

(1989) 08 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal No's. 6147-6148 of 1983 (From the Judgment and Order dated January 17, 1983 of the Rajasthan High Court in D.B. Spl. Appeal No. 43 of 1978 and D.B.S.A. No. 14 of 1975)

State of Rajasthan and Another

APPELLANT

Vs

Shantilal Jain and Others

RESPONDENT

Date of Decision : 02-08-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Rajasthan Medical and Health Subordinate Service Rules, 1965 — Rule 4(1)

Citation : (1989) 59 FLR 836 : (1989) 3 JT 273 : (1989) 2 LLJ 461 : (1989) 2 SCALE 185 : (1989) 2 SCC 777 Supp : (1989) 3 SCR 670 : (1989) 2 UJ 585 : (1989) 2 WLN 136

Hon'ble Judges : Kuldeep Singh Singh, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : B.D. Sharma, for the Appellant; Dalveer Bhandari, K.R.R. Pillai, Surya Kant, P.T. Mathur and Sambandhan, for the Respondent

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The question for consideration in these two appeals is whether the creation of two cadres, consisting of Nursing Superintendent Grade I, Nursing Superintendent Grade II, Assistant Nursing Superintendent and Nursing Tutor (hereinafter called 'nursing cadre') and of Compounder Grade I, Compounder Grade II and Compounder Grade III (hereinafter called compounders cadre') under the Rajasthan Medical and Health Subordinate Service Rules, 1965 (hereinafter called 'Rules'), is arbitrary and as such violative of Articles 14 and 16 of the Constitution of India,

2. The relevant facts are as under: Bansilal Sharma was appointed as Male Nurse in 1941. He qualified Punjab Nursing Registration Council Examination in 1944 and was confirmed as Compounder Grade-I in 1950. He was officiating as Sister Tutor when the Rules came into force in March, 1966. He filed writ petition in the Rajasthan High Court in 1971 challenging the creation of two separate

cadres under the rules. It was pleaded that hitherto there as combined Channel of promotion for compounders and nurses but the rules have arbitrarily deprived compounders Grade-I of their right to promotion to the higher posts of Assistant Nursing Superintendent, Nursing Superintendent Grade-11 and Nursing Superintendent Grade I. It was further urged that recruitment to the nursing cadre was confined to females alone which resulted in discrimination on the ground of sex and as such violative of Article 15 of the Constitution of India. Kan Singh, J. rejected the contentions of Sharma and held that there was no arbitrariness in creating two separate cadres for nurses and compounders. The learned Judge further found as a fact that males and females were both eligible for recruitment to the nursing cadre and as such repelled the attack on ground of Article 15.

3. Shanti Lal Jain, in the second case, was appointed compounder Grade-IV in 1955. He was confirmed as compounder Grade-I in the year 1959 and in March 1966 when the Rules were enforced, he was holding the post of Sister Tutor on officiating basis. He also challenged the vires of the Rules on the grounds of Articles 14, 15 and 16 of the Constitution of India. Dwarka Prasad, J. dismissed the writ petition holding that creation of two separate cadres did not infringe the equality clause and also that there was no discrimination on the ground of sex. Both Sharma and Jain filed separate special appeals before a Division Bench of the Rajasthan High Court.

4. The Division Bench upheld the findings of learned single Judges on Article 15 in the following terms:

Both the learned single Judges were, in our opinion, right in holding that the Rules did not exclude the appointment of males on the posts mentioned in group A of the Schedule and the said categorization of groups A and E could not be held to be unconstitutional on the ground that it was based on sex alone. The argument of Shri Mridul that the Rules were violative of the provisions of Article 15 of the Constitution cannot, therefore, be accepted.

5. So far as the attack on the grounds of Articles 14 and 16 was concerned, the Division Bench set aside the judgments of learned single Judges and found that there was no justification for creating separate cadres and denying channel of promotion to compounders Grade-I to the higher posts in the nursing cadre. The Bench held the Rules to be arbitrary and violative of Articles 14 and 16 of that Constitution of India and directed the State Government to consider Sharma and Jain for promotion to the post of Assistant Nursing Superintendent and other higher posts from the dates when they filed writ petitions in the High Court. This is how these two appeals by way of special leave, filed by the State of Rajasthan, are before us.

6. There is no material on the record to show as to what was the cadre-composition before coming into force of the Rules. Prior to 1966 there was no statutory Rules pertaining to the service. No executive order creating cadre in

the department or a joint seniority list indicating common cadre for nurses and compounders have been produced. Simply because Sharma and Jain were working as Sister Tutors in officiating capacity in 1966 it cannot be assumed that there was a joint cadre of compounders and nurses. Even if we assume that prior to coming into force of the Rules there was a combined cadre of nurses and compounders, Articles 14 and 16 of the Constitution do not forbid the State Government from creating new cadres bifurcating one cadre into two or more or uniting two or more cadres into one. The creation of cadres in the service of the State is a matter which has to be left entirely to the State Government. In *Reserve Bank of India Vs. N.C. Paliwal and Others*, this Court held as under:

It is now well settled, as a result of the decision of this Court in *Kishori Mohanlal Bakshi Vs. Union of India*, that Article 16 a fortiori also Article 14 do not forbid the creation of different cadres for government service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause.

7. The High Court has, by strained-reasoning, come to the conclusion that the nurses and compounders form one class and as such treating them differently by creating two separate cadres is discriminatory and violative of Articles 14 and 16 of the Constitution of India. To appreciate the High Court reasoning we may reproduce Rule 4(!) of the Rules and relevant part of Schedule to the Rules:

4. Composition and Strength of the Service-(1) The service shall consist of eleven groups. The right of promotion shall be confined to each group except the extent specified in the Schedule.

