

M.P.Nos.2 and 2 of 2015
W.P.Nos.16774 and 17039 of 2015

D.HARIPARANTHAMAN, J.

W.P.No.16774 of 2015 is filed by the Association of Government Trained and Trainee Nurses and two Trained Nurses. They sought to quash the notification No.1/2015, dated 19.04.2015, issued by the Medical Services Recruitment Board calling for applications to fill up 7243 posts of Nurses, on various grounds.

W.P.No.17039 of 2015 is filed by three Trained Nurses questioning the Clause 6B of the aforesaid notification dated 19.04.2015 with respect to educational qualification prescribed for Nurses (Men).

2. While the petitioners in W.P.No.16774 of 2015 sought interim stay of the notification dated 19.04.2015 in this miscellaneous petition in M.P.No.2 of 2015, the petitioners in W.P.No.17039 of 2015 filed M.P.No.2 of 2015 seek interim injunction restraining the Medical Services Recruitment Board from conducting the examination on 28.06.2015 for the recruitment to the post of Nurses on contract and consolidated pay basis as per the notification dated 19.04.2015.

3. The interim prayer sought for in W.P.No.17039 of 2015 has virtually become infructuous, since the examination already took place on 28.06.2015.

4. In any event, out of three petitioners in W.P.No.17039 of 2015, two of them were permitted to write the examination as they possess prescribed qualification

based on the declaration made by them and the other petitioner was not issued with the hall ticket to write the examination as he did not possess the required qualification as per his declaration. In these circumstances, I passed an order on 25.06.2015 that if a person does not possess the qualification, as per his declaration, he cannot seek to participate in the selection process.

5. The learned counsel for the petitioners in W.P.No.16774 of 2015, particularly, made the following submissions in support of his plea seeking stay of notification :

- (1) The notification seeking to recruit Nurses on contract basis is bad and illegal, particularly, in view of the judgment of this Court dated 26.04.2013 in W.P.No.3711 of 2013 etc. batch. In this regard, he questioned the Clause 1 of the notification ;
- (2) The upper age limit prescribed in the notification for making application at 58 years is contrary to the Tamil Nadu Medical Subordinate Service Rules. In this regard, Clause 6A of the notification is put in question ; and
- (3) The notification provides reservation of 6792 posts exclusively to women candidates and such a reservation is not provided in the Tamil Nadu Medical Subordinate Service Rules. Hence, such reservation is bad and illegal and also violative of Article 14 of the Constitution. In this regard, Clause 2 of the notification is put in question.

6. Heard the submissions of the learned counsel appearing for the petitioners in W.P.No.17039 of 2015.

7.0. On the other hand, learned Advocate General appearing for the State sought to sustain the notification. He took me through the counter-affidavit, additional counter-affidavit and the voluminous documents produced in three volumes of typed-set of papers.

7.1.1. The learned Advocate General submitted that though the Clause 1 of the notification states that recruitment would be on contract basis and on consolidated pay basis, it is only recruitment to the posts under various schemes funded by the central Government. That is, according to him, the recruitment is to the posts covered under various schemes and it is not contract appointment and it is scheme appointment. There is no Contractors, i.e., middlemen. It is also not for a tenure. The persons appointed as Nurses will continue to hold the post so long as the schemes continue. He took me to the paragraph 14 of the additional counter-affidavit giving the break-up of sanctioned posts in various schemes, that are funded by the Central Government.

7.1.2. He further submitted that the Nurses appointed to various schemes on consolidated pay are absorbed in regular vacancies that arise in the Government hospitals. He also submitted that such absorption takes place from two to five years. On such absorption, the Nurses would be paid the time scale of pay.

7.2.0. As far as prescription of 58 years as upper age limit to make the application for the post of Nurses is concerned, the learned Advocate General heavily relied on G.O.Ms.No.482, Health and Family Welfare Department, dated 01.10.1997 granting exemption to the upper age limit fixed under the Special Rules, namely, Tamil

Nadu Medical Subordinate Service Rules at 32 years.

