

(2014) 12 MAN CK 0001
In the Manipur High Court
Case No : WP(C) No. 257 of 2008

Smt. Ch. Subadani Devi

APPELLANT

Vs

Regional Institute of Medical Sciences

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 NEJ 423

Hon'ble Judges : Mr. Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : Shri M. Devananda, Advocate, for the Petitioner; Shri A. Bimol & Shri S. Suresh Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Kh. Nobin Singh, J.(CAV) - Heard Shri M. Devananda, learned counsel appearing for the petitioners, Shri A. Bimol, learned counsel appearing for the respondent No. 1 and Shri S. Suresh Singh, learned counsel appearing for the respondent No. 3.

2. By this writ petition, the petitioners have challenged the correctness and validity of the order dated 06-02-2008 passed by the respondent No. 1, RIMS.

3. As stated in the writ petition, the petitioner Nos. 1 and 2 are the President and Secretary of the Trained Nurses' Association of India, RIMS and the petitioner No. 3 who is a member of the said Association, was at the relevant time working as Staff Nurse in the RIMS Hospital. In the rejoinder affidavit, it is stated that the present writ petition is being filed by the Trained Nurses' Association of India, RIMS for redressal of their common grievances. In other words, the above writ petition is filed by the petitioners in the capacity of the President and Secretary and a member thereof in pursuance of a unanimous decision of the members of the said Association. The case of the petitioners is that the order dated 06-02-2008 was issued by the respondent No. 1 promoting altogether 5 (five)

Staff Nurses including the respondent No. 3 in serious infraction of the relevant Rules and Regulations and that the respondent No. 3 being junior to petitioner No. 3 and not being within the zone of consideration, the order dated 06-02-2008 by which respondent No. 3 was promoted to the post of Nursing Sister is illegal.

4. On the other hand, Shri A. Bimol, raised some preliminary objections as regards the maintainability of the present writ petition on the inter-alia grounds that the petitioners are not personally aggrieved with the impugned order and the present writ petition is not filed as Public Interest Litigation. It is submitted by Shri A. Bimol that the post of Nursing Sister, being classified as non-selection post in the Recruitment Rules, 1991, the principle of zone of consideration is not applicable to the facts and circumstances of the case. It is further submitted by Shri A. Bimol that since the petitioner No. 3 does not belong to Scheduled Caste category, the petitioner No. 3 does not have any right to challenge the order dated 06-02-2008 and moreover, the petitioner Nos. 2 & 3 who have by now been promoted to the post of Nursing Sister, will have no grievance against the promotion given to the respondent No. 3 against the reserved quota. By endorsing the submissions made by Shri A. Bimol and by way of supplement thereto, Shri S. Suresh Singh, learned counsel appearing for the respondent No. 3. submitted that pursuant to the judgment and order delivered by the Hon''ble Supreme Court in the matter of R.K. Sabharwal v. State of Punjab, (1995) Vol. 2 SCC 745, the O.M. dated 02-07-1997 was issued by the Union of India by which it was decided that the existing 200 point, 40 point and 120 point Vacancy Based Roster should be replaced by the Post Based Roster which is annexed therewith as Annexure - III. On the basis of the said Model Roster prepared by the Union of India, an exercise has been done by the respondent No. 1 determining the actual representation of the incumbents belonging to different categories in cadre vis-a-vis the points earmarked for this category viz. SC/ST/OBC and General in the Roster. Shri S. Suresh further submitted that the impugned order dated 06-02-2008 was issued by the respondent No. 1 based on the said determination by applying the Principle of Replacement.

Two main issues have arisen out of the present writ petition which are given as under -

(i) Whether the present writ petition filed under Article 226 of the Constitution is maintainable or not?

(ii) Whether, having regard the fact that the post of Nursing Sister is classified as non-selection post in the Recruitment Rules, 1991, the principle of zone of consideration is applicable to the facts and circumstances of the present case?

5. On the question of maintainability of the present writ petition, it is submitted by the counsel of the petitioner that the Trained Nurses'' Association of India is the apex association of Nurses working in the country which is mainly formed for the welfare of Nursing Staff and to protect their common interest and

accordingly, the above writ petition is filed by the Trained Nurses" Association of India, RIMS unit for redressal of their common grievances and therefore, the petitioners have locus standi to file the present writ petition. To substantiate his contention, the counsel for the petitioner relied upon the decision given by the Hon"ble Supreme Court in the matter of B.P. Srivastava v. State of Madhya Pradesh, (1996) 7 SCC 759 wherein the Hon"ble Supreme Court has held that in view of the finding of the tribunal that the respondent Nos. 3 and 4 successfully safeguarded the interest of promotees, the tribunal erred in law holding that not inclusion of the affected parties is fatal to the proceedings.

