

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.210/00225/2018

and

O.A.210/00274/2018

Dated this Friday the 28th day of February, 2020.Coram: Dr. Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).

(1) O.A.210/00225/2018

Mrs. Nilam Nagesh Mestry nee
Ms. Nilam Dilip Mestry,
Residing at Room No.29,
'B' Wing, Sanghmitra C.H.S. Ltd.,
Tilak Nagar, Chembur,
Mumbai - 400 089. .. Applicant.

(By Advocate Shri D.A. Athavale).

(2) O.A.210/00274/2018

1. Rekha Chandrakant Dolas,
Residing at -
383, Late Aali, Near Ambedkar Nagar,
Shirur, Taluka Shirur,
District - Pune.
2. Madhavi Madan Kadam,
Residing at -
1/16, Naigaon Police Head Quarters,
old Police Line, B.J. Derukhakar Road,
Naigaon, Dadar East,
Mumbai - 400 014. .. Applicants.

(By Advocate Shri D.A. Athavale).

Versus

1. Union of India, through the
Secretary,
Ministry of Health and
Family Welfare,
Nirman Bhavan,
New Delhi - 110 011.
2. The Additional Director,
Central Government Health Scheme,
Old C.G.O. Building,
(Prathishtha Bhavan), Ground Floor,

South Wing, 101, M.K. Road,
New Marine Lines,
Mumbai - 400 020.

.. Respondents in
both the OAs.

(By Advocate Shri N.K. Rajpurohit).

Order reserved on : 27.01.2020

Order delivered on : 28.02.2020.

O R D E R

Per : Dr.Bhagwan Sahai, Member (A).

These two OAs involving identical reliefs being sought and the subject matter involved, have been heard together on 27.01.2020 and are being decided by this common order, with consent of the counsels of the parties..

In these OAs the applicants seek setting aside of the qualification criteria of two years Auxiliary Nurse Midwifery (ANM) Course stipulated in advertisement for recruitment of ANMs against combined vacancies at CGHS, Ahmedabad, Mumbai, Nagpur and Pune by declaring them is illegal, bad in law, and direction to the respondents to accept their ANM Course qualification acquired by them under the earlier ANM Course of 18 months and to select them in accordance with merit list. They have also sought cost of these applications from the respondents.

2. Summarized facts:

2(a). The applicants have stated that Indian Nursing Council (INC) is the statutory body

constituted under provisions of Indian Nursing Council Act, 1947 and there is a State Nursing Council constituted in each State. The INC sets the courses, syllabus, qualifications, eligibility criteria, etc for various courses conducted by it and State Councils. To students successfully passing various courses, the State Councils issue certificates.

2(b). They have further stated that the ANM course was of two years duration upto the year 1977, then its duration was reduced to 18 months which included internship also. This duration of 18 months continued upto the academic year 2011-12. However, from the academic year 2012-2013, duration of the course was revised to 24 months, consisting of 18 months of the course followed by six months of internship after which the students can appear for the examination. Eligibility for the ANM course of 18 months was 10th Standard pass educational qualification and for the revised two years course, the educational qualification is 12th Standard pass from respective recognized Higher Secondary Board (copy of Resolution of INC circulated on 29.10.2014 is at Annex-A-3).

2(c). The applicants completed their ANM course with distinction prior to the academic year 2012-2013 from recognized institutes in Maharashtra as

it was only 18 months course available at that time and recognized by the INC. Certificates of their registration have been duly renewed and were valid till the time of filing of these O.As in April, 2018.

2(d). The Ministry of Health and Family Welfare, Government of India published an advertisement in November, 2017 (Annex-A-1) for recruitment against combined vacancies under CGHS at Ahmedabad, Mumbai, Nagpur and Pune (copy at Annex-A-1), mentioning 9 vacancies of ANM in Mumbai. The educational qualification for ANM course set out in that advertisement was completion of two years ANM course under vocational stream from the Central Board or recognized board or university, the candidate to be registered as ANM with respective nursing Council, and one year experience and training in family welfare as desirable.

2(e). In response to the advertisement, the applicants applied for the posts of ANM and submitted their applications. They claim that they were under impression that they were qualified to apply in response to the advertisement as old course was upgraded and their mark-sheets for the 2nd year stated that it was for the 2nd year and they were duly registered as ANM. Their online applications were received and written examination

was held on 08.01.2018, and the successful candidates who passed the written examination were called for documents verification, as per letters dated 14.02.2018 and 16.02.2018.

