

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No.060/00838/2016

Date of decision- 16.11.2017

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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1. Navjinder Kaur D/o S. Tarsem Singh, # 257, Sec. 32-A, Chandigarh.
2. Inderjit Kaur W/o Sh. Gurdeep Singh Rana.
3. Harigobu H S/o Sh. R. Harinathan.
4. Harpreet Kaur W/o S. Sher Singh.
5. Navneet Kaur Neetu S/o Sh. Banta Singh.

All the applicants are working as Staff Nurses in Govt.
Medical College & Hospital, Sector 32, Chandigarh.

...APPLICANTS

BY ADVOCATE : Mr. G.S. Bal, Sr. Advocate along with Mr. G.S. Sathi, Advocate.

VERSUS

1. Union of India, through it's Secretary, Ministry of Health & Family Welfare, (Nursing Section), New Delhi, Nirman Bhawan Mallana Azad Road.
2. Union Territory Chandigarh, through its Secretary, Medical Education & Research, Chandigarh Administration, Sector 9, Chandigarh.
3. Director Principal, Medical College & Hospital, Sector 32, Chandigarh.
4. Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

...RESPONDENTS

BY ADVOCATE: Mr. Arvind Moudgil, counsel for respondent nos. 2 & 3.
Mr. B.B. Sharma, counsel for respondent no. 4.

ORDER

SANJEEV KAUSHIK, MEMBER(J):-

The applicants have impugned public notice dated 05.07.2016 (Annexure A-1) whereby respondents invited online applications for filling up four posts of Tutors on fixed consolidated pay of Rs. 32000/- for the college of Nursing in Government Medical College and Hospital, Sector 32, Chandigarh, on direct contract basis.

2. What borne out from the pleadings available on record and arguments suggested by learned counsel for the respective parties is that the applicants challenged the action of the respondents in filling up the entire cadre of Tutor by way of direct recruitment without considering the claim of the eligible Staff Nurses for their promotion under 75% quota.

3. The facts are not in dispute. The applicants are working as Staff Nurse since 1997, 2012 & 2013. They also possess Master's Degree in Nursing or M.Sc Degree in Nursing with specialty in Medical Surgical Nursing/Psychiatric. School of Nursing with Multi Specialty Hospital, Sector 16, Chandigarh running under the Director, Health and Family Welfare, Chandigarh Administration was upgraded into College of Nursing as per the sanction accorded vide order dated 29.04.2010. As per this letter, there were initially 6 posts of Tutor which was enhanced to 15 posts by creating 9 more posts of Tutor. Vide communication dated 26.11.2012 (Annexure A-3), administrative control of the College of Nursing under the Directorate of Health and Family Welfare U.T, Chandigarh. Staff Nurses working in the Medical College & Hospital, Sector 32, Chandigarh were not having avenues of promotion, therefore, they represented to the respondents for making avenues so that they can be promoted. To this effect, they also served legal notice upon respondent no. 4 and in response to the demand

justice notice issued on behalf of GMCH Nurses Welfare Association, it has been informed to Nursing Staff vide letter dated 04.03.2016 that they are in process of making new recruitment rules. It has also been submitted on similar lines that State of Punjab was also under process of notifying new rules. It is the case of the applicants that Government of Punjab, Department of Medical Education & Research framed Punjab Nursing Education (Group B) Rules, 2016 (in short 2016 Rules) notified in the official gazette on 14.06.2016. Under these Rules, the post of Tutors are to be filled up 25% by direct appointment and 75% by promotion amongst the Staff Nurses working with them & who are in possession of M.Sc (Nursing). Since Punjab Rules are applicable to the corresponding post of Chandigarh Administration in terms of President of India notification dated 13.01.1992 which was published in the official gazettee on 06.02.1992, therefore, the respondents are under obligation to fill up these posts as per 2016 Rules which is so held in case of **U.T. Chandigarh Vs. Rajesh Kumar Basandhi**, 2004 (1) SCT 680. Contrary to above, the respondents have invited applications for filling up the posts of Tutor by way of direct recruitment, therefore, the present O.A is for invalidation of impugned notice.

4. The respondents did not dispute the factual accuracy and submitted that there are 15 posts of Tutor. In their defence, the respondents submitted that Recruitment Rules for these posts are under process and have not been notified by the UPSC as yet, therefore, as per the proposed Draft Recruitment Rules for the post of Tutor in College of Nursing GMCH, the method of recruitment is direct basis.