It is submitted by the counsel for the respondent No. 1 that the petitioner Nos. 1 and 2 being the President and Secretary of the Trained Nurses" Association of India are not personally aggrieved with the order promoting the respondent No. 3 and moreover, the present petition being not a public interest litigation, the same cannot be entertained. It is further submitted that since respondent No. 3 has been given promotion against the reserved quota, the petitioner No. 3 has no right to claim against the reserved quota of the Scheduled Caste. It is submitted by the counsel for the respondent No. 3 that since the petitioners are not the aggrieved persons, they have no right to approach the High Court to ventilate their grievances. It is further submitted by the Counsel for the Respondent No.3 that the other 4 (four) incumbents appearing at Sl. No. 1 to 4 in the impugned order dated 06-02-2008 are necessary parties and since they have not been arrayed as party respondents, the petition suffers from non-joinder of necessary parties and therefore the petition is liable to be dismissed.

6. Although it is stated in the writ petition as well as in the rejoinder affidavit that the present petition is being filed by the Trained Nurses Association of India, RIMS through the petitioners, the same is not reflected in the cause title wherein the petitioners are shown in their individual capacities as joint petitioners. Moreover, in the affidavit filed in support of the present petition, it is nowhere stated that the writ petition is filed in a representative capacity. Since petitioner No. 1 is not in the cadre of Staff Nurse and the petitioner No. 2 is junior to the respondent No. 3, they do not have any locus standi to challenge the order dated 06-02-2008 and hence, the writ petition filed by them is not maintainable and is liable to be dismissed. So far as the petitioner No. 3 is concerned, she being senior to the respondent No. 3, the writ petition filed by her cannot be said to be not maintainable but in view of the fact that other incumbents appearing at Sl. No. 1 to 4 in impugned order dated 06-02-2008 have not been arrayed as parties in the writ petition, the present petition filed by the petitioner No. 3 can also be dismissed as not maintainable. However, since the counsels for the parties have advanced their arguments on merit, I propose to decide the issues involved herein on merit also. The decision given by the Hon"ble Supreme Court in the matter of B.P. Srivastava v. State of Madhya Pradesh, (1996) 7 SCC 759 is not applicable to the facts and circumstances of the present case for the reason that in the present case, the order dated 06-02-2008 as a whole is being sought to be quashed and set aside and in the event of the said order dated 06-02-2008 being

quashed, the incumbents appearing at Serial Nos. 1 to 4 will have to be demoted without giving them an opportunity of being heard which may amount to violation of the Principles of Natural Justice.

7. As regards the second issue, the contention of the petitioner's counsel is that since the respondent No. 3 is junior to many incumbents and is not within the zone of consideration, the order dated 06-02-2008 by which the respondent No. 3 has been given promotion to the post of Nursing Sister is illegal. However, the counsels for the respondents have submitted that since the post of Nursing Sister is classified as non-selection post in the Recruitment Rules, 1991, the principle of zone of consideration is not applicable to the facts and circumstances of the case. There is considerable force in the arguments advanced by the counsels for the respondents. In the case of *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745, the Hon'ble Supreme Court has held that reservation of jobs for the SC, ST and OBC should apply to post and not to vacancies. The court further held that the Vacancy Based Roster can operate till such time as the representation of persons belonging to the reserved categories, in the cadre, reaches the prescribed percentages of reservation.

8. Pursuant to the law laid down by the Hon'ble Supreme Court, the Union of India has issued an O.M. dated 20-07-1997 laying down the principles of preparing the Roster as elaborated upon in the Explanatory Note annexed thereto. Relevant paras of the Explanatory Notes namely Para Nos. 4, 9 and 10 are reproduced herein below :-

"4. The number of points in each roster shall be equal to the number of posts in a cadre.

9. Whenever there is any increase or decrease in the cadre strength, the roster shall be correspondingly expanded or contracts. The same will also apply whenever there is a change in Recruitment Rules which affects the proportion of posts to be filled by a particular mode of recruitment.

10. The roster is to be operated on the principle of replacement and not as a "running account" as hitherto. In other words, the points at which reservation for different categories applies are fixed as per the roster and vacancies caused by retirement, etc., of persons occupying those points shall be filled by appointment of persons of the respective categories."

