

# SUPREME COURT OF INDIA

The Registrar,Rajiv Gandhi University of Health Sciences,Bangalore

Vs.

G.Hemlatha

C.A.No.5992 of 2012

(A.K.Patnaik and Ranjana Prakash Desai,JJ.)

23.08.2012

## JUDGMENT

**Ranjana Prakash Desai,J.**

1. Leave granted.

2. This appeal, by special leave, is directed against the judgment dated 28.10.2010 of the Division Bench of the Karnataka High Court. By the impugned judgment, the Division Bench declined to entertain the appeal filed by the appellant challenging the judgment of learned Single Judge of the High Court permitting rounding-off of the percentage of marks obtained by respondent 1 so as to make her eligible to get admission to post- graduate course [“PG course”, for convenience] in M.Sc (Nursing).

3. On 11.03.2011 this Court issued notice only to settle the question of law raised in the appeal because respondent 1 has completed the course. This court refused to stay the impugned order and directed that respondent 1’s admission be regularized and her results be declared.

4. The question of law involved in this case is whether by applying the principle of rounding-off the eligibility criteria prescribed for the qualifying examination for admission to the PG course in M.Sc (Nursing) can be relaxed.

5. For deciding the question of law, it is necessary to know the facts of the case. Respondent 1 completed Bachelor of Science degree in Nursing with 54.71% aggregate marks from N.T.R. University of Health Sciences in the year 1997. Thereafter, she registered herself as a Public Health Nurse and Midwife. She also registered herself as a nurse under the provisions of the Andhra Pradesh Nurses and Midwives (Extension of Amendment) Act, 1964. She was appointed as a working staff nurse at the Primary Health Centre, Nagasamudram (Andhra Pradesh) on 08.07.1999. She served for eight years and three months in the said institution.

She made a representation to the Regional Director of Medical Health Services seeking permission to pursue the PG course in M.Sc (Nursing). The eligibility criteria prescribed by the Indian Nursing Council for securing admission to the said PG course was 55% aggregate marks. The petitioner, however, secured 54.71% aggregate marks. She approached the Secretary, Indian Nursing Council, the third respondent herein, requesting that a certificate of eligibility be issued to her. The third respondent communicated to her that 0.50% would normally be rounded-off to next digit. She was asked to approach the concerned authority of the institute in that regard. Accordingly, she approached the petitioner. The petitioner gave her the eligibility certificate. She, then, approached the Principal, Navodaya College of Nursing, Raichur, Karnataka, the second respondent herein. With the said certificate she obtained admission in the management quota.

6. When she was preparing to take the annual examination, she was informed by the second respondent that she was not eligible to take examination as she has secured less than 55% in the qualifying examination. She approached the petitioner for reconsideration of her case. She was informed that on reconsideration it was found that she was not eligible to take examination. She, therefore, preferred writ petition in the High Court challenging the said communication. She obtained an interim order permitting her to take first year examination. She took the examination but, results were withheld. She was also permitted to take the second year examination by an interim order. Thus, she has completed the PG course by taking both the examinations. As stated by us earlier, while issuing notice, this court directed that her results be declared and her admission be regularized.

7. By order dated 01.09.2010 learned Single Judge of the High Court, by applying the rule of rounding-off of numbers, held that 54.71% marks obtained by respondent 1 should be rounded-off to 55%. Thus, respondent 1 became eligible by virtue of the High Court's order. Learned Single Judge set aside the endorsement issued by the petitioner stating that respondent 1 was not eligible for admission to the PG course in M.Sc. (Nursing). The said order was carried in appeal to the Division Bench of the Karnataka High Court by the appellant. The Division Bench of the Karnataka High Court declined to entertain the appeal. The Division Bench observed that it was not inclined to interfere with the discretion exercised by learned Single Judge in rounding-off of 54.71% to 55%. In the circumstances, the Division Bench held that respondent 1 did possess required qualification to get admission to PG course.

8. In *Orissa Public Service Commission and Another v. Rupashree Chowdhary and Another*<sup>2</sup> this Court in somewhat similar fact situation considered whether the eligibility criteria could be relaxed by the method of rounding-off. The Orissa Public Service Commission published an advertisement inviting applications from suitable candidates for the Orissa Judicial

Service Examination, 2009 for direct recruitment to fill-up 77 posts of Civil Judges (JD). Pursuant to the advertisement, the first respondent therein applied for the said post. She took the preliminary written examination. She was successful in the said examination. She, then, took the main written examination. The list of successful candidates, who were eligible for interview, was published in which the first respondent's name was not there. She received the mark sheet. She realized that she had secured 337 marks out of 750 i.e. 44.93% of marks in the aggregate and more than 33% of marks in each subject. As per Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 (for short "the Orissa Rules"), the candidates who have secured not less than 45% of the marks in the aggregate and not less than a minimum of 33% of marks in each paper in the written examination should be called for viva voce test. Since the first respondent therein had secured 44.93% marks in aggregate she was not called for interview/viva voce. The first respondent approached the Orissa High Court. The High Court allowed the writ petition. The appeal from the said order was carried to this court. After considering the Orissa Rules, this court held that Rule 24 thereof made it clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% marks in the aggregate in all the written papers in the main examination. This court observed that when emphasis is given in the rule itself to the minimum marks to be obtained, there can be no relaxation or rounding-off. It was observed that no power was provided in the statute/rules permitting any such rounding-off or giving grace marks. It was clarified that the Orissa Rules are statutory in nature and no dilution or amendment to such rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding-off or relaxation.

9. In our opinion, the ratio of this judgment is clearly applicable to the facts of this case. Judgment of the Full Bench of Allahabad High Court in *Vani Pati Tripathi vs. Director General, Medical Education and Training and Others*<sup>2</sup> and judgment of the Full Bench of Punjab and Haryana High Court in *Kuldip Singh, Legal Assistant, Punjab Financial Corporation vs. The State of Punjab and Others*<sup>3</sup> were cited before us because they take the same view. However, in view of the authoritative pronouncement of this Court in Orissa Public Service Commission (supra), it is not necessary for us to discuss the said decisions.

10. No provision of any statute or any rules framed there under has been shown to us, which permits rounding-off of eligibility criteria prescribed for the qualifying examination for admission to the PG course in M.SC (Nursing). When an eligibility criterion is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding

that learned Single Judge was right in rounding-off of 54.71% to 55% so as to make respondent 1 eligible for admission to PG course. Such rounding-off is impermissible.

11. We make it clear that this order merely settles the question of law and shall not have any adverse impact, in any manner, on the service of respondent.

12. The appeal is disposed of in the aforesaid terms.

*Judgment Referred*

<sup>1</sup>(2011) 8 SCC 0108

<sup>2</sup>AIR 2003 All 0164

<sup>3</sup>(1997) 117 PLR 0001

