

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 460/2013

~~Wednesday~~ day this the 19th day of August, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

Fairoosa Beegum, aged 22 years.
D/o Abdul Samed, Present address:
Government Type IV Quarters, 50, Acre, Minicoy
Permanent address: Arabiyoda House,
Agatti Island, Union Territory of Lakshadweep.

...Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. The Administrator,
Union Territory of Lakshadweep,
Lakshadweep Administration,
Kavaratti-682555.
2. The Secretary (Health)
Union Territory of Lakshadweep
Kavaratti-682 555.
3. The Director of Health Services,
Administration of the Union Territory of
Lakshadweep, Directorate of Health Services,
Kavaratti-682 555.
4. Sumayya Thasneem MP, aged 23
D/o Cheriya Koya, K.J.
Meppaly House, Kalpeni
Union Territory of Lakshadweep
Pin. 682 557.
***(4th respondent Impleaded as additional respondent vide
order dated 4.12.2013 in M.A.No.1304 of 2013)***

...Respondents

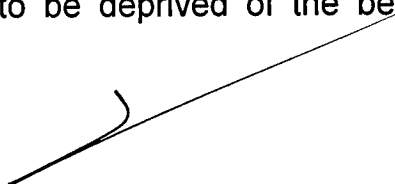
(By Advocate Mr. S.Radhakrishnan for Respondents 1 to 3
M/s Aysha Rahman & Nila C.V for R.4. **(no representation)**)

This application having been finally heard on 19.8.2015, the Tribunal on the same day delivered the following

O R D E R (oral)

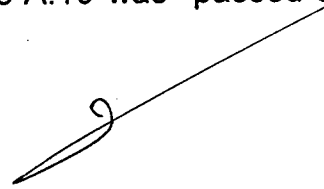
Per: Justice N.K.Balakrishnan, Judicial Member

The applicant who is a native of Agathi Island of Union Territory of Lakshadweep is a holder of diploma in General Nursing and Midwifery Course. Annexure. A2 employment notice dated 14.9.2012 was issued by the official respondents to the post of Auxiliary Nurse Midwife. Successful completion of ANM training for 2 years/18 months in recognized institution is one of the required qualifications. The applicant has qualification of SSLC pass + Pre Degree and also a Diploma in Nursing and Midwifery having undergone 3 years and 6 months, training. Annexure.A3 is the diploma certificate in general Nursing and Midwifery issued by Kerala Nurses and Midwives Council, having undergone 3 years and 6 months training. She had registered her name with the Kerala Nurses and Midwives Council as per Annexure.A4 dated 5.9.2012. ANM is expected to assist the nurses and midwives. During the entire course of training of the applicant for 3 ½ years, applicant was mostly undergoing such a training by assisting the nurses and midwives. She had practical training as ANM. Annexure. A5 is the check list where the applicant is seen at SI.No.26 who had secured 61.89 marks the second among those whose application is found to be in order. Since the applicant came to know that she was likely to be deprived of the benefit of appointment,



Annexure. A6 representation was given by her. While so Annexure. A.1 notice dated 12.2.2013 was issued which shows that no marks were awarded to the applicant and the endorsement shows that she had no requisite qualification as per Recruitment Rules. Since the respondents were taking steps to fill up the vacancy, the applicant moved this Tribunal seeking a direction to the respondents to consider the applicant for appointment to the post of Auxiliary Nurse Midwife and also to give a further direction to appoint the applicant within a time limit as may be found just and proper.

2. Respondents 1 to 3 filed reply statement contending that the name of the applicant was included in the check list as Sl.No.26 and subsequently it was noted that she had no requisite qualification as per Recruitment Rules. Since the qualification possessed by the applicant is not a qualification notified, consideration of such candidates will be treated as illegal and as such it was noted that she was not qualified. The contention raised by the applicant regarding the nature of work of ANM is not correct. The initial check list prepared was only a rough one prepared with the entire applicants who applied for the post. It was revised by Annexure.A.1 in accordance with Recruitment Rules and the criteria prescribed for selection. The applicant is not having the requisite completion of ANM training. Hence her name was excluded from the final list. The respondents have not violated any statutory Recruitment Rules. The representation submitted by the applicant was duly considered by the respondents and Annexure A.10 was passed as directed by this Tribunal



vide Annexure. A9 order. The contention that Annexure.A.10 is arbitrary and discriminatory is unsustainable. There is no provision in the Recruitment Rules in the notification enabling the department to go for equivalent qualification or for higher qualification. In the absence of such enabling provision respondents cannot entertain any other qualification which according to the applicant is equivalent or above the notified qualification. The applicant alone cannot be considered for recruitment without specifying such qualification in the notification.

