

(2024) 03 TEL CK 0026

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 13291, 15620 Of 2021

Uma Papabathinivs State Of
Telangana

APPELLANT

Vs

RESPONDENT

Date of Decision: March 26, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 315, 320

Hon'ble Judges: T. Madhavi Devi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

1. In both of these Writ Petitions, the petitioners are seeking a Writ of Mandamus declaring the action of the respondents in issuing the revised selection list of Staff Nurses, by including in the selection list of candidates, the hall ticket numbers of also the candidates who have not even qualified in the written test, by adding service weightage marks to them and in not including the petitioners' hall ticket numbers in the revised selection list, in spite of their securing minimum or more than qualifying marks in the written test, as illegal and arbitrary and unconstitutional.

(ii) The petitioners are also seeking a declaration that the action of the respondents in treating the 893 posts as backlog vacancies, as per G.O.Ms.No.81, General Administration (Ser.A) Department, dt.22.02.1997, through the Web Note dt.04.05.2021, as contrary to the dicta of the Hon'ble Supreme Court in Munja Praveen and others Vs. State of Telangana and others Order dt.17.08.2017 in SLP (Civil) Nos.36057 – 36059 of 2016 and 36194 of 2016 : (2017) 14 SCC 797, is illegal, arbitrary and unconstitutional and consequently to direct the respondents to delete the hall ticket numbers of the candidates who have not even qualified in the written test from the revised selection list by revising the selection list and include the petitioners' hall ticket numbers in the revised selection list and accordingly appoint

the petitioners as Staff Nurses under their respective categories in Zones-V and VI with all consequential benefits pursuant to the Notification No.57/2017 dt.08.11.2017 issued by the 3rd respondent and to pass such other order or orders.

2. Brief facts leading to the filing of the present Writ Petitions are that the petitioners claim to be belonging to BC and SC categories in Zones-V and VI. They also claim to be possessing necessary qualifications for appointment to the post of Staff Nurse. On 08.11.2017, the 3rd respondent has issued the Notification No.57/2017 calling for applications from the eligible candidates for filling up of 1115 posts of Staff Nurses in the Director of Public Health and Family Welfare and 81 posts of Staff Nurses in the Telangana Vaidya Vidhana Parishad. It is submitted that the petitioners submitted their online applications and participated in the written examination and have secured qualifying marks in the written test. It is submitted that on 07.11.2020, the 3rd respondent has published the merit list with qualifications and service weightage marks and it contained the hall ticket numbers also of the candidates who did not secure the minimum marks in the written examination. It is submitted that on 07.11.2020, the candidates in the revised selection list were called for certificates verification and on 23.02.2021, web options were called for and on 29.04.2021, the provisional selection list was issued and on 04.05.2021, the revised selection was published. Since the petitioners secured the minimum qualifying marks in the written examination, but were not included in the list of selected candidates, these Writ Petitioners were filed.

3. Vide orders dt.16.06.2021 in W.P.No.13291 of 2021, this Court had directed that any appointments to the post of Staff Nurses will be subject to the outcome of W.P.No.13291 of 2021.

4. The respondents have filed a counter affidavit and the petitioners have also filed their reply affidavit thereto and the respective learned counsel have advanced their arguments in support of their contentions.

5. Sri D. Prakash Reddy, learned Senior Counsel appearing for Sri Chandraiah Sunkara, learned counsel for the petitioners, submitted that the Notification prescribed the procedure for selection and it prescribed that the minimum qualifying marks for selection are: OCs 40%, BCs 35%, SCs, STs and PH quota 30%. It is submitted that the weightage points for written examination were 70 and for experience, it was 30 and therefore, if the minimum qualifying mark for selection out of 70 marks is to be calculated, it would be 28 points for OCs, 24.5 points for BCs and 21 points for SCs/STs/PH quota. He submitted that Sub-para (3) of Para-VIII of the Notification prescribes that the appearance in all papers at the written examination as per rules is compulsory and absence in any of the paper/papers will automatically disqualify the candidature of such candidates. Thus, according to him, the written examination was compulsory and securing minimum qualifying marks in the written examination was necessary to be considered as being qualified to be considered for selection. He submitted that only such candidates who have secured

