

**HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABALPUR**

WRIT PETITION NO.15256 OF 2015

Smt Sangeeta Soni

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.13598 OF 2015

Archana Lal Prince

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.15117 OF 2015

Smt Yogita Donodkar

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.15118 OF 2015

Smt Sadhna Baghel

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.15119 OF 2015

Smt Lubna Siddiqui

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.15120 OF 2015**Smt Shobha Thapa****Vs.****State of Madhya Pradesh & others****WRIT PETITION NO.15121 OF 2015****Smt Mariamma Oommen****Vs.****State of Madhya Pradesh & others****WRIT PETITION NO.15255 OF 2015****Smt Shweta Naroliya****Vs.****State of Madhya Pradesh & others**

Present :-

Shri Sanjay K. Agrawal, Advocate for all the petitioners.

Shri Vaibhav Tiwari, Panel Lawyer for the respondents/State.

Shri Mohan Sausarkar, Advocate for the respondent/Indian Nursing Council.

Smt. P.L. Shrivastava, Advocate for the respondent/M.P. Bhoj Open University in W.P. Nos.15256/2015, 15117/2015, 15118/2015, 15119/2015, 15120/2015, 15121/2015 and 15255/2015.

Smt. Amrit Ruprah Advocate for the respondent/M.P. Bhoj Open University in W.P. No.13598/2015.

ORDER

(Passed on this the 07th day of November, 2017)

The present order passed in W.P. No.15256/2015 shall also govern the disposal of W.P. Nos.13598, 15117, 15118, 15119, 15120, 15121 and 15255 of 2015. The only issue in all these petitions is that whether the petitioners who have obtained degree in B.Sc. Nursing from the respondent/Madhya Pradesh Bhoj Open University, Bhopal and who are presently posted as

Staff Nurse would be entitled to promotion despite the fact that the aforesaid degree course has not been authorized by the Indian Nursing Council.

2. In brief the facts of the case (W.P. No.15256/2015) are that the petitioner is an employees of the State of Madhya Pradesh and is presently working as Staff Nurse at District Hospital, Seoni. The petitioner's case is that she was initially appointed as Staff Nurse at Government Indira Eye Hospital, Sagar on 16.1.1998. Vide Memo dated 17.3.1999 the State of Madhya Pradesh through Medical Education Department started B.Sc. Nursing Course degree in the respondent No.5/University which is established under the provisions of Madhya Pradesh Bhoj Vishwavidyalaya Act, 1991. It was stipulated in the aforesaid memo that a Selection Committee would select the candidates for the aforesaid B.Sc. degree course in Nursing and it was also provided that the candidates will be given special leave for a month in session for the purpose of attending the B.Sc. Nursing course. A similar memo was also issued by the respondent No.5/University on 2.11.1999 providing information regarding the aforesaid course to all the Chief Medical & Health Officers/Civil Surgeonss and District Hospitals of the entire State of Madhya Pradesh.

3. The petitioner's contention is that vide order dated 26.11.1999 the respondent No.2, the Director of Health Services (Nursing) also directed the respondent No.3/Chief Medical & Health Officer, Seoni that the salary for the study period spent in pursuing the B.Sc. Nursing course should not be deducted and the entire salary should be paid to the selected candidates. Subsequently an advertisement was also issued by

