
(2022) 04 SHI CK 0021
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2134 Of 2022

Sunita Kumari	Vs	APPELLANT
State Of H.P And Others		RESPONDENT

Date of Decision : 08-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Himachal Pradesh Department Of Health And Family Welfare Staff Nurse, Class III
(Non-Gazetted) Recruitment And Promotion Rules, 2019 — Rule 6

Citation : (2022) 04 SHI CK 0021

Hon'ble Judges : Mohammad Rafiq, CJ;Sandeep Sharma, J

Bench : Division Bench

Advocate : Sanjay Jaswal, Ajay Vaidya

Final Decision : Disposed Of

Judgement

Mohammad Rafiq, CJ

1. This writ petition has been filed by petitioner- Sunita Kumari, with the following prayer:

(i) That a writ in the nature of mandamus be issued thereby directing the respondents to amend/modify the Rule 6 of the Himachal Pradesh, Department of Health and Family Welfare Staff Nurse, Class III (Non-Gazetted) Recruitment and Promotion Rules, 2019, with respect to upper age limit i.e. 45 years by fixing the same to be reasonable age qua batch wise general category, if required and consider the petitioner for the post of Staff Nurse Batch wise (General) being batch of November, 2010 in the forthcoming recruitment of Staff Nurses (General category) batch-wise on contract basis with the department."

2. The case of the petitioner is that she has passed three years Diploma in General Nursing and Midwifery in second division in November, 2010. She was issued Diploma in General Nursing and Midwifery, three and half years course (including 6 months internship) from Punjab Nurses Registration Council,

Chandigarh on 19.02.2012. The petitioner got herself registered with the Himachal Pradesh Nurses Registration Council, Shimla in batch of November, 2010, bearing registration No. 4461 for Nurse and registration No. 4651 for Midwife, on 23.11.2011. Thereafter, the petitioner also completed her two years' B.Sc Nursing (Post Basic) in first division in May/June, 2013. Thereafter, the petitioner got herself registered with the Himachal Pradesh Nurses Registration Council, Shimla-1, after completing B.Sc. Nursing (Post Basic) as additional qualification certificate on 24.06.2014 and she was assigned No. 199. It is contended that the respondent-Department had notified the amended Himachal Pradesh, Department of Health and Family Welfare Staff Nurse Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2019 on 22.03.2019 (for short 'Rules 2019'), whereby Himachal Pradesh, Department of Health and Family Welfare Staff Nurse Class-III (Non-Gazetted) Recruitment and Promotion Rules, 1999, were repealed. It is contended that the petitioner on 13.05.2019 got herself registered vide registration No. W-19051338002 with the Sub-office Employment Exchange, Nurpur, District Kangra, H.P. In the year 2019, respondent No. 2 issued an Advertisement Notice, advertising 264 posts of Staff Nurses on contract basis, out of which 105 posts were reserved for general category upto 12/2010 batch-wise. The petitioner attended the Counselling for the post of staff nurse batch-wise being batch-wise incumbent of November, 2010, but she was not selected. In the year 2011, Respondent No. 2 again advertised 28 posts of Staff Nurse, batch wise on contract basis, out of which 11 posts were reserved for Staff Nurses batch-wise on contract basis and the candidates upto the batch of December, 2009 were called , but the petitioner was not called as she was a candidate of batch of November, 2010. Thereafter on 11.08.2021, respondent No. 2 again advertised 40 posts for General category Staff Nurses batch-wise on contract basis upto June, 2011, alongwith other categories, total 89 posts, but no call letter was issued to the petitioner, as according to the respondents, she had become over-age by that time, having crossed the age limit of 45 years, as per the Recruitment and Promotion Rules, 2019. The counseling was conducted on 08.03.2022. Respondent No. 2 declared the result on 16.03.2022 for appointment of 89 posts of Staff Nurses on contract basis.

3. The prayer of the petitioner in the writ petition is that the respondents may be commanded by issuance of a writ of mandamus to amend/modify Rule 6 of Rules 2019, with respect to upper age limit of 45 years by fixing the same to be reasonable age qua batch wise general category and consider the case of the petitioner for appointment on the post of Staff Nurse, being a candidate of batch of November, 2019.

4. Learned Counsel for the petitioner submitted that in similar situation, relaxation in upper age has been granted to the candidates, who were appointed in the Education Department on the post of Teacher (Batch-wise).

5. We are afraid that no direction commanding the respondents to amend/modify

Rule 6 of Rules, 2019, in a particular way, can be issued, as it is beyond the pale of jurisdiction of the High Court, under Article 226 of the Constitution of India. Even then, it may be a case of hardship because the petitioner after having acquired various qualifications in the Nursing when her turn on batch-wise appointment as Staff Nurse was about to come, she has crossed the upper age limit of 45 years. The petitioner, may for that reason, approach the respondents/ authorities, by means of a representation, invoking their power of relaxation under Rule 18 of Rules 2019, by citing the reasons for her hardship and also the fact that the candidates of subsequent batches had been appointed and the petitioner was over-looked only for the reason that till the time, she did not attain the age of 45 years, sufficient number of posts of Staff Nurse were not advertised. If any such recommendation is made, the case of the petitioner shall be considered and decided by the respondents/authorities, within a period of one month, thereafter.

6. The writ petition is accordingly disposed of alongwith pending application(s), if any.