7.2.1. The learned Advocate General, while narrating about various litigations between the Government and Private Institutions Trained Nurses in the recruitment of Nurses, also submitted that the Nurses were recruited by the Government only from students, who are trained in the Government Nursing Institutions so far. Only from 1985, Private Nursing Institutions came into existence and the students trained in those institutions also claimed employment in the Government service. Hence, there were a lot of litigations and the Government Trained Nurses got orders in their favour to confine recruitment only from the students trained in Government Nursing Institutions. This is the first time, wherein, the private trained Nurses are permitted to make application and to write the examination for the post of Nurses in the Government service pursuant to the judgment of the Division Bench of this Court dated 08.01.2014 in W.A.No.1119 of 2013 etc. batch.

7.2.2. When the candidates are recruited as Nurses from Government Nursing institutions, the recruitment is solely based on batch-wise seniority. That is, seniority is the only criteria and there is no selection process. According to the learned Advocate General, it is for the first time that the recruitment to this public employment takes place by way of selection process and the candidates shall face the written examination to get employment as Nurses in the Government service.

7.2.3. Under these circumstances, the Government decided to permit all the candidates without reference to age to participate in the present selection process. That is, since the private trained Nurses from 1985 onwards were not given chance to enter into the Government service, the age relaxation is granted. It is also submitted

that even in the case of Government trained Nurses, some of them would have crossed 32 years of age, as only upto 2007 batch Nursing students in Government Nursing Institutions were recruited before this recruitment. Hence, this would benefit all the persons, according to him. In this regard, the learned Advocate General relied on the following details relating to the issuance of Hall Tickets to number of persons in a particulate range of age group, that was given in paragraph 13 of the additional counter-affidavit in this regard :

<i>Sl. No.</i>	<i>Range of Age</i>	<i>total No. of Hall Tickets issued</i>
1	< 32	32089
2	32-40	7628
3	41-45	538
4	46-50	140
5	51-58	37
TOTAL		40432

7.2.4. Therefore, the persons above the age of 32 years are not in substantial numbers and hence, it would not seriously prejudice the candidates below 32 years. In any event, he has submitted that the present selection is based on written examination.

7.2.5. The learned Advocate General gave an undertaking that in future recruitments, there would not be any age relaxation and the upper age, as prescribed in the Special Rules, would be scrupulously followed. He also took me through paragraph 12 of the additional counter-affidavit, wherein, a written undertaking is given in this regard.

7.3.1. As far as reserving 6792 posts for women is concerned, learned Advocate General submitted that the Central Government Schemes for which, the

recruitment takes place provide for recruitment of Women Nurses. The Central Government Schemes are relating to treat diseases suffered by women, such as, Breast Cancer, Cervical Cancer, Child Care, maternity, etc. Therefore, the Central Government itself provides for appointment of Women Nurses to be posted in those posts. He has further submitted that the Female candidates alone are given Midwifery training in Government Nursing Institutions. Even in the case of private nursing institutions, the male candidates, who underwent Midwifery training, are not in substantial numbers.

7.3.2. He further submitted that providing reservation in favour of women cannot be objected to, particularly, the same is in accordance with the Constitutional scheme and he has referred to Article 15(3) of the Constitution in this regard. He also heavily relied on Rule 21 of the Tamil Nadu State and Subordinate Service Rules that provides for reservation to women exclusively.

8.0. In reply, the learned counsel for the petitioners in W.P.No.16774 of 2015 has vehemently contended that the State cannot resort to contractual appointment as the same would amount to exploitation of labour.

8.1. The learned counsel for the petitioners submitted that in view of the judgment of this Court dated 26.04.2013 in W.P.No.3711 of 2013 & batch, the Nurses shall be appointed on regular basis with appropriate scale of pay applicable to that post.

8.2. According to him, there are a large number of vacancies in the hospitals and even if the appointments are made to various schemes, since the posts are

sanctioned posts under those schemes, the appointment to those sanctioned posts shall be made on regular basis so that the persons appointed to those sanctioned posts shall be granted regular scale of pay. He has taken me through paragraph 14 of the additional counter-affidavit, wherein, it is mentioned as Sanctioned Posts. In this regard, he submitted that when Doctors are appointed to the schemes, they are paid time scale of pay. But the same treatment is not given to the Nurses appointed in the very same schemes. He relied on G.O.Ms.No.109, Health and Family Welfare Department, dated 13.05.2013, wherein, the appointment of Doctors are made for the same schemes and those Doctors are provided scale of pay applicable to the posts.