the respondent No.5/University on 31.12.1999 inviting applications from the candidates including the departmental candidates. The petitioner's name was also forwarded by the respondent No.2 vide order dated 31.3.2001 to respondent No.5/University for pursuing the B.Sc. Nursing Course as a departmental candidate and special leave was also given to her. The petitioner's further contention is that she completed her B.Sc. Nursing degree from the respondent No.5/University and enrolled herself in the Mahakaushal Nurses Registration Council. Until now there was no problem so far as the aforesaid degree B.Sc. Nursing course was concerned and in fact, on 25.9.2009 a circular was issued by the Indian Nursing Council to the Registrar of Mahakaushal Nursing Registration Council to the effect that those candidates who have passed their post basic B.Sc. Nursing course from Madhya Pradesh Bhoj Open University (Madhya Pradesh Bhoj Mukta Vishwavidyalaya) may be allowed to work in the State of Madhya Pradesh only but they would not be entitled to carry on their work outside the State of Madhya Pradesh as decided by the Indian Nursing Council, New Delhi and also that they would not be entitled to have the permission to pursue M.Sc. Nursing on the basis of the aforesaid degree. Similarly on 26.8.2014 also the respondent No.4/Indian Nursing Council communicated to the Dy. Director (Nursing), Directorate of Health Services, State of M.P. Bhopal that the Madhya Pradesh Bhoj Open University is not affiliated by the Indian Nursing Council for course post basic B.Sc. Nursing course, hence such students who have possessed such degrees cannot pursue M.Sc. Nursing Course, however, they can work in the State of Madhya Pradesh only. It is further provided

in this letter that the persons who have passed post basic B.Sc. Nursing Course from Madhya Pradesh Bhoj Open University/Indira Gandhi Open University can be appointed on the post of Sister Tutor and their appointment shall be governed by the Rules made in this behalf by the State of Madhya Pradesh only.

4. The petitioner's further contention is that vide letter dated 5th of May, 2004, the University Grants Commission, New Delhi which is the apex body for deciding the issue of recognition of degrees in education has also clarified that the degrees issued by the Open Universities in conformity with the UGC notification on Specification of degrees are equivalent to the corresponding awards of the traditional Universities in the country.

5. The petitioner's further contention is that in the decision rendered by this Court in W.P. No.10142/2012 (**Smt Stella Peter vs The State of M.P. and others**), this Court has also decided the validity of the degree conferred by the respondent No.5 and has held the same to be a valid degree vide order dated 3.12.2013. On the basis of the aforesaid order, the petitioner therein, namely, Smt. Stella Peter has also been promoted from the post of Nursing Staff to Sister Tutor in the pay-scale of Rs.9300-34800 + Grade Pay Rs.4200/-.

6. The petitioner's contention in the present case is that since her name finds place in the seniority list of the Staff Nurse as on 1.4.2012, she is entitled to be promoted. Vide order dated 30.7.2014 several persons were promoted to the post of Sister Tutor but she was not granted the promotion, hence Writ Petition No.11003/2014 was also preferred by the petitioner and

the other persons and this Court disposed of the same vide order dated 25.9.2014 directing the respondents to consider the petitioners' case in the light of the order passed by this Court in the case of **Smt Stella Peter (supra)**.

7. In a subsequent development, vide their letter dated 26.9.2014, the respondent No.4/Indian Nursing Council informed the State Government that since the respondent No.5/Bhoj Open University is not authorized by the Indian Nursing Council to provide post basic B.Sc. Nursing Course, hence there is no question of their promotion from the said post. Subsequently a Contempt Case No.1796/2014 was also filed by the petitioner which was decided by this Court vide order dated 22.6.2015 and this Court directed the respondents to decide the case of the petitioner without being influenced by the order passed in the case of **Smt Stella Peter (supra)** as subsequent to the aforesaid order passed by this Court, the Indian Nursing Council has also issued certain communications regarding ineligibility of the petitioner for promotion. Pursuant to the order passed by this Court in the contempt case, the respondents have passed the impugned order dated 31.7.2015 and the petitioner's claim for promotion has been dismissed on the ground that for the purpose of running any training center for the Nursing Course the permission of Indian Nursing Council is necessary and since the Bhoj Mukta (Open) Vishwavidyalaya, Bhopal from where the petitioner had obtained her degree of B.Sc. Nursing examination is not authorized by the Indian Nursing Council, hence she cannot be promoted and her representation was thus rejected.

8. Shri Sanjay K. Agrawal, learned counsel for the

petitioner has argued that there was no justification in passing the impugned order on the basis mere communication made by the Indian Nursing Council, which runs contrary to their own communications dated 27.8.2014 (Annexure P/17). He has further submitted that the case of the petitioner is squarely covered by the decision rendered by this Court in the case of **Smt Stella Peter** (supra) and has further submitted that the Indian Nursing Council is governed by the Indian Nursing Council Act, 1947 which is akin to Indian Medical Council Act, 1956 and the Hon'ble Apex Court in various judgments has held that the orders issued by the Indian Medical Council are recommendatory only and are not obligatory. Learned counsel has also relied upon the judgments of the Apex Court in the case of **Dr. Arun Kumar Agrawal vs State of Bihar and others, 1991 Supp (1) SCC 287** (para 9); **Dr. Ganga Prasad Verma and others vs State of Bihar and others, 1995 Supp (1) SCC 192** (para 5); **Government of Andhra Pradesh and another vs. Dr. R. Murali Babu Rao and another, (1988) 2 SCC 386** (para 13, 14, 15, 16,).

9. On the other hand, Smt. P.L. Shrivastava, learned counsel for the respondent No.5/M.P. Bhoj Open University has submitted that they are authorized by the State Government to grant the B.Sc. degree in Nursing and they are bound by the orders passed by the State Government, hence the degree issued by them is in accordance with law. She has also supported the case of the petitioner.

10. Shri Mohan Sausarkar, learned counsel for the respondent No.4/Indian Nursing Council has opposed the prayer made by the petitioner on the ground that the Indian

Nursing Council is a statutory body and in the Indian Nursing Council Act,1947 specific provisions have been made regarding recognition of an institute for the purpose of imparting training to nursing courses which includes various stages and also involves physical inspection of the premises and it is only when the concerned officer of the Indian Nursing Council is satisfied regarding the infrastructure and other facilities of the institute the recommendation is given to impart education and to grant degree in Nursing. Being the statutory body, it is submitted that the State Government as also respondent No.5 were bound to follow the provisions of Indian Nursing Council Act,1947 and the instructions made by the Indian Nursing Council and since no certificate was issued to the respondent No.5/University to conduct the course for the degree in B.Sc. Nursing, the State had no authority to pass circular or to authorize the respondent No.5/University to conduct course in B.Sc. Nursing on their own. It is further submitted that the case of **Smt Stella Peter** (supra) is distinguishable as the same was passed prior to the communication dated 22.1.2015 (Annexure P/18) issued by the Indian Nursing Council to the respondents and as such impugned order passed by the respondents in the light of the communication made by the Indian Nursing Council is just and proper. Learned counsel for the respondent No.4 has also relied upon the Division Bench judgment of Chhattisgarh High Court in the case of **Smt Sarita Archana Wilson vs State of Chhattisgarh and others** (W.P. (s) No.465/2012) wherein in similar circumstances, it was held that in absence of any affiliation from the Indian Nursing Council the University was not authorized to impart education for B.Sc. Nursing course,

thus it is submitted by the counsel that the petition being devoid of merits be dismissed. The learned counsel for respondent No.4 has also relied upon the Division Bench judgment of the Bench at Gwalior in the case of **Smt. Girija Jha vs The Mahakoshal Nurses Registration Council, Bhopal and another** (W.P. No.6753/2012 decided on 15.07.2014.

11. Learned counsel for the respondent/State has also supported the passing of the impugned order and has submitted that they are also guided by the Indian Nursing Council and as such no illegality has been committed by them in passing the impugned order.

12. Heard learned counsel for the parties and perused the record.

13. The facts of this case are not disputed. It is not disputed that the petitioner is a government employee working as a staff nurse at District Hospital Seoni. It is also not disputed that she has completed her degree in B.Sc. (Nursing) from Bhoj Open University, Bhopal which was granted the permission by the State Government vide order dated 17.03.1999 vide Annexure P/2 with certain conditions. It is also not disputed by the respondents that the Indian Nursing Council vide its communication Annexure P/8 dated 12.9.2009 and vide Annexure P/17 dated 26.08.2014 had informed the State Government that the B.Sc. Degree in Nursing provided by the Bhoj Open University would entitle the persons only to work in the State of M.P. but they would not be able to work outside the State of M.P. on the basis of this degree and they would also not be able to pursue M.Sc. Nursing on the basis of such degree in B.Sc. and most importantly it is also informed that all such

candidates who have passed their B.Sc. Nursing from M.P. Bhoj Open University can be appointed by the State on the post of Sister Tutor and would be subject to the recruitment Rules framed by the State in this behalf.

14. So far as the letter dated 22.1.2015 issued by the respondent No.4/Indian Nursing Council is concerned, in the letter it is informed by the Indian Nursing Council to the Director (Nursing) that none of the courses run by the M.P. Bhoj Open University are sanctioned by the Indian Nursing Council hence there is no question of promotion of such employees who have passed their exams from the said University and this analogy has also been adopted by the State Government while passing the impugned order dated 31.07.2015. In the considered opinion of this Court, the reasoning assigned by the respondent No.4 and the respondent State is arbitrary, unjust and is made without application of mind for the reasons that firstly, the State Government had itself allowed the M.P. Bhoj Open University to conduct the aforesaid course of Degree in B.Sc. (Nursing). Secondly, when the State Government itself had not only sanctioned the aforesaid course but also sponsored and encouraged its employees to commit to it and obtain the further qualification then it does not lie in the mouth of the State to denounce its action at the instance of Indian Nursing Council. Thirdly, even the Indian Nursing Council, though initially also did have certain reservations to accept the validity of the course but still in no unclear terms informed the State Government that the said course would be valid in the State of M.P. only and the employees who have obtained such degree would be governed by the recruitment Rules framed by the State Government which

is apparent from the letter dated 12.9.2009 (Annexure P/8) and letter dated 26.8.2014 (Annexure P/17) only. Fourthly even in their reply the Indian Nursing Council have not repudiated the aforesaid letters Annexure P/8 & P/17 that the same were issued under any misconception of facts, hence, the same are binding on the respondents and; fifthly, the petitioner had involved her time, money and energy in completing the aforesaid course on a legitimate expectation that the same would help her in advancement of her career moreover on the basis of and in the light of the letters Annexure P/8 and P/17 issued by the Indian Nursing Council.

15. Learned counsel for the petitioner has also relied upon the decisions rendered by the Apex Court to submit that the instructions issued by the Indian Nursing Council are recommendatory in nature and are not directory, but in the considered opinion of this Court it is not necessary to advert to those judgments as the petitioner has already made out a case for interference.

16. The judgment relied upon by the learned counsel for the respondent No.4 of the Chhattisgarh High Court in the case of **Smt Sarita Archana Wilson (supra)** is also of no use to them as the same is clearly distinguishable as in the said case there is no reference of the letter issued by the Indian Nursing Council as in the present case whereby the degree has been allowed in the State of M.P. for limited purpose only.

17. Similarly, the Division Bench judgment of the Bench at Gwalior in the case of **Smt. Girija Jha (supra)** is also distinguishable for the reason that in that case the petitioner wanted to pursue her degree in M.Sc. Nursing and this Court

held that the B.Sc. Course of M.P. Bhoj Open University was not recognized by the Indian Nursing Council hence she cannot be allowed to register for M.Sc. Nursing In this case also there is no reference of the letters as issued by the Indian Nursing Council in the present case viz. Annexures P/8 and P/17.

18. As a result, on the basis of the aforesaid discussion, this Court is of the firm view that the impugned order dated 26.9.2014 contained in Annexure P/17 and letter dated 22.1.2015 (Annexure P/18) are liable to be and hereby quashed. Consequently, the order dated 31.7.2015 (Annexure P/20) issued by the State Government is also quashed. As a result, the respondents No.1 and 2 are also directed to issue orders of promotion to the present petitioner and other petitioners also whose petitions are also being decided by this common order to the post of Sister Tutor with all the consequential benefits with effect from the date on which her/their juniors stood promoted.

19. Accordingly, the writ petition stands allowed.

20. No costs.

(Subodh Abhyankar)

Judge

07/11/2017

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