
(2013) 12 MP CK 0061

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10142-2012 (S)

Smt. Stella Peter

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0061

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : P.N. Dubey, for the Appellant; Rahul Jain, Learned D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.—The petitioner who is performing duties of Sister Tutor in Netaji Subhash Chandra Bose, Medical College, Jabalpur and who is substantively holding the post of Staff Nurse, seeks consideration of her case for promotion/absorption to the post of Sister Tutor. It is said that based on certain qualifications and conditions prescribed in the Recruitment Rules, the petitioner is entitled to be promoted/absorbed on the said post and even though she fulfills all the qualifications, she is not being considered for promotion and the DPC which met has rejected the claim of the petitioner. It is said that DPC which was held in the matter of promotion some time in July, 2012, petitioner's case is not considered on the ground that she does not fulfill the qualification criteria. The petitioner has passed B.Sc. Degree in Nursing from M.P. Bhoj (Open) University and has also fulfills various other qualifications. However, the only dispute that exists between the parties is as to whether the qualification acquired by the petitioner from Bhoj (Open) University is recognized or equivalent to the degree certificate issued by a recognized University in the matter of promotion.

2. Even though various contentions have been raised by the petitioner and respondents in the petition, return, rejoinder and additional return, the only question is with regard to recognizing the qualification acquired by the petitioner

from Bhoj (Open) University in the matter of consideration for promotion to the post of in question. Admittedly promotion in question is governed by the statutory rules framed under Article 309 of the Constitution of India and the Rules framed are the M.P. Public Health & Family Welfare Department (Director of Health Services) Class III Nurses Services Recruitment Rules, 1989. In the said rule promotion from the post of Staff Nurse to Sister Tutor, a candidate should have 5 years experience of working alongwith degree of B.Sc. (Nursing or Post Basic) and post certificate course of sister tutor.

3. From the documents and material available on record, it is clear that the petitioner has the aforesaid qualifications but the qualification is acquired by the petitioner from Bhoj (Open) University, the respondents contend that the said degree obtained by the petitioner from Bhoj (Open) University is not recognized or sufficient for seeking promotion to the said post as per the rules.

4. Shri P.N. Dubey, learned counsel for the petitioner invites my attentions to the various documents and annexures available on record to say that the degree certificate for the qualification in question conferred by the Bhoj (Open) University is a valid and approved qualification. In this regard, he invites my attention to Annexures P-10, P-11 and P-12, received from the Indian Nurses Council, the University Grant Commission and the department itself to say that the said qualification is recognized. That apart by filing rejoinder and bringing to the notice of this court the cases of two employees who have been granted similar benefits after having obtained the necessary degree from the Open University are indicated, these employees are one Smt. Anguri Singh and another is Smt. R. Thakur., who are said to have been obtained B.Sc. (Nursing) degree from the open university and inspite thereof, they have been granted promotion.

5. Shri Rahul Jain, learned Deputy Advocate General for the respondents submits that as far as the State Government is concerned, the decree obtained from the Open University is only valid for promotion till the post of Staff Nurse and for promotion to the post of Sister Tutor the said decree is not valid, that being so, the respondents only say that the degree is not approved.

6. Heard the learned counsel for the parties and perused the record. From the records, it is clear that as far as qualification acquired by the petitioner and other documents are concerned there is no dispute. The only dispute is as to whether the degree in question obtained by the petitioner from the Bhoj (Open) University is valid for promotion to the post of Sister Tutor. The respondents did not give any reason as to why the degree is not valid nor have they given any comparison between the degree obtained from a traditional University and the Open University to show difference in the study or the course and the reasons why the degree is not approved and do not bring on record anything to say as to what is difference between the degree granted by any another university and Open University. Therefore, to consider the question that the said degree obtained by the petitioner from Bhoj (Open) University is concerned, it is

