

State of Rajasthan and Another

Vs

Shantilal Jain and Others

Civil Appeal Nos. 6147-6148 of 1983

(M. H. Kania, Dr. T. K. Thommen JJ)

02.08.1989

JUDGMENT

KULDIP SINGH, J. –

1. The question for consideration in these two appeals is whether the creation of two cadres, consisting of Nursing Superintendent Grade I, Nursing Superintendent Grade II, Assistant Nursing Superintendent and Nursing Tutor (hereinafter called 'nursing cadre') and of Compounder Grade I, Compounder Grade II and Compounder Grade III (hereinafter called 'compounders cadre') under the Rajasthan Medical and Health Subordinate Service Rules, 1965 (hereinafter called 'Rules'), is arbitrary and as such violative of Articles 14 and 16 of the Constitution of India.

2. The relevant facts are as under :

Bansi Lal Sharma was appointed as Male Nurse in 1941. He qualified Punjab Nursing Registration Council Examination in 1944 and was confirmed as Compounder Grade I in 1950. He was officiating as Sister Tutor when the Rules came into force in March 1966. He filed writ petition in the Rajasthan High Court in 1971 challenging the creation of two separate cadres under the rules. It was pleaded that hitherto there was combined channel of promotion for compounders and nurses but the rules have arbitrarily deprived compounders Grade I of their right to promotion to the higher posts of Assistant Nursing Superintendent, Nursing Superintendent Grade II and Nursing Superintendent Grade I. It was further urged that recruitment to the nursing cadre was confined to females alone which resulted in discrimination on the ground of sex and as such violative of Article 15 of the Constitution of India. Kan Singh, J. rejected the contentions of Sharma and held that there was no arbitrariness in creating two separate cadres for nurses and compounders. The learned Judge further found as a fact that males and females were both eligible for recruitment to the nursing cadre and as such repelled the attack on ground of Article 15.

3. Shanti Lal Jain, in the second case, was appointed compounder Grade IV in 1955. He was confirmed as compounder Grade I in the year 1959 and in March 1966 when the Rules were enforced, he was holding the post of Sister Tutor on officiating basis. He also challenged the vires of the Rules on the grounds of Articles 14, 15 and 16 of the Constitution of India. Dwarka Prasad, J. dismissed the writ petition holding that creation of two separate cadres did not infringe the equality clause and also that there was no discrimination on the ground of sex. Both Sharma and Jain filed separate special appeals before a Division Bench of the Rajasthan High Court.

4. The Division Bench upheld the findings of learned Single Judges on Article 15 in the following terms :

"Both the learned Single Judges were, in our opinion, right in holding that the Rules did not exclude the appointment of males on the posts mentioned in group A of the Schedule and the said categorisation of groups A and E could not be held to be unconstitutional on the ground that it was based on sex alone. The argument of Shri Mridul that the Rules were violative of the provisions of Article 15 of the Constitution cannot, therefore, be accepted."

5. So far as the attack on the grounds of Articles 14 and 16 was concerned, the Division Bench set aside the judgments of learned Single Judges and found that there was no jurisdiction for creating separate cadres and denying channel of promotion to compounders Grade I to the higher posts in the nursing cadre. The bench held the Rules to be arbitrary and violative of Articles 14 and 16 of the Constitution of India and directed the State Government to consider Sharma and Jain for promotion to the post of Assistant Nursing Superintendent and other higher posts from the dates when they filed writ petitions in the High Court. This is how these two appeals by way of special leave, filed by the State of Rajasthan, are before us.

6. There is no material on the record to show as to what was the cadre composition before coming into force of the Rules. Prior to 1966 there were no statutory Rules pertaining to the service. No executive order creating cadres in the department or a joint seniority list indicating common cadre for nurses and compounders have been produced. Simply because Sharma and Jain were working as Sister Tutors in officiating capacity in 1966 it cannot be assumed that there was a joint cadre of compounders and nurses. Even if we assume that prior to coming into force of the Rules there was a combined cadre of nurses and compounders, Articles 14 and 16 of the Constitution do not forbid the State Government from creating new cadres, bifurcating one cadre into two or more or uniting two or more cadres into one. The creation of cadres in the service of the State is a matter which has to be left entirely to the State Government. In *Reserve Bank of India v. N. C. Paliwal* ((1976) 4 SCC 838 : 1977 SCC (L&S) 82 : (1977) 1 SCR 377) this Court held as under : (SCC p. 852, para 15)

"It is now well settled, as a result of the decision of this Court in *Kishori Mohanlal Bakshi v. Union of India* (AIR 1962 SC 1139 : (1962) 44 ITR 532) that Article 16 a fortiori also Article 14 do not forbid the creation of different cadres for government service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause."

7. The High Court has, by strained reasoning, come to the conclusion that the nurses and compounders form one class and as such treating them differently by creating two separate cadres is discriminatory and violative of Articles 14 and 16 of the Constitution of India. To appreciate the High Court reasoning we may reproduce Rule 4(1) of the Rules and relevant part of Schedule to the Rules :

"4. Composition and strength of the service. - (1) The service shall consist of eleven groups. The right of promotion shall be confined to each group except to the extent specified in the Schedule.

