

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WA No. 3 of 2019

Ref: WP(C) No. 872 of 2017

Smt. I. Nalini Devi, aged about 61 years, W/o Nameirakpam Biramani Singh, resident of MLA Quarter No. 4 Major Khul, P.O. Imphal, P.S. City Police, District Imphal West, Manipur, Pin-795008.

***..... Appellant/s
(Respondent No. 3 in the Writ Petition)***

- Versus -

1. Smt. N. Nalinibala Devi, aged about 61 years, W/o W. Pishak Singh, resident of Singjamei Makha Khongnang Pheidekpi, P.O. & P.S. Singjamei and District Imphal West, Manipur Pin-795008.

***.....Principal Respondent
(Petitioner in Writ Petition)***

2. The State of Manipur through the Principal Secretary (Health & F.W.) Government of Manipur, Imphal, Manipur, Pin-795001.
3. The Director of Health Services, Government of Manipur, Imphal, Manipur

***.....Proforma Respondent/s
(Respondent Nos. 1 to 2
in the writ Petition)***

with

WA No. 37 of 2017

Ref: WP(C) No. 512 of 2015

Smt. I. Nalini Devi, aged about 60 years, W/o Nameirakpam Biramani Singh, resident of MLA Quarter No. 4 Major Khul, P.O. Imphal, P.S. City Police, District Imphal West, Manipur, Pin-795008.

***..... Appellant/s
(Respondent No. 2 in the Writ Petition)***

- Versus -

1. Smt. N. Nalinibala Devi, aged about 60 years, W/o W. Pishak Singh, resident of Singjamei Makha Khongnang Pheidekpi, P.O. & P.S. Singjamei and District Imphal West, Manipur Pin-795008.

.....Principal Respondent
(Petitioner in Writ Petition)

2. The State of Manipur, through Principal Secretary (Health & Family Welfare), Government of Manipur, Imphal, Manipur Pin-795001
3. Dr. N. Surbala Devi, Associate Professor, College of Nursing, Medical Directorate, Manipur.
4. Smt. Kh. Ratna Devi, Associate Professor, College of Nursing, Medical Directorate, Manipur.
5. Smt. Th. Nandarani Devi, Associate Professor, College of Nursing, Medical Directorate, Manipur.
6. Smt. A. Ibeyaima Devi, Associate Professor, College of Nursing, Medical Directorate, Manipur.
7. Smt. M. Shanti Devi, Associate Professor, College of Nursing, Medical Directorate, Manipur.

.....Proforma Respondent/s
***(Respondent Nos. 1, 3 to 7
in the writ Petition)***

with
WA No. 38 of 2017
Ref: WP(C) No. 512 of 2015

The State of Manipur, through Principal Secretary (Health & Family Welfare), Government of Manipur, Imphal, Manipur Pin-795001

..... Appellant/s
(Respondent No. 1 in the Writ Petition)

- Versus -

Date of Hearing

::

23.02.2023/01.03.2023/01.08.2023/02.08.2023/
14.08.2023/23.08.2023

Date of Judgment & Order

:: **31.10.2023**

JUDGMENT & ORDER (CAV)

[A. Guneshwar Sharma, J.]

[1] Heard Mr. N. Ibotombi, learned senior counsel for the appellant assisted by Mrs. N. Savitri, Advocate in W.A. No. 3 of 2019 and W.A. No. 37 of 2017, Mr. S. Nepolean, learned G.A. for the appellant assisted by Mrs. RK Emily, Deputy GA in W.A. No. 38 of 2017, Mr. Kh. Tarunkumar, learned senior counsel for contesting respondent No. 1 assisted by Ms. Rebati, Advocate in all the writ appeals and Mr. HS. Paonam, learned senior counsel for the private respondents assisted by Mr. S. Gunabanta, Advocate.