2(f). Final result of the recruitment process was published by the respondents on their website on 09.03.2018 in which the names of the applicants were not there among the successful candidates. On enquiry, they were orally informed by respondent No.1 that their applications were rejected because they had done 18 months course as against the requirement of two years course as per the qualification criteria mentioned in the advertisement. Thereafter they have submitted their request to respondent No.1 that when they passed the ANM course, it was of only 18 months duration. However, they were informed that they cannot be helped in this regard unless their request is submitted through respondent No.2. Therefore, these OAs have been filed.

3. Contentions of the parties:

In their OAs and rejoinder (filed by applicant No.1 in O.A.274/2018) and arguments of their counsel, the applicants contend that -

3(a). the educational qualification criteria set out by the respondents for the posts of ANM are discriminatory and unjustified, as upto the

academic year 2011-12, the ANM course available all over the country was only of 18 months duration, which has been discontinued from the academic year 2012-13 by raising its duration to 24 months;

3(b). since 1977 upto academic year 2011-12, thousands of students have completed the 18 months ANM course all over the country and that course was duly recognized by the Indian Nursing Council and State Nursing Councils. Thus by the educational criteria set out in the advertisement, the respondents have disqualified thousands of students who have successfully completed the 18 months course and they have indirectly favoured the students who have passed the two years ANM course from the academic year 2012-13;

3(c). the respondents have not appreciated the issue that such certificate is not insisted upon by the INC, and the students who completed the ANM course prior to the year 2012-13 will cease to be qualified even to appear for any examination, thereby losing job prospects;

3(d). the respondents have ignored the applicants' work experience as ANM, based on which they should have been given preference but because of the criteria adopted by the respondents, meritorious candidates have been rejected, which is unfair and discriminatory;

3(e). the respondents have avoided to consider the applicants' important contention that INC sets course for ANM all over the country and prior to the academic year 2012-13, the ANM course was of only 18 months duration, which means that the respondents have admitted this fact. If the contention of the respondents about two years course of ANM is to be accepted, then it will have to be presumed that there was no recruitment at all under CGHS from 1993 till academic year 2012-13;

3(f). the applicants were under the impression that the condition of two years ANM course in the advertisement was an error. They have not dealt with other contentions of the respondents in their reply. In view of this factual position, they seek the OAs to be allowed.

In their reply, additional affidavit and arguments of their counsel on 27.01.2019, the respondents contend that -

3(g). no legal right of the applicants has been violated by the respondents and the present O.A. filed in the form of a Public Interest Litigation is not maintainable in law and it should be dismissed with cost;

3(h). C.G.H.S. is an organization which caters to medical care and treatment of Central Government employees, pensioners and their family members

residing within the areas covered by it in 31 cities in the country. In Mumbai there are 28 Wellness Centres and 2 Polyclinics under the Additional Director, CGHS. Office of Head of this organization working under the Ministry of Health and Family Welfare is at New Delhi. The Government decided to fill up vacant posts of some of the para medical staff to work under the CGHS at Ahmedabad, Mumbai, Nagpur and Pune and accordingly the advertisement was issued in November, 2017. Recruitment to the posts of ANM is made as per Recruitment Rules framed by the Ministry of Health & Family Welfare and notified on 24.11.1993 (Annex-R-1);

3(i). for nine posts of ANM advertised for CGHS, Mumbai, the requisite qualification was two-years ANM course under vocational stream of 10+2, with Certificate from the Central Board of Secondary Education and Registered as ANM with the respective Nursing Councils. Experience and training in Family Welfare was also mentioned as desirable criteria.

The applicants were allowed to take the examination based on the information submitted by them in their applications. The result was declared on 09.03.2018 when the applicants were shortlisted provisionally based on the written

examination. But on verification of their documents, it was found that they had done only 18 months ANM course and, therefore, their selection was not considered;

3(j). CGHS, Mumbai is concerned with recruiting ANMs with two-years ANM course under the vocational stream of 10+2 possessing the certificate from the Central Board of Secondary Education and is not aware of change of duration of course, etc by the Indian Nursing Council as claimed by the applicants. The Recruitment Rules for the posts of ANM were notified by the Department of Health, Ministry of Health & Family Welfare, Government of India in 1993 and the educational qualification prescribed in the schedule attached to those rules very clearly mentions the educational and other qualifications for direct recruitment of ANM as two years ANM course under the vocational stream of 10+2 possessing the Certificate from the Central Board of Secondary Education and Registered as ANM with respective Nursing Councils. Thereafter there has not been any amendment to those rules about the educational qualifications pertaining to two-years ANM Diploma Course in Nursing;

3(k). even if the contention of the applicants that from the academic year 2012-13, the ANM course is of two-years duration is to be considered, it is

clear that as per the advertisement of November, 2017, candidates with 2-year ANM Course were available to apply for the posts of ANM under the CGHS, Mumbai. That advertisement incorporated the requisite educational qualifications, age limit and experience, etc as per the Recruitment Rules, 1993. There was also inserted a declaration that all the information provided in their applications was true and correct and furnishing of wrong information about duration of course they were liable for proper action including loss of job if the information provided is found to be incorrect.