3. The 4th respondent filed reply statement contending that she is the first rank holder as per the check list and also as per revised list and so she is entitled to be appointed for the notified post. She also refutes the averments made by the applicant that she has got the required qualification and so she has to be appointed for the post of ANM.

4. The point for consideration is whether the applicant has got the required qualification so as to consider her for the post of ANM covered by Annexure.A2 notification?

5. Annexure. A2 is the employment notice dated 14.9.2012. Serial No.3 shows the name of the post -Auxiliary Nurse Midwife, The educational and other qualifications required therein are mentioned as Annexure.A2: It is as under:-

"The age should be 18-25 years.

SSLC Pass.

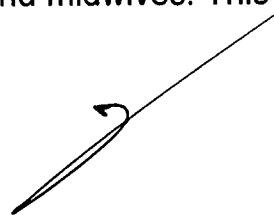
Successful completion of ANM training for 2 years/18 months in recognized institution."

Annexure.,A5 is the check list where the serial number of applicant is 26. It is seen that the percentage of marks obtained by her is 61.89 . In the last

column it is noted that the applicant had "Diploma in General Nursing and Midwifery". Annexure.A.1 is the revised check list. In Annexure A5 the 4th respondent is shown as the first rank holder; her percentage of mark is shown as 70.79. It is also noted that she had ANM Training for 18 months. As against SI.No.26 which pertains to the applicant though it is shown that the applicant had diploma in General Nursing and Midwifery in the remarks column it is noted that she had no requisite qualification as per Recruitment Rules. Annexure. A.1 is challenged by the applicant.

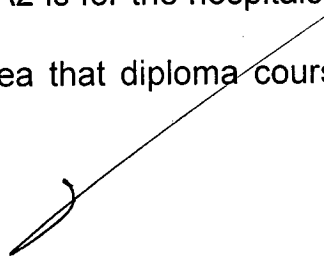
6. Annexure.A3 is the certificate issued to the applicant, which shows that she had Diploma in General Nursing and Midwifery issued by the Registrar of Kerala Nurses and Midwives Council. It shows that applicant had undergone three years and six months diploma in General Nursing and Midwifery Course. It appears she had undergone that course. She was admitted to the Register maintained under the provisions of the Nurses and Midwives Act 1953 on 10.5.2012.

7. The main thrust of the argument of the counsel for applicant is that Annexure A3 would show that the applicant had acquired diploma in General Nursing and Midwifery Course undergoing the course for 3 ½ years which is admittedly a higher qualification than what was required as per Annexure.A2 notification. It is vehemently argued by the learned counsel for the applicant that what is meant by Auxiliary Nurse Midwife is to assist the nurses and midwives. According to the applicant during the entire course of training of the applicant for 3 ½ years she had mostly undergone training for the nurses and midwives. This has been taken strong objection



to by the learned counsel for the respondents. Getting a diploma course certificate is totally different from successful completion of training for 2 years/18 months in recognized institution. While undergoing the course as mentioned in Annexure. A3 the applicant might have undergone some training or practical experience as ANM also, even if the case of the applicant is accepted. The contention raised by the applicant that the qualification possessed by her would take within its fold the qualification as prescribed in Annexure.A2 is found to be devoid of any merit. The qualification possessed by the applicant ie., diploma course, though may be a higher qualification, is not a qualification notified as per Annexure.A2 since what is required under Annexure.A2 is successful completion of ANM training for 2 years/18 months in recognized institution. That is absolutely wanting in Annexure A3 produced by the applicant. According to respondents 1 to 3 the ANMs who themselves are midwives are expected to perform duties like Field Survey, BCG, DPT, OPB, Hepatitis B, Measles, ANC Field Survey etc. It is submitted that as can be seen from Annexure.R.1(a) the duty chart of Health Worker female/ANM under ICDS was notified by Director of Medical and Health Services (as seen in Annexure. R.1(a) whereas the General Nurses who undergo the course as mentioned in Annexure.A3 are not trained in any such field surveys.

8. The learned counsel for the applicant would submit that Annexure. R1(a) refers to the ANM under ICDS whereas here the ANM notified as per Annexure.A2 is for the hospitals in the Lakshadweep Island. Whatever that be, the plea that diploma course certificate (Annexure.A3)



obtained by the applicant should take within its fold ANM training also cannot be countenanced at all. Therefore, the respondents are perfectly justified in not granting any marks for the applicant and in stating that she does not possess the qualification as notified under Annexure. A2.

