
(1988) 07 KAR CK 0012
In the Karnataka High Court
Case No : W.P. No. 14779/1987

Vijayakumari

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 07-07-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 14

Citation : (1988) 3 KarLJ 292

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-In this petition the petitioner has questioned the constitutional validity of Note 1(f) of rule-7 of the Rules for the training of Candidates in Sick Nursing and also the legality of the order made there-under by which her admission to the Nursing Course was cancelled on the ground that she got married after joining the training course.

2. The petition has come up for orders. By consent of both the learned Counsel, it is taken up for final hearing in view of the urgency of the matter, as also for the reason that the matter is covered by the ratio of the judgment of the Supreme Court in the case of *Air India v Nergesh Meerza and Others* (A.I.R. 1981 S.C. 1829).

3. The facts of the case in brief are as follow:

The petitioner joined respondent-2 Medical College, Hubli, as a trainee nurse, general nursing Course, in the year 1987. After she completed one year and before she completed the second year of the Course, her admission to the Course was cancelled by order dated 22-4-1987. The relevant portion of the order reads: As can be seen from the above order, the cancellation was for the reason that the petitioner got married and that act of her was violative of the Rules for the Training of Candidates in Sick Nursing (hereinafter referred to as "the rules"). Learned counsel for the respondents also submitted that the cancellation was in terms of a clause in the agreement signed by the petitioner. In the petition the petitioner had originally challenged the legality of the

impugned action and by subsequent amendment she has also questioned the constitutional validity of the rule itself.

4. Note 1(f) to Rule 7 of the Rules which imposed the condition that marriage of a trainee amounts to her resignation from the training course reads:

"Candidates either marrying during the period of training including the period of contract or discharged for misconduct etc., will be deemed to have resigned from engagement for training and they will be liable to the penalties provided for in the agreement to be executed by them."

5. Learned counsel for the respondents submits that the petitioner had also entered into an agreement in which there was a clause to the effect that her admission to the course shall be liable to be cancelled if she were to marry during the period of training. Clause of the agreement reads:

"8. Should the said..... marry (this being applicable only in respect of women candidates) before the completion of the period of this agreement or termination thereof as hereinafter provided she shall be deemed to have left the training school or service without notice and she will be subject to the penalties here-in-before provided."

The Rules have been framed by the Government in its order dated 31st July, 1958 and the form of agreement is also prescribed by the Government.

6. The short question for consideration is whether Note 1(f) of rule 7 of the Rules is violative of Articles 14 and 15 of the Constitution and secondly, as to whether, in view of the clause in the agreement, the petitioner is precluded from challenging the constitutional validity of the rule.

7. In the case of *Air India v Nergesh Meerza* reported in A.I.R. 1981 S.C. 1829, the Supreme Court considered as to whether Rule 46(1)(c) of the Air India Employees Service Regulations which provided that the services of Air Hostess would stand terminated on first pregnancy was violative of Article 14 of the Constitution? The Supreme Court held that rule was violative of Article 14 of the Constitution. The relevant portion of the judgment reads:

"It seems to us that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood-the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution."

On the ratio of the aforesaid judgment, it should be held that the note in question which is made applicable only to women is equally obnoxious capricious

and discriminatory and therefore violative of Articles 14 and 15 of the Constitution.

8. As far as the clause contained in the agreement is concerned, it should be pointed out that the injunction of Article 14 of the Constitution against the State not to deny equality before law to all persons and the injunction of Article 14 not to discriminate against any citizen on grounds only of sex, does not get dispensed with by securing an agreement from an individual. Such an agreement itself is void and unenforceable. (See: Srinivasa Murthy v B.E.M.L.-1982(1) L.L.J. p. 268).

9. For the aforesaid reasons, note 1(f) to Rule 7 of the Rules is liable to be declared as void as offending Articles 14 and 15 of the Constitution and consequently, the clause contained in the agreement has to be declared as void and unenforceable.

10. In the result, I make the following order:

(i) The writ petition is allowed, (ii) Note 1(f) to Rule 7 of the Rules for the Training of Candidates in Sick Nursing is declared as void as violative of Articles 14 and 15 of the Constitution.

(iii) A writ of mandamus shall issue to the respondents to allow the petitioner to rejoin and to complete, the Course.

11. Prepare a carbon copy and furnish to the Counsel for the State.