appropriate to take note of certain documents available on record issued by the Indian Nurses Council and the University Grants Commission and to see the expert opinion of these authorities in the matter of degree conferred or granted by the Open University. Annexure P-10 is communication made by the Indian Nurses Council to the Registrar, M.P. Nurses Registration Council on 12th September 2009 and it is indicated in this communication that the students who have studied from Bhoj (Open) University and have obtained the post Decree B.Sc. (Nursing) certificate or degree course are entitled to be registered as a Nurse and the decree obtained by the students from this open University is recognized by Indian Nurses Council for all the purpose. It is indicated that the degree from the said university can be held as valid for the purpose of registration and discharging duties as nurse. Similar Annexure P-11 is an annexure made by the University Grants Commission to the Registrar, Madhya Pradesh Bhoj (Open) University on 05-05-2004 and the University Grants Commission comes out with a case that all the degrees, diplomas, certificates awarded by the Open University are in conformity with the UGC notification on specification of degrees and are equivalent to the corresponding awards of degree etc. by any other traditional University in the country. For the sake of convenience the communication made by the University Grants Commission Annexure P-11 with regard to validity of the degrees/diploma/certificates issued by the Open University is indicated, which is reproduced as under:

Attention is further invited to UGC circular No. F 1-25/93(CPP-II) dated 28th July, 1993(copy enclosed) for recognition of degrees and diplomas as well as two types of Universities so that the mobility of students from Open University stream to traditional Universities is ensured without any difficulty.

The UGC has specified the nomenclature of degrees u/s 25(3) of the UGC Act, 1956 to ensure mandatory requirement viz. Minimum essential academic inputs required to awarding such degrees. A copy of Gazetted Notification regarding specification of degrees issued vide No. 1-52/97(CPP-II) dated 31st January 2004 as enclosed. The details are also given in UGC Website: www.ugc.ac.in.

May, I therefore, request you to treat the Degrees/Diploma/Certificates awarded by the Open Universities in conformity with the UGC notification on Specification of degrees as equivalent to the corresponding awards of the traditional Universities in the country.

7. From the aforesaid specific instructions and observations made by the University Grants Commission, it is clear that for the purpose of conferral of degree from the open university as established and functioning under the statutory provisions are treated at par with traditional universities and there is no difference between these two and other universities. M.P. Bhoj (Open) University is statutory creation and have been established under M.P. Bhoj Vishwa Vidyalaya Act, 1991 and discharging its functioning. That apart even department has considered the degree/certificate/diploma certificate issued by the Bhoj (Open) University for appointment to the department in question even for the post of

staff nurse.

8. Once the highest statutory authorities, expert in deciding the validity of the degree/certificate issued by the various Universities, namely, University Grant Commission has categorically stated that the degrees/diploma/Certificates awarded by the Open University in the country are inconformity with the UGC notifications issued and are equivalent in all respect to degrees/Diploma/Certificates awarded by any traditional University. With regard to the degree in question obtained by the petitioner from a open university the respondents have not produced any documents or material to say that the degree issued by the Open University in question is not valid for any cogent or justifying reason whatsoever. Once the expert authority namely University Grants Commission has approved the degree to be equivalent to any other degree granted by traditional university, the said degree cannot be disputed. If it is the case of the State that the degree awarded by the Open University is not equivalent to the degree awarded by the traditional university, it was incumbent upon the state to show to this court as to what is the difference between the course undertaken in the traditional university and in the open University and in what manner the courses conducted by the two universities are different. On the contrary when the University Grants Commission comes out with a case that the degree and diploma granted by the open University fulfills all the norms laid down by the University Grants Commission and is equivalent to the degree/diploma awarded by the traditional university, I am of the considered view the contention of the respondents that the degree as obtained by the petitioner is not valid cannot be considered. That apart discrimination as alleged by the petitioner in the cases of Smt. Anguri Singh and Smt. R. Thakur is also not explained by the respondents in the additional return. That being so, this court has no hesitation in holding that the degree of B.Sc. (Nursing) obtained by the petitioner from the M.P. Bhoj (Open) University is a degree valid for consideration her case for promotion to the post of Sister Tutor.

9. Accordingly, this petition is allowed and the respondents are directed to consider the case of the petitioner for promotion. Based on the decision of DPC previously held in the matter if any person junior to the petitioner has been granted promotion to the post of Sister Tutor at par with the petitioner, a review DOC be held and the claim of the petitioner be considered, if entitled for promotion, the petitioner be granted all benefits. The said exercise be done within a period of 2 months from the date of receipt of the certified copy of this order. With the aforesaid, this petition stands allowed and disposed of.