nursing. Both of them have 10 years experience as Nurses but both of them do not have 10 years experience, after M.Sc. According to Shri Ajay Mohan Goel, learned counsel for the petitioner only the experience, after obtaining the Master degree in Nursing, will be taken into consideration. The petitioner and respondent No. 2 have made allegations and counter allegations that both of them do not have requisite teaching experience. The question whether these teachers have requisite teaching experience has not been gone into by me in this petition because I am of the considered view that it is for the employer to decide what experience has to be considered, teaching experience only. Be that as it may, the fact remains that as per the letter dated 26.4.2010 sent by the Principal of the College to the Principal Secretary(Health) to the Government of Himachal Pradesh, the petitioner had 12 years teaching experience and private respondent No. 2 had 14 years teaching experience. It has also come on record that respondent No. 2 is not even working as Professor-cum-Principal in the Sister Nivedita College of Nursing, IGMCI, Shimla but is also working as Principal Nursing Officer, IGMCI, Shimla.

8. During the course of these proceedings, this court had asked the learned Advocate General to find out when the Recruitment and Promotion Rules for filling up the posts would be finalized. The Special Secretary (Health) to the Government of Himachal Pradesh on 29th August, 2010 replied that at present the staff had been provided to the college on deployment basis and that the matter regarding creation of 68 posts in the college was under process and as soon as these posts are created, the Recruitment and Promotion Rules would be finalized.

9. In my opinion, the Government cannot create an institute without any post. It

cannot deploy regular employees from their posts in the teaching institute and show them as teachers in the Nursing Institute only to satisfy the Indian Nursing Council. It must create posts and frame rules within a reasonable time. The initial appointment of the petitioner was made on 7.7.2010. More than one and a half years have elapsed and the Government cannot make an excuse for not framing the Rules.

10. Shri Ajay Mohan Goel, Advocate submits that the respondent No. 2 has virtually no teaching experience after her M.Sc. He also submits that since respondent No.2 was on leave while she was studying for M.Sc. that period cannot be taken into consideration. He has relied upon the judgment of Supreme Court in AIR Shailendra Dania and Others Vs. S.P. Dubey and Others, Shailendra Dania v. S.P. Dubey and the judgment of this Court in CWPs No. 1341 and 1459 of 2007, decided on 29.10.2010. As far as the judgment of this Court is concerned, I am of the considered view that the same has no relevance to the facts of the present case. It is obvious that teaching experience of the period when a person is on leave cannot be deemed to be a teaching experience. However, the contention of Shri Ajay Mohan Goel, Advocate that the experience only after post Graduation has to be counted in my opinion cannot be accepted. The judgments of Apex Court in N. Suresh Nathan and another Vs. Union of India and others, N. Suresh Nathan v. Union of India and (2001) 2 SCC 362, Indian airlines Ltd. and others. V. S. Gopalakrishnan in my view cannot be of any help to the petitioner because neither the petitioner nor private respondent No. 2 fulfill this criteria, if only the experience, after Post Graduation has to be taken into consideration.

11. Therefore, I am of the considered opinion that a direction should be issued to the respondent-State to create posts and frame Recruitment and Promotion rules latest by 30th April, 2012 and the posts of Principal and teachers should be filled up on regular basis after issuing advertisement latest by 31st July, 2012. Since I am of the view that the Government must fill up the post on regular basis latest by 31st July, 2012, the present incumbent in my opinion should be permitted to continue till that date.

12. In view of the above discussion, the petition is disposed of with a direction to the respondent-State to ensure that the Recruitment and Promotion Rules, especially for the post of Professor-cum-Principal are framed in accordance with the guidelines laid by the Indian Nursing Council latest by 30th April, 2012 and the post should be filled up in accordance with such rules latest by 31st July, 2012. If no person within Himachal Pradesh is available, then obviously persons from outside Himachal Pradesh can also apply for such posts and, if eligible, be considered and appointed.

13. With these observations, the writ petition is disposed of. No costs.