

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION Nos.4615 and 4816 of 2023

W.P.No.4615 of 2023

Yenuganti Thriveni, D/o Krishna Prasad, aged about 28 years, R/o D.No.11-3-490 / 25, Palnadu Road, Narasaraopet, Palnadu District, A.P. and another

... Petitioners

Versus

The State of Andhra Pradesh, Rep. by its Prl. Secretary, Health, Medical and Family Welfare Department, Secretariat, Velagapudi, Amaravathi and two others.

... Respondents

Counsel for the petitioners : Sri Narra Srinivas Rao

Counsel for respondents : GP for Services-IV

W.P.No.4816 of 2023

Cherukuri Deepti Usha, W/o Kandru Suneel, aged about 39 years, R/o H.No.3-41, Nagendra Colony, Near Nagendra Swamy Temple, Venkatapuram, Eluru Mandal, Eluru District, A.P. and another.

... Petitioners

Versus

The State of Andhra Pradesh, Rep. by its Prl. Secretary, Health, Medical and Family Welfare Department, Secretariat, Velagapudi, Amaravathi and two others.

... Respondents

Counsel for the petitioners : Sri Narra Srinivas Rao

Counsel for respondents : GP for Services-IV

:: COMMON ORDER ::

W.P.No.4615 of 2023 is filed seeking the following relief:

“... to a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent authorities in issuing the selection list vide Rc.No.540/B1/2022 dated 13.01.2023 by deleting the Covid weightage of the Petitioners who served as nurses during the Covid-19 period in the Railway Hospital, Vijayawada which is a Central Government Department as illegal, arbitrary and discrimination shown on the part of the Petitioners and in violation of Article 14, 19 and 21 of the Constitution of India and direct the Respondent authorities to issue a new selection list for the recruitment of Staff Nurse by providing Covid weightage to the Petitioners who served as nurses during the Covid-19 period in the Railway Hospital, Vijayawada which is a Central Government Department and pass such other order or orders ...”

2. **W.P.No.4816 of 2023** is filed seeking the following relief:

“... to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent authorities in issuing the final list dated 06.01.2023 by not giving the Covid weightage of the Petitioners who served as nurses during the Covid-19 period in the Railway Hospital, Vijayawada which is a Central Government Department as illegal, arbitrary and discrimination shown on the part of the Petitioners and in violation of Article 14, 19 and 21 of the Constitution of India

and direct the Respondent authorities to issue a new revised final list for the recruitment of Staff Nurse by providing Covid weightage to the Petitioners and pass such other order or orders ...”

3. Since the issue involved in these two writ petitions is the same, they are disposed of by this common order.

4. The averments of the affidavits, in brief, are that notification No.05/2022 dated 01.12.2022 was issued calling for the applications from eligible candidates for appointment of Staff Nurses on a contract basis, for one year. The total number of posts notified is 957 and the qualification prescribed is General Nursing & Midwifery/B.Sc. (Nursing). Clause No.5 in the notification deals with the method of selection. Clause 5(d) prescribes weightage up to 15% to be given to the candidates working on contract/outsourcing and honorarium basis, including Covid-19 subject to their satisfactory service certified by the competent authority as per G.O.Ms.No.211 HM & FW (B2) Department, G.O.Rt.No.573 HM & FW (B2) Department, G.O.Rt.No.07 HM & FW (B2) Department, dated 08.05.2021, 01.11.2021, 06.01.2022 respectively, Government Memo No.3740784/B2/2020 of HM & FW (B2) Dept., dated 14.02.2022, and Circular No.03/CHFW/2022 of CHFW, AP dated 11.02.2022.

Sub-Clause (f) of Clause 5 indicates that COVID-19 weightage shall apply only to the persons, who are appointed by the District Collector or any other competent authority based on the orders issued by the Government from time to time and rendered their services for COVID-19 on contract/outsourcing/honorarium basis and certified by the controlling officers (DMHO/DCHS/ Principal of GMC/Superintendent of GGH) to that effect.

5. As per the averments in the affidavits, the petitioners applied to the Staff Nurse posts. Petitioner No.2 in **W.P.No.4615 of 2023** annexed the certificate issued by the Medical Superintendent, South Central Railway Hospital, Vijayawada, counter-signed by the Chief Nursing Superintendent, Railway Hospital, Vijayawada, claiming weightage marks in terms of clause 5 (f) of the notification.