As per letters dated 14.02.2018 and 16.02.2018 sent to the applicants, they were instructed to clearly understand that their candidature was provisional subject to verification of their documents. However, during the verification of applicants' documents, it was revealed that they had completed the Diploma Course of ANM only for 18 months duration as per their diploma certificates but they had deliberately furnished wrong information in their applications declaring that they had done 24 months ANM Course;

3(1). relaxation of duration of the ANM course is not permissible under the CGHS as per the Recruitment Rules. Therefore, for non-possession of two years ANM Course Certificates of the Diploma

by the applicants, they were not eligible for recruitment as ANM under the CGHS. In view of these facts, the OAs being devoid of merits should be dismissed and the respondents should be allowed to fill up the posts immediately.

4. Analysis and Conclusions:

4(a). We have perused the OA memos and their annexes, rejoinders of the applicants, replies and additional replies filed by the respondents, and considered the arguments advanced by both sides on 27.01.2020. Based on this, the OAs are analysed as under.

4(b). The main issue for decision in these OAs is whether the applicants having educational qualification of ANM course of 18 months duration were eligible for the posts of ANM under the CGHS as per the advertisement dated 24.11.2017. The advertisement was issued by the respondents for direct recruitment of ANMs under the CGHS as per the Recruitment Rules, 1993, which have not been amended subsequently with respect to the educational qualification i.e. 24 months ANM course, etc.

4(c). All the three applicants possess ANM Course Certificates issued by the Maharashtra Nursing Council of 18 months duration. Thus they did not possess the ANM course Diploma of two years

as required under the Recruitment Rules and as per the qualifications mentioned in the advertisement of November, 2017. But even then in the online applications submitted by them in pursuance to that advertisement, they mentioned / declared that they were possessing the required qualifications in terms of ANM course/diploma of twenty four months duration. This was deliberate suppression of true facts by the applicants. The specious plea of the applicants that upto academic year 2011-12, all over the country the ANM course was of 18 months duration and they were under the impression that they were eligible for the posts of ANM under CGHS as per the advertisement of November, 2017 is of no substance.

4(d). As explained by the respondents, in view of the details submitted by the applicants in their online applications (which also contained a declaration that they possessed the requisite ANM Course Diploma of 24 months), they were allowed to appear in the written examination but during verification of their documents such as the ANM Course Certificates, it was detected that the applicants possess only ANM course Certificates of 18 months duration as against the requirement of ANM Course of two years duration. Therefore, they were not selected. This clearly shows a

deliberate, false and misleading attempt of the applicants in their declarations in the applications that they possess the required qualification of two years duration ANM Course diploma and filling up the applications forms by mentioning it so.

4(e). The very fact that the Central Government Health Scheme (Auxiliary Nurse Midwife) Recruitment Rules, 1993 prescribe the essential certificate for the post of ANM as two years ANM Course and thereafter this essential qualification has not been amended and the submission of the applicants themselves that from the academic year 2012-13, the INC has prescribed the duration of ANM Course of 24 months make it abundantly clear that before the recruitment process was taken up as per the advertisement of November, 2017, there were available candidates in the country possessing the two years ANM Course Diploma for recruitment by the respondents. But the applicants were not eligible to apply for the posts of ANM under the CGHS as per the Recruitment Rules of 1993 and advertisement of November, 2017.

4(f). There is also merit in the contention of the respondents that once having participated in the selection process, on their failure in getting selected the applicants cannot challenge the same

process in the OA and, therefore, the O.A. is liable to be dismissed.

4(g). In view of non-possession by the applicants of the requisite qualification in terms of two years ANM Course Diploma and having indulged in suppression of facts by falsely claiming possession of two-years duration ANM course diploma in their applications, these O.As have no merit at all, are only wasteful litigation and they deserve to be dismissed with imposition of cost.

5. Decision:

The OAs are dismissed, and each of the applicants is directed to pay cost of Rs.5000/- to respondent no.2 within one month of receipt of a copy of this order.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
03/03/2020