5. We have heard learned counsel for the respective parties at considerable length.

6. Mr. Bal, Senior Advocate representing the applicants vehemently argued that impugned notice inviting the applications for the posts of Tutor is illegal and arbitrary and against the settled law in case of Rajesh Kumar Basandhi (supra) wherein it has been held that in absence of specific rules, conditions of service of the employees of the State of Punjab will Ispo-facto applicable to corresponding posts of U.T employees. Since the Punjab Government has notified the rules governing the posts of Tutor in the year 2016, therefore, the respondents are bound to follow those rules and consider the claim of the applicants for promotion in terms of 2016 Rules. He also argued that by making appointment by way of direct recruitment, the respondents have taken away the right of the persons who are working as Staff Nurses against 75% quota, therefore, it is prayed that impugned notice be quashed and specific direction be issued to the respondents to fill up the post of Tutors as per 2016 Rules.

7. Per contra, Mr. Moudgil, learned counsel for respondents no. 2 & 3 argued on same lines what has been stated in the written statement.

8. We have given our thoughtful consideration to the entire matter.

9. Undisputedly, notification issued by the President of India dated 13.01.1992 makes it clear that if Chandigarh Administration is not having its own rules, then the rules to the corresponding posts in the State of Punjab will be ispo facto applicable. The notification dated 13.01.1992 came up for consideration before the Hon'ble Supreme Court in case of Rajesh Kumar Basandhi (supra) wherein it has been held as under:

"On the other hand, a close reading of the whole provision will indicate a different position altogether. In the proviso it is said "...it shall be competent for the Administrator to revise their

scales of pay from time to time so as to bring them at par with the scales of pay which may be sanctioned by the Govt. of Punjab...". That is to say, the Administrator would be competent to bring scale of pay at par from time to time with that of Punjab Services. The Administrator is supposed to do something positive as he is made competent to bring about the parity in scale of pay. But conspicuously, this provision is not there in the main provision which provides for other conditions of service of employees of Chandigarh Administration; which shall be the same as for the time being applicable to the members of the Punjab Services. It is not provided that it would be competent for the Administrator to apply the same conditions of service, as on the contrary provided in the proviso in respect of revision of scales of pay from time to time; but only the Administrator will be competent to do it. Whatever be the conditions of service for Punjab Services at the time they are to be applied, the same would, ipso facto, apply to Chandigarh Services without anything further to intervene for its applicability."

Perusal of above makes it clear that whatever be the service conditions for employees of State of Punjab, the same would, ipso facto, apply to the employee working on the corresponding posts of Chandigarh Administration. Admittedly government of Punjab makes recruitment rules vide notification dated 14.06.2016 notified as Punjab Nursing Education (Group B) Rules, 2016 wherein 75% of posts of Tutor are to be filled by promotion and 25% by direct recruitment. The relevant provisions of Appendix 'B' of the 2016 are reproduced below for ready reference:-

"Appendix B

Designation of the post:- Tutor

Percentage of appointment by :

Direct Appointment: "Twenty Five Percent

Promotion: Seventy Five Percent

Method of appointment, qualifications and experience for appointment by:

Direct appointment: From amongst the candidates, who have done M.Sc (Nursing) in the concerned specialty. Preference shall be given to those candidates who have one year of teaching experience in nursing education.

Promotion: From amongst the Staff Nurses, Public Health Nurses, Nursing Sisters and Sister Tutors working on regular basis under the control of the Director, Health and Family Welfare, Punjab or Director, Research and Medical Education, Punjab who have done M.S. (Nursing) in the concerned specialty. Preference shall be given to those candidate who have one year of teaching experience in nursing education."

In Chandigarh Administration, there are 15 cadre posts of Tutor. Out of total, 4 come within the direct recruitment and 11 come under the promotional quota. As on date, out of 15 posts, the respondents have already filled up 12 posts by way of direct recruitment by appointing persons on direct basis and vide impugned notice, now they have invited applications in same fashion without considering the claim of the eligible Staff Nurses. It is not denied by the respondents that in view of the ratio laid down in case of Rajesh Basandhi (supra), the Chandigarh Administration is bound to follow Punjab Rules governing the posts. Merely, they have decided to frame their own draft rules, will not take away the right of the eligible persons for promotion under this garb, as the Rules are still draft rules only and therefore, we are of the considered view that unless 2016 Rules are not replaced by Chandigarh Administration, they are bound to follow 2016 Rules issued by State of Punjab. Accordingly, we find merit in the arguments advanced by learned counsel for the applicants that impugned notice qua Tutor posts cannot be filled up by way of direct recruitment though on contract basis without considering the claim of the eligible Staff Nurses who are working on feeder post of Tutor under 75% quota. Accordingly, impugned notice qua the post of Tutor is hereby quashed and set aside. The respondents are directed to consider the claim of the applicants or similarly situated persons like applicants for promotion to the post of Tutor as per the 2016 Rules issued by State of Punjab if otherwise found eligible.

10. The O.A is allowed in above terms. No order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 16.11.2017.

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