In the aforesaid Explanatory Notes, it has been clearly provided as to how the Post Based Roster is to be workout to determine the actual representation of the incumbents belonging to different categories. Para 1 of the said Explanatory under the heading "Initial Operation" is reproduced herein below:

"1. At the point of initial operation of the roster, it will be necessary to determine the actual representation of the incumbents belonging to different categories in cadre vis-a-vis the points earmarked for each category, viz. SC/ST/OBC and General in the roster. This may be done by plotting the appointments made

against each point of roster starting with the earliest appointee. Thus, if the earlier appointee in the cadre happens to be a candidate belonging to the Schedule Castes, against point No. 1 of the roster, the remark "utilized by SC" shall be entered. If the next appointee is a general category candidate, the remark "utilized by general category" shall be made against point No. 2 and so on and so forth till all appointments are adjusted in the respective rosters. In making these adjustments, SC/ST/OBC candidates on merit, in direct recruitment, shall be treated as general category candidates."

9. In the present case, in terms of the Model Roster prepared by the Union of India, the respondent no. 1 has worked out and determined the actual representation of the incumbents belonging to different categories in tabulation form which is annexed in writ petition as Annexure - A/7 and the same is reproduced herein below -

RESERVATION

Name of the post

:

Nursing Sister

No. of ST required

:

4

No. of post

:

56 Nos.

No. of ST in position

:

22

Mode of promotion

:

100% by promotion

No. of ST shortfall

:

Nil

Reservation Roster

:

SC - 15%

No. of SC required

:

8

:

ST - 7.5% No. of SC in position

:

1

Date of operation

:

1-4-2007

No. of SC shortfall

:

7

Sl. No. of Post

Category for which post should be earmarked

Name of Employee

Remarks

1.

UR

J. Rallinzo Hmar (ST)

Utilised by ST

2.

UR

R.G. Patinglieu (ST)

Utilised by ST

3.

UR

Jamkhonei Haokip (ST)

Utilised by ST

4.

UR

M. Thaibema Devi

-

5.

UR

W. Dashumanit Devi

-

6.

UR

Ksh. Kunjarashi Devi

-

7.

SC - 1

N. Tombimacha Devi

Utilised by General

8.

UR

A. Ashalata Devi

-

9.

UR

Chingkhoniang (ST)

Utilised by ST

10.

UR

Sh. Lata Devi

-

11.

UR

Y. Suchitra Devi

-

12.

UR

W. Surodhoni Devi

-

13.

UR

M. Bino Devi

-

14.

ST - 1

M. Jamuna Devi

Utilised by General

15.

SC - 2

Ch. Subadani Devi

Utilised by General

16.

UR

Hmunhol Kom (ST)

-

17.

UR

W. Memcha Devi

-

18.

UR

Y. Pramodini Devi

-

19.

UR

Ringzokim Joute (ST)

Utilised by ST

20.

SC - 3

Th. Mema Devi

Utilised by General

21.

UR

L.D. Ashem (ST)

Utilised by ST

22.

UR

Ch. Ahanbi Devi

-

23.

UR

L. Leipaklei Devi

-

24.

UR

Khomzabung (ST)

Utilized by ST

25.

UR

Regina Rongmei (ST)

Utilized by ST

26.

UR

T. Neikim Paite (ST)

Utilized by ST

27.

SC - 4

A. Tombi Devi (SC)

-

28.

ST - 2

N. Shanti Devi

Utilized by General

29.

UR

P. Maipakpi Devi

-

30.

UR

V. Sumniang Hatzaw (ST)

Utilized by ST

31.

UR

Lonleina Rungsung (ST)

Utilized by ST

32.

UR

M. Jamuna Devi³-

33.

UR

S. Chingjang (ST)

Utilized by ST

34.

UR

Neizakeim Vaiphei (ST)

Utilized by ST

35.

SC - 5

Ngemkhapam (ST)

Utilized by ST

36.

UR

Ch. Kiranmala Devi

-

37.

UR

T. Niangzabung (ST)

Utilized by ST

38.

UR

L. Ibohal Singh

-

39.