the minimum qualifying marks in the written examination should thereafter be given weightage marks for their service and should be considered for appointment. He also drew the attention of this Court to the Notification No.67/2017 issued on 18.12.2017 for the posts of Lab Technicians Grade-II, wherein under Para-VIII and Sub-para 1 thereof the procedure of selection prescribing similar criteria prescribed that "those candidates who qualify in the examination in order of merit will be called for verification of certificates, community and category wise for the vacancies available as required". He submitted that the minimum qualifying mark for selection is the same as in the case of Staff Nurses. Therefore, according to him, the respondents have not applied the correct and proper criteria for determining the selection list of candidates as Staff Nurses. He also referred to Web Note dt.04.05.2021, wherein it was clearly pointed out that for a total of 3311 vacancies of Staff Nurses, only 2418 vacancies were filled and that the remaining 893 vacancies, which are left unfilled due to non-availability of eligible candidates in the respective communities and zones, will be carried forward to the next Recruitment/Notification as per G.O.Ms.No.81 dt.22.02.1997. The learned Senior Counsel submitted that this Web Note is not in accordance with the dicta of the Hon'ble Supreme Court in the case of Munja Praveen and others Vs. State of Telangana and others (1 supra). He submitted that only such of the vacancies which remained unfilled due to non-joining of the candidates after the issuance of appointment orders can be carried forward to the next Recruitment/Notification and not such of the vacancies where the candidates were not even selected and no appointments were even offered. In support of this contention, the learned Senior Counsel has relied upon the following judgments of the Hon'ble Supreme Court of India.

(i) Munja Praveen and others Vs. State of Telangana and others (1 supra).

(ii) The Telangana State Level Police Recruitment Board and another Vs. Narimetla Vamshi and others Civil Appeal No(s).4735/2022 dt.23.11.2022.

He therefore prayed for setting aside the revised selection list and for a direction to consider the case of the petitioners against the 893 unfilled vacancies.

6. Sri M.Ramgopal Rao, learned Standing Counsel for the 3rd respondent TSPSC, however, submitted that the Notification issued for the recruitment of Staff Nurses clearly prescribed the selection procedure, according to which, such of those candidates who come up in order of merit will be called for verification of certificates, community and category wise for the vacancies available as required. It is submitted that the minimum qualifying marks for selection are: OCs 40%, BCs 35% and SCs/STs/PHs 30% and that the order of merit is the combined weightage of marks secured in the written examination as well as the experience weightage. He submitted that TSPSC (Telangana State Public Service Commission) has followed the procedure for selection in accordance with G.O.Ms.No.166, HM & FW (B1) Department, dt.09.09.2017 and has prescribed the procedure for selection in accordance therewith. It is submitted that the eligibility for final selection does not

mean only the marks obtained in the written examination, but it includes both written examination as well as the experience and therefore, it is considered for all purposes, i.e., for generating merit list and calling the candidates for their certificate verification. Therefore, according to him, there is no discrepancy in the list of selected candidates published by the respondents.

7. As regards 893 unfilled vacancies which were carried forward to the next Recruitment/Notification, he submitted that they were left unfilled due to non-availability of eligible candidates in the respective categories and in accordance with Rule 6 of the Rules of Procedure and G.O.Ms.No.81, General Administration (Ser-A) Department, dt.22.02.1997, they have to be carried forward to the next Notification and therefore, the petitioners herein cannot put forward their claim against such unfilled or unclaimed vacancies. He further submitted that having participated in the selection process pursuant to the Notification and without challenging the Notification itself, the petitioners cannot seek the relief claimed by them. He relied upon the judgment of the Division Bench of this Court in the case of Gatla Srinivas and others Vs. Ale Raju and others³ in support of his contentions.

8. Having regard to the rival contentions and the material on record, this Court finds that the issue to be considered in this case is whether the marks obtained in the written examination have to be taken as the qualifying marks before adding the weightage marks to select the candidates or it is the consolidated marks of written examination and experience which are to be considered for selection of the eligible candidates?

9. For the purpose of proper appreciation of the facts, the relevant portion of the Notification No.57/2017 dt.08.11.2017 is reproduced hereunder:

"PARA-VIII: PROCEDURE OF SELECTION:

3 Common Judgment in W.A.Nos.735, 614 and 493 of 2022 dt.09.11.2022 THE SELECTION OF CANDIDATES FOR APPOINTMENT TO THE POST IS AS FOLLOWS:

THE FINAL SELECTION OF THESE POSTS WILL BE BASED ON 70 WEIGHTAGE (POINTS) IN WRITTEN EXAMINATION AND 30 WEIGHTAGE (POINTS) FOR THE GOVT. SERVICE (EXPERIENCE) PUT TOGETHER.

The procedure of selection for the post is as follows:

S.No.	Particulars	Weightage(Points)
1	Written Examination	70
2	Experience	30
	Total:	100

The criteria for awarding Weightage (Marks) for Govt. Service (Experience) is as follows:

Service Consists of	Criteria Weightage experience Govt. Service	Weightage(Marks)
i) Six Months in Tribal Area	4	
ii) Six Months in Rural Area	2	
iii) Six Months in Urban Area (Corporations & Grade-I Municipalities)	1	

As per the Selection of procedure, it consists of Weightage of total 100 points. In which maximum 70 points will be given to Written Examination conducted for 150 marks and maximum 30 points will be given to Experience of the candidates based on their Government Service.