8.3. The learned counsel for the petitioners, in his usual style, also submitted that even the unskilled Labours (OAs) provided by the Public Works Department in the residences of the Hon'ble Judges are paid more pay than the one fixed for the Nurses. The consolidated pay of Rs.7,700/- is less than the minimum wages being paid to unskilled labours, according to him.

8.4. The learned counsel for the petitioners disputed the additional counter-affidavit as well as the submission made by the learned Advocate General that the appointment is for various Schemes of the Central Government.

8.5. The learned counsel for the petitioners submitted that prescribing 58 years as age qualification under the notification is violative of the statutory rule. He argued that the Government Order referred to by the learned Advocate General in G.O.Ms.No.482, Health and Family Welfare Department, dated 01.10.1997, could not be applied in this case, as the same was issued in the context of recruitment to Government Trained Nurses.

9. I have considered the submissions made by either side.

10. The counter-affidavit as well as the additional counter-affidavit is sworn in to by the Additional Secretary to the Government, Health and Family Welfare Department. Those affidavits make it very clear in uncertain terms that the recruitment is only for various Central Government Schemes. The following passage in paragraph 14 of the additional counter-affidavit can be usefully extracted :

<i>Sl. No.</i>	<i>Year</i>	<i>Name of the Scheme</i>	<i>No. of posts sanctioned</i>
1	2011	Non-Communicable Diseases (NCD)	2359
		Neo-natal Care Units (NICU)	126
		24 Hrs Delivery Care	219
2	2012	Maternal and Child Health (MCH)	42
		Non-Communicable Diseases (NCD)	73
		Nutrition Rehabilitation Centre	08
3	2013	Sick Neo-natal Care Unit (SICU)	244
		Neo-natal Care Units (NICU)	468
4	2014	Rashtriya Bal Swasthya Karyakram (RBSK)	770
		Additional Manpower sanctioned to the existing schemes	773
		TOTAL	5082

11. In view of the categorical averments made in the counter-affidavit, additional counter-affidavit and the submission made by the learned Advocate General, I am of the view that the recruitment is only for those Central Government Schemes. It is not contractual appointment. As rightly contended by the learned Advocate General, the recruited candidates would continue in service so long as the schemes continue to

exist. The learned Advocate General further submitted that the candidates employed in the schemes are absorbed in the regular vacancies that would arise in the Government Hospitals, based on seniority. Furthermore, the learned Advocate General also brought to my notice that the consolidated pay would be given only for a period of two years and thereafter, they would be absorbed in the regular vacancies, subject to availability of regular vacancies. The learned Advocate General also submitted that normally, the persons are brought to regular service between two and five years and hence, the recruited Nurses could not be kept under consolidated pay for a long time. In fact, the same is mentioned in Clause 4 of the impugned notification. The said submission made by the learned Advocate General is recorded.

12. In these circumstances, I am unable to agree with the submissions made by the learned counsel for the petitioners that since the notification used the word "contract", the same shall be stayed. It is explained by the learned Advocate General that the recruitment is only for the schemes and there is no middlemen in between and they are directly employed by the Government in various schemes.

13. Further, at this juncture, I find much force in the submissions of the learned counsel for the petitioners that even if appointments are made to schemes, they cannot be appointed to a meager sum of Rs.7,700/- on consolidated pay basis. The Nursing students undergo three and half years course and they belong to skilled category. The learned counsel for the petitioners submitted that the Government, while appointing Doctors in the schemes in G.O.Ms.No.109, Health and Family Welfare

Department, dated 15.03.2013 has provided scale of pay, but the Nurses are not given the same treatment. I am of the view that the persons, who are recruited to the schemes would get the scale of pay from the date of appointment, if they succeed in these writ petitions and therefore, the same cannot be a reason to stay the notification and I am not inclined to stay the impugned notification on that score.

14. Though the notification does not indicate that the recruitment is for the Central Government Schemes, the recruitment is only for those Central Government Schemes and the posts are "*sanctioned posts*". In fact, as rightly pointed out by the learned counsel for the petitioners, paragraph 14 of the additional counter-affidavit states that the posts in the schemes are Sanctioned Posts. The non-mention of the same in the notification could not make the notification bad and illegal.