UR

Lamneng Haokip (ST)

Utilized by ST

40

ST - 3

E. Baburam Singh

Utilized by General

41

SC - 6

Panem Lhouvung (ST)

Utilized by ST

42

UR

Themkholhing (ST)

Utilized by ST

43

UR

Th. Thaba Devi

-

44

UR

T. Nganbi Devi

-

45

UR

A. Indira Devi

-

46

UR

N. Sobita Devi

-

47

SC - 7

Lenkhochong Misao (ST)

Utilized by ST

48

UR

Akim Chothe (ST)

Utilized by ST

49

UR

Y. Ruiva (ST)

Utilized by ST

50

UR

A. Puinabati Devi

-

51

UR

Th. Chaoba Devi

-

52

UR

K. Shanti Devi

-

53

UR

Tainelam Vaiphei (ST)

Utilized by ST

54

SC - 8

L. Bishakha Devi

Utilized by General

55.

St - 53

Kh. Rupabati Devi

Utilized by General

56.

UR

-

Vacant

10. From the above chart, it is evident that out of the total strength of 56 (fifty six) posts in the cadre of Nursing Sister, 8 (eight) posts are reserved for the candidates belonging to Scheduled Caste and 4 (four) belonging to Scheduled Tribe in terms of the percentage of reservation. But the actual position as on the date of determination of the representation of different categories is that 22 (twenty two) posts are utilized by the ST although only 4 (four) posts are reserved for the ST whereas only 1 (one) posts is occupied by the candidate belonging to Scheduled Caste though the posts reserved for them are 8 (eight). In other words, there are shortfalls in respect of the General and the Scheduled Caste categories which are to be made up in the subsequent appointments to be made for purpose of promotions by way of adjustment till the quota provided under the rules is reached and thereafter, as and when there is vacancy in the post, the same has to be filled from amongst the category to which the post belonged in the roster namely by following the Principles of Replacement.

11. It is contended by the counsels for the respondents that the DPC meeting was held for appointment on promotion to the post of Nursing Sister against 5 (five) vacancies, of which 4 (four) posts were utilized by the candidates belonging to Scheduled Tribes and 1 (one) was occupied by the candidates belonging to Scheduled Caste. It is further contended that keeping in view the law laid down by the Hon"ble Supreme Court in of R.K. Sabharwal v. State of Punjab, (1995) Vol. 2 SCC 745 and Guidelines contained in the said OM dated 02-07-1997, the DPC recommended 4 (four) persons belonging to General category against the 4 (four) posts vacated by the candidates belonging to ST and 1 (one) belonging to Scheduled Caste namely the respondent No. 3. It is submitted by the counsel for the petitioner that a copy of the DPC proceeding furnished by the counsel for the Respondent No. 1 did not contain the details thereof. It is no doubt true that the said DPC proceeding does not elaborate as to how and why the names of the said 5 (five) Staff Nurses have been recommended and it is only recorded in the proceeding that after examining the relevant paper and ACRs, names of those 5 (five) Staff Nurses have been recommended. But the perusal of the chart in the tabulation form mentioned and reproduced in the preceding para and impugned order dated 06-02-2008 make it very clear that the actions have been taken by the respondent No.1 in accordance with the law laid down by the Hon"ble Supreme Court and the principles contained in the said O.M. dated 01-07-1997 and there is no infirmity in the order dated 02-06-2008 issued by the respondent No.1.

12. In regard to the stand of the respondents that since the promotion is not by selection, the mode of selection shall be by seniority subject to fitness, the counsel for the petitioner has not seriously disputed it in view of the averment made in the rejoinder affidavit. The only contention of the counsel for the petitioners is that although there is no need for a comparative evaluation of the

respective merit as required in respect of promotion by selection, a separate list of eligible candidates belonging to different categories be prepared and be placed before the DPC for consideration and there is no whisper about such preparation. It may be true that there is no averment in the pleadings of the respondents for such preparation of a list of eligible candidates which has duly been placed before the DPC. The non-preparation of a list of eligible candidates for placing before the DPC may not be fatal for the reason that a final inter-se-seniority was already published on 03-01-201008 and there were only few vacancies. In the prayer (ii) of the writ petition, the order dated 06-02-2008 as a whole is being sought to be quashed and set aside as illegal but from the pleadings of the petitioners, it appears that their grievances are only against the promotion being given to the respondent No. 3. The respondent No. 3 being undoubtedly the senior most, in the final seniority, list from amongst the candidates belonging to Scheduled Caste, has been duly recommended by the DPC for appointment on promotion to the post of Nursing Sister.

13. In view of the aforesaid, I do not find any merit in the present writ petition and the same is accordingly dismissed.

14. No order as to cost.