[2] The present writ appeals, being WA Nos. 37 of 2017 & 38 of 2017 have been filed by the appellants (i.e., private party and State respectively) praying for quashing and setting aside the judgment & order dated 12.05.2017 passed by a Single Bench of this Court in WP(C) No. 512 of 2015 whereby quashing the order dated 01.08.2014 issued by the Under Secretary (Health), Government of Manipur in respect of principal respondent/private respondent No. 2 with the directions that the State Government shall constitute a special DPC within 3 (three) weeks and the so constituted DPC shall examine and consider the case of the petitioner within 3 (three) weeks. WA No. 3 of 2019 is

filed by the appellant Smt. I. Nalini Devi against the impugned judgment/order dated 05.12.2018 passed by a Single Bench of this Court in WP(C) No. 872 of 2017 whereby order dated 28.10.2017 passed by the State Government in pursuance of a Special DPC constituted on the directions of the Single Judge in Para 10 of the judgment/order dated 12.05.2017 in WP(C) No. 573 of 2015, was set aside for non-compliance of the aforesaid directions.

[3] Since the writ appeals relate to the same issue of appointment of the appellant in WA Nos. 37 of 2017 and 3 of 2019, these are heard together and being disposed of by a common order herein. In order to avoid reference to different appellants and respondents by names in these appeals and for easy identification, the parties are referred to their respective nomenclatures as given in WP(C) No. 512 of 2015. Accordingly, in these writ appeals, Smt. N. Nalinibala Devi will be referred as writ petitioner/petitioner, Smt. I. Nalini Devi as respondent No.2, State as State respondent(s) and others as private respondents.

[4] The brief fact of the case is that the petitioner was initially appointed as Sister Tutor vide order dated 20.10.1981 issued by the Director of Medical Health & FW, Government of Manipur on the recommendation of a DPC held on 28.09.1981. On 26.11.2010, the Under Secretary (Health), Government of Manipur conveyed to the Director, Health Services, Manipur regarding approval of the Government for nomination of the petitioner for undergoing M.Sc. (Nursing) Course for the session 2010-2011 at the Regional College of Nursing, Guwahati and on 03.10.2011, the Director of Health

Services, Manipur issued a memorandum wherein the final seniority list of Sister Tutors, Public Health Nurses and Public Health Nurse Instructor as on 03.10.2011 was published and the name of the petitioner appeared at serial No. 2 (Sister Tutor and the private respondent No. 2 appeared at serial No. 3. The Under Secretary (Health), Government of Manipur issued an order dated 23.11.2011 where the petitioner along with another incumbent were promoted to the post of Principal, FHW/GNM Training School in the Health and FW Department, Manipur on regular basis on the recommendation of a DPC meeting held on 16.11.2011 wherein the name of the petitioner appeared at serial No. 1 followed by an order dated 01.12.2011 where the petitioner was transferred and posted as Principal, School of GNM, Imphal and her name appeared at serial No. 2.

[5] On 07.09.2012, the Commissioner (Health & FW), Government of Manipur issued an order wherein certain members of the teaching faculty under the said department were utilized their services in the newly established College of Nursing, Imphal and in the said order, one Smt. N. Kumudini Devi who is just above the petitioner in the seniority list dated 03.10.2011 was utilized as Principal of the College of Nursing, Imphal without considering the seniority position of the petitioner and private respondent No. 2 (who is at serial No. 2) has been utilized as Vice-Principal of the said College of Nursing, Imphal. On 07.09.2013, the Jt. Director (Nursing), Medical Directorate, Government of Manipur prepared a list of teaching staffs of School of GNM & FHW Training School, Medical Directorate wherein the name of the petitioner appeared at

serial No. 1 with the remark that she was undergoing M.Sc. Course by enjoying study leave till January, 2013 and the private respondent No. 2 , who is at serial No. 2, of the said list as in-charge Principal of the School of GNM till regular Principal returned.

[6] On 25.09.2012, the Secretary, Indian Nursing Council, New Delhi conveyed to the Principal, College of Nursing, Medical Directorate, Lamphelpat that the Institution was permitted/suitable for B.Sc. (N) Programme with an intake of 40 seats subject to the approval of State Nursing Council and University/Board for the academic year 2012-2013. On 06.10.2013, the Deputy Secretary (Health), Government of Manipur issued an order transferring and posting of two incumbents including the private respondent No. 2, who was given in-charge Principal, FHW Raining School, FW Lamphel with the remark that the said arrangement was made till the petitioner finished her PG Course and took over charge as Principal FHW Training School, Lamphel. The petitioner successfully passed the M.Sc. Nursing Final Examination held in December, 2012 in First Division from the Regional College of Nursing, Guwahati, Assam.

[7] On 29.12.2012, the Principal, College of Nursing, Medical Directorate, Government of Manipur addressed a letter to the Director of Health Services, Government of Manipur informing that regular class for B.Sc. (Nursing) would be started from 05.11.2012 along with a chart of the teaching faculty wherein the name of the private respondent No. 2 appeared at Sl. No. 2. Since, the petitioner having completed her M.S.c. (Nursing) course, the

Director of Health Services, Manipur issued an order dated 18.03.2013 by which the petitioner was relieved from her place of posting i.e. Principal, GNM School, Lamphel to enable her to join at her new place of posting i.e., Principal, FHW Training School, Family Welfare, Lamphel. In continuation of its earlier order, the Deputy Secretary (Health) issued an order dated 16.07.2013 utilising the services of the teaching faculty/Nursing Personnel mentioned therein without the name of the petitioner as the Teaching Faculty Member in the College of Nursing.

[8] The Petitioner submitted a representation dated 18.07.2013 to the Director of Health Services, Government of Manipur requesting to upgrade/elevate her to a suitable post in the College of Nursing, Lamphel by highlighting that she has been promoted to the post of Principal of GNM Nursing School, Lamphel on 23.11.2011 and as per the seniority list, she appeared at Sl. No. 2 and she has a total experience of 31 years as Sister Tutor in teaching and one and half years as Principal. Moreover, she also possessed M.Sc. Nursing (Pediatric Specialist). Without taking into consideration, the qualification, experience obtained by the petitioner, the Under Secretary (Health & FW), Government of Manipur issued an impugned order on 01.08.2014 whereby certain existing posts of the College of Nursing under the Medical & Health Department, Manipur were upgraded/re-designated and persons holding the posts were also absorbed against the re-designated post and by the said order, the post of Public Health Nurse Instructor (PHNI), RHFCT, Imphal was re-designated as Professor-cum-Vice-Principal, College

of Nursing and private respondent No. 2 was absorbed against this re-designated post. In the said impugned order, the petitioner was absorbed as Associate Professor, College of Nursing.

[9] Being suspicious of some fault play while issuing the impugned order dated 01.08.2014, an application under RTI Act, 2005 was made by seeking certain query/information as regards the procedure for absorption. However, no information was furnished to the applicant in respect of the procedure for absorption and senior position of the faculty members. Being aggrieved by the said impugned order, the respondent No. 1/ writ petitioner filed a writ petition being WP(C) No. 512 of 2015 before this Court by challenging the legality of the of the impugned order dated 01.08.2014 on the inter-alia grounds that in the impugned order dated 01.08.2014, no source of power by which the post of Professor-cum-Vice-Principal was re-designated, was disclosed and in the said impugned order, the post of Professor-cum-Vice-Principal, School of Nursing is bad in the eyes of law, the private respondent No. 2 does not possess the requisite qualification of 5 years of teaching experience as she never rendered her service as Tutor/Teacher by giving classes to the nursing students. In the impugned order dated 01.08.2014, in respect of the post of Professor-cum-Vice-Principal was issued in an arbitrary manner just to favour the private respondent No. 2 and no reason was assigned in the impugned order for issuing the name of same. While issuing the impugned order, due process of law was not followed, meaning thereby that no selection process/regular DPC was held by the State Government and at the

time when the private respondent No. 2 was absorbed as Professor-cum-Vice-Principal, College of Nursing, she was a non-gazetted officer and the appointment of the petitioner and other eligible incumbents ought to have been done by following the relevant Recruitment Rules, 2012 framed by the INC.