6. The averments of W.P.Nos.4615 and 4816 of 2023 further show that provisional merit lists were published on 21.12.2022 and 24.12.2022 respectively. After the finalization of the provisional merit list, respondent No.3 published a final list, dated 05.01.2023 for recruitment of Staff Nurses *vide* Rc.No.540/B1/2022 dated 06.01.2023, wherein petitioners were

not awarded weightage marks, though they are entitled to weightage marks, on the ground that petitioners worked in Railway Hospital during Covid-19. It seems a revised merit list was prepared after considering the objections, wherein weightage marks were not awarded to the petitioners. Assailing the final merit and selection lists dated 13.01.2023 and 06.01.2023 respectively, the above writ petitions were filed.

7. On 17.11.2023, an interim order was passed in W.P.No.4615 of 2023 directing the authorities to keep three posts vacant, pending disposal the writ petitions.

8. Counter affidavits were filed by respondent No.3. Regarding the awarding of the weightage marks to the petitioners, it was contended that in the certificates produced by the petitioners, it was noticed that petitioners rendered services in the Railway Department, and hence, petitioners do not come under the ambit of G.O. 573, dated 01.11.2021. Therefore, the petitioners' cases were not considered for awarding weightage marks. It was specifically contended that the weightage marks were awarded only to the candidates, who rendered service in State PSUs, autonomous Government Organizations, recruited

through an open transparent process duly following the Rule of Reservation (for short 'ROR'). As per the notification, petitioners are not eligible for weightage marks. Petitioners, though aware of said G.O., participated in the selection process. Eventually, prayed to dismiss the writ petition.

9. Heard Sri Narra Srinivasa Rao, learned counsel for the petitioners, and Sri Y.B. Ramesh, learned Assistant Government Pleader for Services-IV for respondents 1 to 3.

10. Learned counsel for the petitioners reiterated the contentions as per the averments of the writ affidavits. Learned Assistant Government Pleader for Services-IV reiterated the contentions as per the averments of the counter affidavits.

11. The points for consideration are :

1. Whether the act of respondent authorities in not awarding weightage marks to the petitioners, is violative of Articles 12, 14, and 16 of the Constitution of India?

2. Whether the petitioners are entitled to weightage marks in terms of sub-clauses (d) and (f) of Clause 5 of the impugned Notification?

12. Before delving into merits, it is appropriate to extract

sub-clauses (d) and (f) of Clause 5, which read thus:

“5. METHOD OF SELECTION:

...

d. Weightage up to 15% will be given to the candidates working on Contract/Outsourcing/Honorarium basis including COVID-19 service as shown below subject to their Satisfactory service certified by the competent authority, as per GO Ms No.211, HM & FW (B2) Dept., Dt: 08.05.2021, GO Rt No.573 HM & FW (B2) dept. Dt. 01.11.2021 and GO Rt No.07 HM & FW (B2) dept. Dt.06.01.2022. Govt. Memo.no. 3740784/B2/2020 of HM & FW (B2) Dept., dt. 14.02.2022, Circular No.03/CHFW/2022, of CHEFW, AP, dated. 11.02.2022. If any individual work less than 6 months for covid, the weightage shall be 0.8 marks per completed month will be awarded.

f. The COVID-19 weightage shall be applicable only to the persons who have rendered their services for COVID-19 on Contract/Outsourcing/Honorarium basis and are appointed by the District Collector or any other competent authority based on orders issued by Government from time to time and certified by the controlling officers (DMHO / DCHS / Principal of GMC / Superintendent of GGH) to that effect.

(Note: Certificates taken earlier are valid. If additional period of service is there, fresh certificate to that effect shall be obtained and enclosed).

13. Copies of G.O.Ms. No.211, HM & FW (B2) Dept., Dt: 08.05.2021, G.O. Rt. No.573 HM & FW (B2) Dept. Dt. 01.11.2021 and G.O.Rt. No.07 HM & FW (B2) Dept. Dt. 06.01.2022 and Circular No.03/CHFW/2022, of CHEFW, AP, dated 11.02.2022 are placed on record.

14. In G.O.Rt.No.211, dated 08.05.2021 issued by respondent No.1, it was mentioned that as per Govt. Memo No.3446645 / B2 / 2020 dated HM & FW(B2) Department, dated 13.04.2020 the Government decided to consider giving weightage up to 15% during regular recruitment to the persons who rendered services for COVID-19 on contract/outsourcing. Accordingly, the weightage marks for experience of Government service including contract service based on Covid services is awarded/notified as (i) 5 marks per six months, (ii) 10 marks per one year, and (iii) 15 marks per one year six months.

15. Notes 1 and 2 in the said G.O. make it clear that the maximum weightage referred to *supra* for Government service is only 15% and it shall apply to the persons who are appointed by the District Collector or any other competent authority based on the orders issued by the Government from time to time and

rendered their services for Covid-19 on contract / outsource / honorarium basis. (emphasis is mine).