#-----Sl. Name of Source of re- Minimum quali- Post Mini- Re-No. Post cruitment fication & ex- from mum Marks with percent- perience for which quali- age direct recruit promo- ficati- ment tion on & ex- is to perience be made required for pro- motion-----
 ----- 1 2 3 4 5 6 7-----
 ----- GROUP-A1. Nursing 50 per cent by 1. R.N.C.R. or Nursing 3 years Supdt. Gr. direct recruitment its equivalent Supdt. service I with percentage & qualification Gr. II as Nur- 50 per cent by recognised by sing promotion government Supdt. 2. Regd. 'A' Gr. II grade Nurse 3. Sister Tutor course passed 4. 12 years ex- perience out of which 4 years must be as Sister Tutor and 3 years as Nursing Supdt. Gr. II or at an equivalent post2. Nursing 25per cent by 1. R.N.C.R. or Asst. 2 years Supdt. Gr. direct recruit- its equivalent Nursing service II ment and 75 qualification Supdt. as Nur- per cent by pro- recognised by sing motion government Supdt. 2. Regd. 'A' grade Nurse 3. Sister Tutors' course passed 4. 10 years' ex- perience out of which 4 years should be as Sister Tutor and 3 years as Asstt. Nursing Supdt. or at an equivalent post3. Asstt. 25 per cent by 1. R.N.C.R. or Sister 2 years Nursing direct recruitment its equivalent or Nur- service Supdt. and 75 per cent qualification sing as Sis- by promotion recognised by Tutor ter or government Nursing 2. Regd. 'A' Tutor Grade Nurse 3. Sister Tutor course passed-----

-----Sl. Name of Source of re- Minimum quali- Post Mini- Re-No. Post cruitment fication & ex- from mum Mar- with percent- perience for which quali- ks age direct recruit promo- ficati- ment tion on & ex- is to perience be made required for pro- motion-----
 ----- 1 2 3 4 5 6 7-----
 ----- 4. 7 years' ex- perience out of which at least 3 years should be as Nursing Tuto Sister or 25 per cent by 1. R.N.C.R. or Staff 5 years Nursing direct recruit- its equivalent Nurse/ service Tutor ment and 75 qualification Comp. Staff per cent by recognised by Gr. II Nurse/ promotion government Comp. 2. Regd. 'A' Gr. II Grade Nurse or 4 years 3. Sister Tutors service course passed as Staff 4. 3 years ex- Nurse out perience as of which 3 Staff Nurse/ years con- Comp. Gr. II tinous serviceshould bein Operat-ion Thea-tre or 3years se-rvice asStaffNursewith Sis-ter TutorCertifi-cateNote : For the post of Sister Tutor, Sister Tutor's Certificate will be compulsory5. Staff 75 per cent by 1. PNRC or Mid-wife 7 years Nurse direct recrui- its equivalent & Auxil- service Comp. tment and 25 qualification lliary as Mid- Gr. II per cent by recognised by Nurse wife or promotion. government Midwife Auxilliary

Nurse

Midwife-----Sl. Name of Source of re- Minimum quali- Post Mini- Re-No. Post cruitment fication & ex- from mum Mar- with percent- perience for which quali- ks age direct recruit promo- ficati- ment tion on & ex- is to perience be made required for pro- motion-----
 ----- 1 2 3 4 5 6 7-----6. Midwife and 100 per cent Auxiliary Nurse - - Auxiliary by direct Midwifery trained Nurse recruitment and VIII standard Midwife passed GROUP 'E'1. Com- 100 per cent - Com- PNRC pounder by promotion poun- or its Gr. I der equival- Gr. II nt qualification re cognised by gover- nment with 5 year service as Com- pounder Gr. II2. Com- -do- Com- PNRC or pounder poun- its equi- Gr. II der valent Gr. qualifi-

III cation recogni- sed by govern- ment3. Com- 100 per cent by Matriculate pounder direct recruitment or equivalent Gr. III qualification recognised by government."-----

-----## 8. A bare reading of the Rules shows that the composition of the two cadres including designations, qualifications and methods of appointment to various posts, is entirely different. We do not agree with the High Court that nurses and compounders belong to one class and as such must be encadred together. The attention of the High Court was invited towards the qualifications prescribed for the nursing cadre and it was argued that the compounders do no possess the said qualifications and hence are not eligible to be considered for promotion in nursing cadre. The High Court repelled the argument with the following reasoning : "Special qualification in midwifery is required for the purpose of maternity cases only. But maternity cases form only a small part of the patients undergoing treatment in the hospitals and special qualification in midwifery is not required for other patients. In this regard it may be pointed out that under the original Schedule to the Rules a person having PNCR or its equivalent qualification recognised by government was eligible for direct recruitment on the post of Staff nurse and it was not necessary that he should be midwifery trained. Such a person on being appointed as staff nurse could be promoted to all the higher nursing posts enumerated in group 'A' of the Schedule. In other words, the absence of special qualification in midwifery would not preclude a person who was directly recruited as staff nurse being promoted to the higher posts. There is no reason why the same person should be denied this right if he, instead of joining as staff nurse, joined as compounder Grade III." 9. We do not agree with the approach of the High Court. It is not for the High Court to assume the extent of maternity cases which are treated in the hospitals or to lay down that compounders though not qualified to treat maternity cases must be equated with nurses because they can treat other type of cases. The High Court further erred when it equated the qualifications of Punjab Nursing Registration Certificate with that of matriculation for holding that staff nurses and compounders Grade III possess the same qualifications for entry into service. On the face of it Nursing Certificate is a specialised qualification and cannot be equated with matriculation. 10. We may mention that by amending the Rules in 1978 an opening has been provided for compounders Grade II to enter the nursing cadre by competing with the staff nurses for promotion to the post of Sister/Nursing Tutor. The compounders Grade II have thus been provided with two channels of promotion, one in their own cadre and the other to nursing cadre. Thus the grievances of the compounders that they were denied channel of promotion to the higher posts in nursing cadre has also been removed. 11. We, therefore, see no legal or equitable grounds to sustain the judgment of the High Court. We accept the appeals and set aside the judgment of the Division Bench of the High Court. Affirming the judgments of the learned Single Judges we hold that the Rules are constitutionally valid. There shall be no order as to costs.

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