S. Name Source of Minimum qu- Post from Minimum remarks No. of post
recruitment qualification and which pro- qualification -ment with experience for
motion is tion & ex- percentage direct recruitment to be made experience ment
required for promotion 1 2 3 4 5 6 7 GROUP-A 1.Nursing 50 by I.R.N.C.R or
Nursing 3 years service Supdt. direct recruitment its equivalent Supdt. as
Nursing Supdt. Gr. I recruitment qualification Gr. II Gr. II with percentage
recognised by percentage & 50% Government by promotion 2. Regd. A' grade
Nurse 3. Sister Tutor course passed 4. 12 years experience out of which 4 years
must be as Sis- ter Tutor & 3 years as Nursing Supdt. Gr. II or at an equivalent
post. 2. Nursing 25% by I. R.N.C.R. or Asstt. 2 years service Supdt. direct
recruitment its equivalent Nursing as Asstt. Nursing Gr. II recruitment &
qualification Supdt. Supdt. 75% by recognised by promotion Government 2.
Regd. 'A' Grade Nurse 3. Sister Tu- tors' course passed. 4. 10 years' experience
out of which 4 years' should be as Sisters Tutor & 3 years as Asstt. Nursing
Supdt. or at an equivalent post. 3. Asstt. 25% by 1. R.C.N.R. or Sister or 2 years
service as Nursing direct recruitment its equivalent Nursing Sister or Nursing
Supdt. recruitment qualification re- Tutor Tutor and 75% recognised by by
promo- Government tion 2. Regd. 'A' gr- ade Nurse, 3. Sister Tutors course

passed 4. 7 years experience out of which at least 3 years should be as Nursing Tutor 4. Sister or 25% by 1. R.N.C.R. or Staff 5 years service Nursing direct recruitment its equivalent Nurse/ as Staff Nurse/ Tutor recruitment qualification Comp. Comp. Gr. II or and 75% recognised by Gr. II 4 years service by promo-Government as Staff Nurse tion out of which 3 2. Regd. 'A' grade years continuous Nurse service should be 3. Sister Tutors in operation Theatre course passed or 3 years service as 4. 3 years experience Staff Nurse with as Staff Nurse/Comp. Sister Tutor Gr. II Certificate Note: For the post of Sister Tutor, Sister Tutor's Certificate will be compulsory 5. Staff 75% by PNRC or its eq-Midwife 7 years service Nurse direct recruitment equivalent qualification & Auxias Midwife or Comp. recruitment tion recognised by liary Auxiliary Nurse Gr. II & 25% by Government Nurse Midwife promotion Midwife 6. Midwife 100% by Auxiliary Nurse & Auxidirect recruitment Midwifery trained & liary recruitment VIII standard ----- Nurse passed Midwife GROUP 'E' 1. Compo- 100% by Compounder PNRC or its equivalent under promo- ----- der Gr. II valent qualification Gr. I tion tion recognised by Government with 5 years service as compounder Gr. II. 2. Compo- -do- Compounder PNRC or its equivalent under der Gr.III valent qualification Gr. II recognised by Government 3. Compo- 100% by Matriculate or under direct recruitment equivalent qu- Gr. III recruitment alification recruitment recognised by Government

8. A bare-reading of the Rules show that the Composition of the two cadres including designations, qualifications and methods of appointment to various posts, is entirely different. We do not agree with the High Court that nurses and compounders belong to one class and as such must be encored together. The attention of the High Court was invited towards the qualifications prescribed for the nursing cadre and it was argued that the compounders do not possess the said qualifications and hence are not eligible to be considered for promotion in nursing cadre. The High Court repelled the argument with the following reasoning:

Special qualification in midwifery is required for the purpose of maternity cases only. But maternity cases form only a small part of the patients undergoing treatment in the hospitals and special qualification in midwifery is not required for other patients. In this regard it may be pointed out that under the original Schedule to the Rules a person having P.N.C.R. or its equivalent qualification recognized by Government was eligible for direct recruitment or the post of Staff nurse and it was not necessary that he should be raid-wifely trained. Such a person on being appointed as Staff nurse could be promoted to all the higher nursing posts enumerated in group 'A' of the Schedule. In other words, the absence of special qualification in midwifery would not preclude a person who was direct/y recruited as Staff nurse being promoted to the higher posts. There is no reason why the same person should be denied this right if he, instead of joining the staff nurse, joined as compounder Gr. III.

9. We do not agree with the approach of the High Court. It is not, for the High

Court to assume the extent of maternity cases which are treated in the hospitals or to lay-down that compounders though not qualified to treat maternity cases must be equated with nurses because they can treat other type of cases. The High Court further erred when it equated the qualifications of Punj Nursing Registration Certificate with that of matriculation for holding that staff-nurses and compounders Grade-III possess the same qualifications for entry into service. On the face of it Nursing Certificate is a specialized qualification and cannot be equated with matriculation.

10. We may mention that by amending the Rules in 1978 an opening has been provided for compounded Grade II to enter the nursing cadre by competing with the staff nurses for promotion to the post of Sister/Nursing Tutor. The compounders Grade II have thus been provided with two channels of promotion, one in their own cadre and the other to nursing cadre. Thus the grievance of the compounders that they denied channel of promotion to the higher posts in nursing cadre has also been removed.

11. We, therefore, see no legal or equitable grounds to sustain the judgment of the High Court. We accept the appeals and set aside the judgment of the Division Bench of the High Court. Affirming the judgments of the learned single Judges we held that the Rules are constitutionally valid. There shall be no order as to costs.