[10] The State Government (respondent No. 1) filed an affidavit-in-opposition wherein it is stated that at the time of establishing the College of Nursing, the State Government followed the Guidelines, 2012 of the INC circulated with regard to the qualifications of the teaching staff and as per the said guidelines, the qualifications for appointment to the post of Professor-cum-Vice-Principal are (i) M.Sc. in Nursing and (ii) five years of teaching experience. Whereas, the said guidelines did not prescribe a specific condition that one would have served as a Lecturer/Tutor in a recognized Nursing College as pre-requisite criteria for appointment as Professor-cum-Vice-Principal in the College of Nursing. In order to start the B.Sc. (Nursing) Programme and to get permission from the INC, the State Government utilized the services of some employees vide order dated 07.09.2012 including the private respondent No. 2, who had rendered service for more than 20 years in the Regional Health and Family Welfare Training Centre, Imphal. Vide letter dated 25.09.2012, the INC accorded permission that the service of the private respondent No. 2 was absorbed as Professor-cum-Vice-Principal on regular basis. It is further stated that the essential qualification for appointment as a member of the faculty in the College of Nursing being M.Sc. (Nursing), the petitioner was not qualified for her service being utilised as a faculty member and since, the post held by her

in the past are not feeder posts for appointment as a member of the faculty, the question of seniority is not relevant and application. Even though the petitioner was granted study leave for pursuing the M.Sc. (Nursing) course, there was no guarantee that she should be given deputation for appointment as member of the faculty. When the order dated 07.09.2012 was issued by the State Government, the petitioner was not considered for utilizing as the Professor and the Associate Professor as she being a holder of B.Sc. whereas the private respondent No. 2 having passed the M.Sc. (Nursing) in the year 1986, was considered for utilizing as Professor-cum-Vice-Principal. It is stated that the petitioner has no locus to review the Government (utilization) order dated 07.09.2012 where the services of the private respondents have been utilized. Prior to her possession of M.Sc (Nursing), the petitioner was not qualified for being utilised as a faculty member and she has not locus against the Government order dated 07.09.2012 and its subsequent orders. In order to run State's own Nursing College, the faculty members were appointed by re-designating the posts held by the incumbents and other vacant posts without creating fresh posts and by absorption against the re-designated posts considering their years of passing M.Sc. (Nursing) and their teaching experience. The petitioner having passed M.Sc. (Nursing) only in the year 2013, she was considered for appointment as the Associate Professor. The post of Public Health Nursing Instructor at Regional Health & Family Welfare is a teaching cadre post and the private respondent No. 2, being holding the said post, had been re-designated as Professor-cum-Vice-Principal. The re-

designated of the post and absorption of incumbents against the re-designated posts was a state policy done with the approval of the State Cabinet in its meeting held on 07.07.2014 and the re-designation and absorption orders were issued in concurrence with the Finance Department and the Department of Personnel. But the consultation from the MPSC was exempted due to the urgent need of the faculty members in order to make the Nursing College Functional.

[11] The respondent Nos. 2 & 3 also filed affidavit-in-opposition where it is stated that the respondent No. 2 passed B.Sc. (Nursing) in the year 1979 and M.Sc. (Nursing) in the year 1986 whereas respondent No. 3 passed B.Sc. (Nursing) in the year 1988 and M.Sc. (Nursing) in the year 1995. In terms of the National Health Policy, 2022, the Health Department, Manipur took up a step to establish a Nursing College in the state and in response to the proposal of the Central Government, the Director of Health Service, Manipur submitted a detailed proposal for up-grading the School of GNM to a College of Nursing. The INC issued a guideline prescribing minimum requirements to establish B.Sc. (Nursing) College and the essential qualification for appointment of Professor-cum-Vice-Principal was M.Sc. (Nursing) and the petitioner obtained her post-graduate only in the year 2013 and in order to meet the urgent need of qualified staff to establish the Nursing College, the private respondent No. 2 was allowed to work as in-charge Principal of the GNM Training School till 03.01.2013 and thereafter, she was utilized as the Vice-Principal, College of Nursing. The College of Nursing started functioning in the year 2012 after