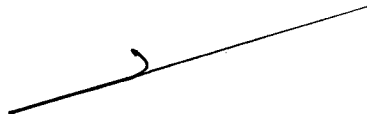
9. It is also pertinent to note that in Annexure.A2 or Annexure.A8 there is no provision to go for equivalent qualification or for higher qualification. Therefore, in the absence of an enabling provision the respondents cannot be asked to accept the qualification mentioned in Annexure.A3 as equivalent to the one notified under Annexure.A2. It is vehemently argued by the learned counsel for the applicant that since the 4th respondent has secured the first rank there would be no difficulty to appoint the applicant for the anticipated vacancy since that will not affect the 4th respondent. That contention cannot be accepted in view of the fact that if the employer/Union Territory of Lakshadweep wanted a post to be filled with a person of higher qualification to be obtained from open market certainly the notification should specify the same inviting all persons having such qualification. When that is not mentioned in the notification it would be against the Recruitment Rules to appoint a person who did not have the required qualification but on the premise that the applicant had undergone a higher qualification course.

10. It was held by the High Court of Kerala in ***Ibrahim Vs. District Medical Officer reported in .1995(1) KLT 704*** that once the qualification is mentioned in the advertisement inviting application that qualification cannot be changed without fresh advertisement. Evidently because by inviting




fresh advertisements it would be open to all persons having such qualification to apply for the post. If that is not done there would be denial of opportunity for such persons having qualification who did not apply in view of the fact that the notification does not prescribe that qualification. It was so held by the Hon'ble Supreme Court in **P.M.Latha and another V State of Kerala 2003(3) SCC 541**) that consideration of candidates having qualification other than prescribed in the qualification on the ground of having higher qualification is not justified. It was also held in **State of Rajasthan and others Vs. Lata Arun 2002(6) SCC 252** that it is not for the courts to determine whether a particular educational qualification possessed should or should not be recognized as equivalent to the notification. Here, the employer Union Territory of Lakshadweep (Respondents 1 to 3) prescribed qualification for appointment of ANM. It is not for the Tribunal to say that a person having a different qualification can also be appointed. Therefore, the challenge against the selection process and appointment of the 4th respondent cannot be questioned at all.

11. Learned counsel for the Respondents 1 to 3 has also placed before us the decision of the Kerala High Court in **Abdul Salam N.P. Vs. Executive Engineer, Electricity Department, Kavarathi and others, reported in 2011(2) KHC 948: 2011(3) KLT 204**. In that case it was not disputed that the syllabus or subject content of course of study for ITI certificate and diploma certificate would be totally different. According to the Administration no additional marks were given to the diploma holders nor



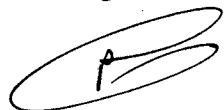
were they given any preference over the ITI certificate holders. It was observed that the marks obtained by the candidates; whether he is an ITI certificate holder or diploma holder were added up and those who obtained higher percentage were placed at the top of the list. The Hon'ble High Court wondered how could the ITI certificate holder be treated on par with a diploma holder in engineering subjects. Therefore, it was held by the Division Bench that the appointing authority has made a fundamental mistake in following such a procedure for selection. Referring to a case decided by the Hon'ble High Court in ***Sunil Vs. Public Service Commission, 2008(3) KHC 299: 2008(3) KLT 384*** it was held that the degree/diploma in civil engineering is not a prescribed or equivalent or alternate qualification for the post of Surveyor Grade II. The decision in ***Jyothi K.K and other Vs. Kerala Public Service Commission, JT 2000 Supp.(1) SC 85*** referred to earlier was cited before the Division Bench. Referring to that decision it was held by the Division Bench that the dictum laid down in Jyothi KK cited supra will have no application to the facts available in the case dealt with by the Division Bench. Diploma obtained by the selected candidates can by no stretch of imagination be said to be in the same faculty. Ultimately in Abdul Salam (supra), the Division Bench set aside the order passed by this Tribunal and the select list was quashed. It was made clear that it will be open to the administration to complete the selection process on the basis of the notification already issued. It was further held that the vacancies for the three recruitment years shall be filled up separately after conducting separate selection process from among the



eligible applicants who had applied for the post for the respective recruitment year. Therefore, this decision would also support the view that Annexure. A3 certificate of diploma in General Nursing and Midwifery relied upon by the applicant is not an alternative qualification going by Annexure.A2.

12. Besides SSLC what was required was successful completion of ANM training for 2 years/18 months in recognized institution. Admittedly the applicant does not fall within that category. It is vehemently argued by the learned counsel for the applicant that the administration considered B.Sc Nursing and other persons having other qualifications. This is found to be factually wrong. Today the learned counsel for the respondents made available to us the Select List in a sealed cover. It has been opened in the open court. It is clear that the 4th respondent is ranked as No.1. Persons who were considered in the selection process were only candidates having ANM qualification which is the qualification prescribed as per Annexure.A2. No persons having diploma or B.Sc Nursing or other qualification was rightly not considered by the administration.

13. The application lacks merit and it is accordingly dismissed. Stay earlier granted in this case stands vacated. No order as to costs.



(P. Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member