16. Subsequently, respondent No.1 issued G.O.Rt.No.573 dated 01.11.2021, wherein it was mentioned that the persons, who rendered services in State PSUs or State Autonomous Government Organizations recruited through an open transparent process duly following ROR shall be awarded weightage marks.

17. Later by issuing G.O.Rt.No.07 dated 06.01.2022, clarification was given regarding awarding of marks. Subsequently, circular memo No.03/CHFW/2022 dated 11.02.2022 was issued, directing the competent authority to scrutinize certificates.

18. Thus, a scrutiny of the government orders and circular memos, makes it clear that those who rendered services, in State PSUs and State Autonomous Government organizations, in COVID-19 are entitled to weightage marks. As per G.O.Rt.No.211, dated 08.05.2021 the appointments should be by competent authority. In the counter affidavit, nowhere it was pleaded that the petitioners' appointment as nurses during COVID-19 is contrary to the Rules. There is no denial regarding

the competency of the authority *qua* appointment of the petitioners.

19. The main contention of the respondents is that since petitioners worked in Railway Hospitals, they were not awarded weightage marks.

20. To deal with the said contention, it is apt look at Articles 12, 14 and 16 (1) of the Constitution of India.

21. Articles 12, 14 and 16(1) of the Constitution of India read thus:

“12. In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

14. “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

22. A bare perusal of Article 12 of the Constitution of India, manifests that the 'State' includes the Government and Parliament of India; the Government and Legislatures of each State, and all local or other authorities within the territory of India or under the control of Government of India.

23. Thus, the definition of the State is apparent that Central, State, and local authorities come under the purview of the State. No difference was been made vis-a-vis the State Government and its sectors or the Central Government and its sectors. The notification and the government orders make things more than discernable that the weightage marks will be awarded to those who worked in State PSU and State Autonomous Government Organisations, during COVID-19.

24. In **Rajasthan State Electricity Board, Jaipur v. Mohan Lal and Ors.**¹, a Constitution Bench of the Supreme Court held that :

"... the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are

¹ AIR 1967 SC 1857

conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities".

25. In light of the above, it can be held that the appointing authority (Railways), in the instant case, fall under the definition of "State" as defined under Article 12. Failure to award weightage marks to the petitioners in the considered opinion of this Court is violative of Article 12 of the Constitution of India.

26. Once this Court concludes that the petitioners are entitled to weightage marks, not extending the same is discriminatory under Article 14 and denial of equal opportunity under Art 16(1) of the Constitution of India.

27. In **E.P. Royappa vs. State of Tamil Nadu and Ors.**², the Hon'ble Supreme Court Observed that :

85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16.

² MANU/SC/0380/1973

Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species, Article 16 gives effect to the doctrine or equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination.

It was further observed that "Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits".

28. Article 14 of the Constitution of India mandates that the State shall not deny, to any person, equality before the law or the equal protection of the laws within the territory of India. In the case at hand, the petitioners were discriminated against the same class of candidates and further denied equal benefits by not giving weightage marks. Indeed, initially, the petitioners were granted weightage marks, however, later the weightage marks were withdrawn.

29. Thus, in view of the discussion supra, the word 'State' employed in G.O.Rt.No.573 dated 01.11.2021 cannot be restricted to the State of Andhra Pradesh. All the nurses who rendered service during COVID-19, subject to the genuineness of certificates, should have been awarded the weightage marks. The contention of the respondents that since petitioners worked in Railway Hospitals, weightage marks were not be awarded to them, is contrary to G.O., itself.

30. Considering the outbreak of Covid-19 pandemic situation, the Hon'ble Apex Court in the order dated 30.04.2021 passed in *suo motu* W.P. (Civil) No.3 of 2021, observed as follows:

“70. Hence, in the present proceedings, we hope to not only initiate a dialogue so as to better tackle the current COVID-19 pandemic but also to preserve its memory in our public records, so that future generations may evaluate our efforts and learn from them.

71. We speak not only as members of this Court, but also as grateful citizens of the country, and commend the outstanding work of our all healthcare professionals (doctors, nurses, healthcare workers, laboratory technicians, ward staff, ambulance drivers, crematorium workers etc.) during this crisis. They have truly gone beyond their call of duty and toiled day in and day out, relentlessly without rest amidst great challenges. It is absolutely necessary to take urgent

steps for their well-being to ensure that our appreciation for their tremendous efforts is not reduced to rhetoric. This is especially important since another factor which affects how collective public memory of any event is created is by the rhetoric surrounding. As such, our public memory of this public event has to transcend its conception as a “war” against the virus of COVID-19 itself, but rather to remember that it is “the complex epidemiological circumstances that promote these outbreaks and the under-resourced health systems that are tasked with disease containment. While the healthcare professionals have been at the forefront of tackling this crisis, we have to recognize their contribution as medical healthcare professionals who have undertaken “to protect public health using proven scientific evidence and best practices and to serve to community at large, and not just as “CORONA WARRIORS”.