15. In any event, the question as to whether the recruited Nurses have right to scale of pay at the very initial appointment to the Schemes or otherwise could be gone into at the time of final hearing of these writ petitions.

16.1. The next issue is as to whether fixing of upper age limit at 58 years to make application would call for any interdiction at the interlocutory stage.

16.2. In this regard, it is useful to refer to G.O.Ms.No.482, Health and Family Welfare Department, dated 01.10.1997. While the Special Rules fix the upper age limit at 32, the said G.O. was issued, exercising the power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules, relaxing the upper age limit without any limit.

Prior to this recruitment, the recruitments were confined only to Government Trained Nurses. Hence, when the said G.O. was issued, the recruitment was confined to Government Trained Nurses. But, it cannot be held that the relaxation given in that Government Order by exercising Rule 48 of the Tamil Nadu State and Subordinate Service Rules would not apply for the present recruitment, particularly, when the Government Order states that the relaxation of age limit would apply for recruitment to future vacancies.

17. I am in agreement with the submission made by the learned Advocate General that taking into account the fact that the Nurses studied and trained in private institutions were not recruited in the Government service so far for the past 25 years due to various litigations, this relaxation would be applied only for this recruitment and the Government would strictly follow the upper limit of 32 years as prescribed under the Rules in the future recruitments. Further, in view of paragraph 12 of the additional counter-affidavit, wherein, it is categorically stated that the age relaxation Government Order will be lifted after this recruitment and the Special Rules will be restored for future recruitments and also in view of the undertaking given by the learned Advocate General before this Court that there would be no age relaxation in future recruitments, I am not inclined to stay the impugned notification.

18. Furthermore, hitherto, the recruitment of Nurses trained in Government institutions was solely based on seniority and batch-wise recruitment took place. Now for the first time, the recruitment of Nurses is based on selection and the candidates

shall be successful in the written examination.

19. At this juncture, it is also relevant to take note of the tabular column that was extracted hereinabove giving the statistics relating to issuance of hall tickets to number of candidates with their age. It is clear that the number of candidates above the age of 32 are less in numbers and permitting them to write the examination would not seriously prejudice the rights of the persons below 32 years.

20. Taking into account the entirety of the circumstances, I am in agreement with the submissions of the learned Advocate General and I do not find any infirmity in permitting the candidates above 32 years of age to participate in the selection process.

21. The last contention is relating to reservation of 6792 posts in favour of women. At this juncture, it is relevant to take note of the statistics provided by the learned Advocate General stating that out of 40,432 candidates applied for the post, the male candidates are only 1790. In fact, only less number of male candidates undergo Nursing Course.

22. In any event, when the Central Government provide for appointment of Women Nurses in the Schemes, in view of the specialized jobs, such as, treatment to patients for breast cancer, Cervical cancer, child care, maternity, etc., the recruitment of Women Nurses to those posts cannot be faulted with. It is relevant that the Central Government is the funding agency.

23. Furthermore, Article 15 (3) of the Constitution permits the State to make special provision for women thereby permitting discrimination in favour of women. Based on the same, Rule 21 was inserted in the Tamil Nadu State and Subordinate Service Rules. It is relevant to extract the relevant passage in Rule 21 of the said Rules as hereunder :

“21. Appointment of Women - (a) Women alone shall be appointed to post in any institution or establishment specially provided for them ;”

24. Taking into account, the Constitutional provision under Article 15 (3) and Rule 21 of the Tamil Nadu State and Subordinate Service Rules and also the fact that the Central Government schemes, under which the Nurses are appointed, provide for appointment of Women Nurses, I do not find any reason to interfere in the reservation of 6792 posts for women.

25. In the result,

(i) The stay petition in M.P.No.2 of 2015 in W.P.No.16774 of 2015 is dismissed with the aforesaid observations.

(ii) The injunction petition in M.P.No.2 of 2015 in W.P.No.17039 of 2015 is dismissed as infructuous.

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Index : Yes / No

Internet : Yes / No

Note : Issue order copy on 27.07.2015

15.07.2015

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