1. Those candidates who come up in order of merit will be called for verification of Certificates, Community and Category wise for the vacancies available as required. The minimum qualifying marks for Selection are Ocs 40%, BCs 35%, SCs, STs and PH 30%. The minimum qualifying marks are relaxable in the case of SC/ST/BC/PH at the discretion of the Commission.

2. The candidates will be selected and allotted to Service/ Department as per their rank in the merit list and as per Department and Zonal Preference for allotment of candidates against vacancies and for the vacancies available.

N.B.: Mere securing minimum qualifying marks does not vest any right in a candidate for being considered for selection.

3. The appearance in all the papers at the Written Examination as per rules is compulsory. Absence in any of the paper/papers will automatically render his candidature as disqualified.

4. Candidates have to produce Original documents and other particulars on the day of verification itself. If candidate fails to produce any of the required certificates and if the particulars furnished by him / her in the Application do not tally with the Original documents produced by him / her, then his / her candidature will be rejected/disqualified without any further correspondence.

As candidature for the recruitment is processed through Computer/Electronic devices based on the particulars furnished in the Application Form, the candidate is advised to fill in all the relevant particulars carefully.

5. The preference opted by candidates in respect of posts, Zone etc., in the application form are only indicative for being considered to the extent possible but not binding or limiting the Commission's powers conferred under Article 315 and 320 of the Constitution of India. Therefore, the Commission has the power to assign a successful candidate to any of the notified posts for which he/she is qualified and eligible, subject to fulfilling the selection criterion. Mere claim of preference for any Department /Zone for allotment against vacancy does not confer a right to selection for that Department/Zone in particular or any Department/Zone in General.

6. The appointment of selected candidates will be subject to their being found medically fit in the appropriate Medical Examination, and if he/she is of sound health, active habits free from any bodily defect or infirmity."

A literal reading of Sub-para (1) of the above Para-VIII of the Notification clearly shows that the candidates who come up in order of merit will be called for verification of certificates and it does not appear to mean that the minimum qualifying marks are to be obtained in the written examination itself. Sub-para (3) therefore only prescribes that appearance in all papers in the written examination is compulsory, but it does not refer to securing minimum marks as a condition precedent for consideration. The petitioners are all the candidates who have no experience and therefore, could not be granted any weightage marks. They appear to have secured more than required marks in the written examination as against the selected candidates, some of whom have secured less marks in the written examination and when service weightage marks are added to the written examination marks, their merit was more than the petitioners herein.

10. The learned Senior Counsel appearing for the petitioners has compared the said condition with the conditions mentioned in the Notification No.67/2017 dt.18.12.2017 for the post of Lab Technician Grade-II. The language used in both the Notifications appears to be similar, but in Notification No.67/2017, Sub-para (1) of Para-VIII clearly prescribed that only such of the candidates who qualify in the examination in order of merit will be called for verification of certificates, community and category wise for the vacancies available as required. Therefore, the language employed in both the Notifications is not the same and hence it cannot be said that the selection procedure for both the posts is the same. It is for the employer to prescribe the necessary qualifications and the procedure for recruitment of its employees. The concerned Department has given mandate to the Recruitment Agency, i.e., TSPSC to issue the Notification for recruitment of the employees and accordingly, the Notifications have been issued. The petitioners, having participated in the selection process pursuant to the Notification are challenging the said

condition in the Notification without any challenge to the Notification itself. The conditions of the Notification have to be interpreted as per the language used in the said condition and not as per the advantage of the candidates. Since Condition No.1 in Para-VIII of the Notification clearly stipulates that the merit will be on the basis of the marks obtained in the written examination as well as the weightage marks of service, the contentions raised by the petitioners herein cannot be accepted. Therefore, the Writ Petitions in respect of the said prayer are dismissed.

11. In respect of the second prayer, i.e., 893 unfilled posts should not be allowed to be carried forward to the next Recruitment/Notification and the petitioners should be considered against the said unfilled vacancies, this Court finds that no doubt the said vacancies cannot be called as fall out vacancies since no candidates are selected against the said vacancies and it is not the case of candidates not joining and therefore, the vacancies have to be carried forward to the next Notification, but as pointed out by the respondents, they remained unfilled due to non-availability of eligible candidates in accordance with the community and category wise. The vacancies will have to be filled up in accordance with the rules of reservation and therefore, where the eligible candidates are not available, the vacancies will have to be carried forward to the next Notification in accordance with G.O.Ms.No.81, GAD, dt.22.02.1997 and under Rule 6 of the Rules of Procedure for selection. Therefore, the prayer of the petitioners that they should be considered against the 893 unfilled vacancies also cannot be accepted and the Writ Petitions in respect of this prayer are also dismissed.

12. In the result, both the Writ Petitions are dismissed. No order as to costs.

13. Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed.