

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. 61/184/2021



Pronounced on: This the 15th day of April 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Latasha Sharma; age: 24 years, D/o Late Sh. Vika Sharma, R/o House No. 864, Indra Chowk, Subash Nagar, jammu-180005.

.....Applicant

(Advocate: Mr. Rahul Pant, Sr. Advocate assisted by Mr. Aniruddha Sharma)

Versus

1. Union Territory of Jammu and Kashmir through Financial Commissioner to Government, Health and Medical Education Department, Jammu and Kashmir Government, Civil Secretariat, Jammu-180001.
2. Principal, Government Medical College, Jammu-180001.
3. Dr. Shashi Sudhan Sharma, Principal, Govt. Medical College, Jammu.
4. Administrator, Associated Hospitals, Government Medical College, Jammu-180001.
5. Sh. Nagendra Singh Jamwal, Administrator, Associated Hospitals, Government Medical College, Jammu-180001.

.....Respondents

(Advocate: Mr. Rajesh Thappa, learned Deputy Advocate General)

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J): -



1. Applicant Latasha Sharma has filed the present petition seeking the following reliefs:-

- “i) Allow the instant application of the applicant along with costs.
- ii) Direct the respondents No. 2 to produce before this Hon'ble Tribunal the appointment orders of the private respondent No. 7 to 10 with a further prayer to set aside the appointment orders of the private respondents No. 7 to 10 selected and appointed, in pursuance to the select list issued by the Respondent No. 2 vide Order No. 589/AHJ of 2020 dated 02.12.2020 whereby respondents no. 7 to 10 being lower in the merit than the applicant have been selected and appointed for the post of Senior Staff Nurse under SRO 24 of 2019 dated 10.01.2019 in Government Medical College and its Associated Hospital Jammu.
- iii) Direct the Respondent No. 2 to select and appoint the applicant against the post of Senior Staff Nurse in the open merit category on the basis of her higher merit than the private respondents no. 07 to 10 in pursuance to the selection process initiated vide Advertisement Notice No. 06 of 2020 dated 18.09.2020 for 20 posts of Senior Staff Nurse under SRO 24 of 2019 dated 10.01.2019 in



Government Medical College and its Associated Hospital
Jammu.

- iv) Set aside and quashed the order passed by the respondent No. 2 bearing order No. 648 AHJ of 2021 dated 21/01/2021.
- v) Direct the respondents to select and appoint the applicant pursuant to the aforesaid advertisement notice date 18.09.2020 as Senior Staff Nurse under the reserved category of EWS for which 10% quota has been provided under the J&K Reservation Rules of 2005 as amended vide SRO 518 dated.
- vi) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may also be granted in favour of the applicants and against the respondents.”

2. The qualification required for the said job is 10+2 or above qualification with B.Sc. Nursing from recognised institute. Case of applicant is that her candidature for appointment to the post of Senior Staff Nurse under reserved category Economically Weaker Sections (EWS) as advertised vide Advertisement notice No. 06 of 2020 dated 18.09.2020 has been rejected by respondent No. 3 vide impugned order dated 21.01.2021.
3. As per the impugned order, weightage of 60 points was allocated to the basic qualification of 10+2 and was the very basis of selection

criteria. Applicant did not enclose the 10+2 mark sheet with the application form and so, the committee was unable to select the applicant.



4. We have heard and considered the arguments of the learned counsel for applicant and learned D.A.G for respondents and gone through the material on record.
5. Two facts stand out. Firstly, and admittedly, applicant applied for the post under the reserved category EWS, as per, the impugned order; Secondly, the dispute arises whether applicant enclosed her 10+2 mark sheet with the application form. Applicant alleging that she had attached the mark sheet which is denied by the respondents.
6. Learned counsel for applicant has advanced two-fold arguments which have force and to be accepted. Firstly, it is argued that unlike the application form of Reema Kumari Sharma placed on record by applicant wherein the office had noted that the ALC certificate of said candidate has expired, the application form of applicant contains no such noting that her mark sheet is not attached to the application form. Therefore, the contention of respondents regarding the non-submission of her marks sheet does not carry weight.
7. Second submission of applicant is that she had undergone B.Sc. Nursing from Jammu University, Jammu which course can be undergone only by a person who qualified 10+2 but that even if the



applicant is denied the weightage for 10+2 as she has failed to file the mark sheet, even then she was entitled to be selected and appointed, inasmuch as, 20 posts of Senior Staff Nurses have been advertised, out of which, Roster Point No.09 and Roster Point No.19, were reserved for the Economically Weaker Section and since a candidate belonging to the Economically Weaker Section has not been selected, as such, the deponent-applicant being the only eligible candidate in the Economically Weaker Section category, is entitled to be selected on the basis of the weightage to her Graduation but has been arbitrarily denied selection even though 5 posts are available. It has been argued that the present OA is required to be allowed with a direction to the respondents to select and appoint the deponent-applicant as Senior Staff Nurse w.e.f. the date the others with lesser merit than the deponent-applicant, have been selected and appointed, with all consequential benefits.

8. We would bring to the notice of the respondents, the law laid down by the Hon'ble High Court in Balwinder Kour v/s State of J&K, (2000) Kash LJ 421 regarding weightage to be given to educational qualification as below:

“15. In view of the above, we are of the opinion that giving undue weightage to 10+2 qualification and giving lesser importance to the degrees in the discipline of Education is not apt. 10+2 qualification has no rational with the object i.e. appointment as teacher. 10+2 qualification is basic for all further attainments in all walks of life. How does this

qualification advances the cause of teaching and of those who are to be taught when this qualification is not given any weightage for any other discipline then why give it so much importance in the selection of teachers. In any case, 50 marks for 10+2 qualification is definitely on the higher side. At 10+2 stage, an individual's personality is yet to develop and as observed in Lila Dhar's case (supra) "it is too early to identify the personal qualities for which greater importance may have to be attached in later life." Deeper traits of leadership, tact, forcefulness are yet to develop. Therefore, giving undue regard to 10+2 qualification at the cost of later qualifications is not apt. In somewhat different context, reserving 75 marks under one head out of 275 marks was held to be bad in the case of Pariakaruppan Vs. State of Tamil Nadu, AIR 1971 SC 2303 (supra). Again reserving 50 marks out of 150 under one head in the case of Nishi Maghu Vs. State of J&K and others. AIR 1980 SC 1975 and 33 1/2 percent of total marks for interview in Ajay Hasia's case (supra), did not find favour with the Supreme Court of India. As indicated above, this was in the context of reserving marks for vivavoce. Nevertheless, the thought behind this view is that giving undue weightage to one criteria at the cost of other attract the vice of inequality. This has certainly not been avoided in this case. There is no rational; there is not nexus with the object to be achieved. The object is to appoint a teacher. A trained teacher having Graduation and Post Graduation qualifications in the discipline of Education would



be best suited for the job. By the process adopted in the present case, a trained teacher is being almost ousted from consideration by giving insignificant weightage to his B.Ed and M.Ed qualifications. As indicated above, if in the discipline of medical law, engineering, architecture etc., the basic qualification is the one which is possessed by a candidate in that very discipline, then there is no justification to not to adopt the same criteria when appointments are made in teaching faculty. The decisions of the Supreme Court noticed above do lay down the importance of trained teachers. The criteria adopted in the present case brings in arbitrariness.”



9. Looking to the facts of the case as well as the stand of the parties in their respective pleadings and their arguments, we are of the opinion that the contention of learned counsel for applicant that applicant is entitled to be appointed on the basis of her marks in B.Sc qualification has force and to be accepted. The O.A. is accordingly allowed by quashing and setting aside the impugned order No. 648 AHJ of 2021 dated 21.01.2021 with direction to the respondents to appoint the applicant to the post of Senior Staff Nurse, as per her merit keeping in view her marks in the B.Sc qualification and eligibility under rules within a period of two weeks from date of receipt of certified copy of this order. No Costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-