72 (ii) Healthcare personnel are at an obvious heightened risk (C-IV, item-52) of contracting the COVID-19 virus. However, we are aware of reports that indicate that infected healthcare personnel are left to fend for themselves without adequate availability of beds, oxygen or essential drugs. Further, some of them have also often been asked to report back to duty within 10 days of first testing positive for COVID-19 (provided they are asymptomatic), even though a longer recuperation period is often recommended. While we are dealing with a terrible second wave of the COVID-19 pandemic, there must be an effective policy to ensure that the nation truly acknowledges their effort and creates incentives for them. We hope it will be remedied soon by the

Central and State Governments through the introduction of appropriate guidelines and measures.”

31. It is not out of place to mention here that in COVID-19, pandemic situation, even the spouse and children of a person, who died due to said virus, did not come near the body and the body was packed in a bag and disposed of. The gratitude and recognition for service to mankind is very much part of our constitutional jurisprudence and if the incentive is not awarded to the petitioners, in the present selection, then it can never be. The incentive i.e. weightage marks, a fall out of Covid-19 pandemic, cannot be restricted, as understood by the respondent authorities. By restricting the incentive, in the lines of understanding of the respondent authorities, the very object of awarding weightage marks would be frustrated.

32. Thus, going by the language employed in G.O.Ms.No.573 dated 01.11.2021 coupled with Articles 12 and 16(1) of the Constitution of India, this Court is of the considered opinion that petitioners are entitled to weightage marks, even though they rendered services in different railway hospitals. If the understanding of the respondents is accepted, it results in a violation of Articles 12,14 and 16 of the Constitution of India.

33. Normally, the writ petitions are mainly dealt with, based on the averment in the affidavits and counter affidavits. The pleadings, in the writ petition, play a vital role. Unless the affidavit contains all the pleadings including legal aspects, even in genuine cases, it is difficult for the Court to appreciate and adjudicate the issue judiciously. Time and again the Hon'ble Apex Court and this Court reiterated the importance of the pleadings in the writ petitions. While pointing out the importance of pleadings, Hon'ble Apex Court in **Bharat Singh and others Vs State of Haryana and others**³ observed as follows:

13. where a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit as the case may be, the Court will not entertain the point. There is a distinction between a pleading under the Civil procedure code and a writ petition of a counter affidavit. While in a pleading, that a point or a written statement, the facts and no evidence are required

³ AIR 1988 SC 2181

to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

34. In **Narmada Bachao Andolan Vs State of M.P. and another**⁴ the Hon'ble Apex Court observed importance of pleadings as follows:

9. ... pleading in particulars are required to enable the court to decide the rights of parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the questions in issue, so that the parties may adduce appropriate evidence on said issue. It is settled legal proposition that “ as a rule relief not founded on the pleadings should not be granted”. Therefore, a decision of a case cannot be based on grounds outside the pleadings of parties.

The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases from being expanded or grounds being shifted during trial. If any factual or legal issues, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to

⁴ AIR 2011 SC 1989

answer the line of reasoning adopted in that regard. Such a judgment may be violative of principles of natural justice”

35. The affidavits, in the above writ petitions, in the opinion of this Court, do not contain sufficient/proper averments. However, that will not preclude the Court from passing appropriate orders in a given case because of the discussion made supra.

36. As discussed supra, since the petitioners worked in different railway hospitals within the State of Andhra Pradesh during Covid-19, the authorities are bound to extend the weightage marks to the petitioners. As pointed out supra, certificate relating to one of the petitioners is filed along with the writ petition. Certificates of other candidates are not available on record. However, based on the averments in the respective counter affidavits, since there is no dispute *qua* the petitioners working in different railway hospitals, this Court deems it appropriate to direct the respondent authorities to award weightage marks to the petitioners considering their length of service based on the certificates produced by the petitioners. Therefore, these writ petitions deserve to be allowed.

37. In the result, these writ petitions are allowed. Respondents shall consider the certificates of the petitioners, if they are issued by the competent authority to include weightage of marks, as per sub-clauses (d) and (f) of clause 5 of the notification.

Based upon such evaluation, the respondents shall add weightage marks to the petitioners, taking into consideration the length of service.

After adding weightage marks, if the petitioners are in the merit list, the respondent authorities shall consider the case of petitioners for appointment of nurses in terms of subject notification, keeping in view the interim orders passed in the writ petition. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date : 06.08.2024
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JUSTICE SUBBA REDDY SATTI

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION No.4615 and 4816 of 2023

Date : 06.08.2024

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