obtaining approval from the INC. The Principal, College of Nursing issued an order dated 14.01.2013 requesting all the qualified members of Nursing Candidates to submit their necessary documents for consideration of absorption to the post of teaching staff of the College of Nursing. The Director of Health Services, Manipur issued a Memorandum dated 04.03.2013 [Annx.C-23 to WP filed for first time by R-2 & 3] for furnishing documents on or before 11.03.2013 from all the Sister Tutors, Public Health Nurses and Public Health Nursing Instructors and on 19.04.2013, the Director of Health Services, Manipur addressed to the Principal Secretary (Health & Family Welfare), Government of Manipur submitting proposal for creating, framing of rules and appointment of qualified staffs as faculty members and made proposal for absorption. The petitioner never possessed the essential qualification nor did she have the teaching experience. After availing the infrastructure and the teaching faculty, the INC, having satisfied, granted the permission to start functioning of the Nursing College. Accordingly, the Government of Manipur issued an order dated 01.08.2014 re-designating certain posts as indicated in the order after approval being granted by the Cabinet as well as Finance Department.

[12] The writ petitioner filed two similar rejoinder affidavits both dated 25.02.2016 to the counter affidavits of the State Respondent and private respondent Nos. 2 & 3. It is stated that private respondent No.2 passed M. Sc. Nursing in the year 1986, but she did not possess the requisite teaching experience as per the prescribed Recruitment Rules for the post of Professor-

cum-Vice Principal as she had never rendered her service either as a Lecturer or Tutor to any recognised Nursing School in Manipur. It is emphasised that the minimum 5 (five) years of teaching experience should be in the field of Nursing as per the prescribed norms/rules of the Indian Nursing Council. It is stated that all the private respondents were juniors to the writ petitioner as per the Seniority List dated 30.06.1989 issued by the Joint Director, Health Services, Manipur. It is highlighted that respondent No.2 had never rendered any teaching class as a teacher in any GNM or ANM School nor in any Nursing College under the Government of Manipur, before her absorption as Professor-cum-Vice Principal to the newly established Nursing College. She did not possess the requisite qualification of 5 (five) years teaching experience as per the Recruitment Rules of Indian Nursing Council framed in the year 2012. It has been pointed out that Indian Nursing Council recognised the following programmes as types of nursing programmes, ie, (i) Auxiliary Nurse & Midwife- 2 years; (ii) General Nursing & Midwifery- 3½ years; (iii) B.Sc.(Basic) – 4 years; (iv) B.Sc.(Post Basic)- 2-3 years; (v) M.Sc.- 2 years; (vi) M.Phil- 1-2 years; (vii) Ph.D.- 3-5 years. It is pointed out that respondent No.2 never conducted classes to any of the aforesaid nursing programmes and hence did not possess the requisite qualification. The petitioner relied to the Memorandum dated 04.03.2013 issued by the Director of Health Service, Manipur (annexed by the respondent No.2 as Annx.C-23 in her counter affidavit in the writ petition) which prescribed that teaching experience should be in FHW/GNM/B.Sc.(N) courses. It is stated that respondent No.2 had no teaching experience in FHW/GNM/B.Sc.(N) courses

as prescribed in the aforesaid Memorandum and hence not qualified for appointment as Professor-cum-Vice Principal in the newly established Nursing College.

[13] The State respondent filed a reply affidavit dated 31.01.2017 to the rejoinder affidavit of the petitioner. It is stated that at the time of establishing the College of Nursing under the Medical Directorate, Manipur, the State Government followed the guidelines of the Indian Nursing Council of June, 2012 regarding the qualifications of the Teaching Staff for B.Sc. (Nursing) programme. The Guidelines prescribed the following:

For the post of Professor-cum-Vice Principal

- Master Degree in Nursing;
- Total 10 years of experience with minimum of 5 years of teaching experience;
- Desirable: Independent published work of high standard/doctorate degree/ M.Phil;

For the post of Reader/Associate Professor

- Master Degree in Nursing;
- Total 7 years of experience with minimum of 3 years of teaching experience;
- Desirable: Independent published work of high standard/doctorate degree/ M.Phil;

It is stated that as per the Guidelines, a person has to possess 5 years teaching experience as eligibility criteria for appointment to the post of Professor-cum-Vice Principal, but the Guidelines do not prescribe the condition specifying for serving as a Lecturer or Tutor in a recognised Nursing School as

pre-requisite criteria for appointment as Professor-cum-Vice Principal in the Nursing College. It is clarified that respondent No.2 passed M.Sc. (Nursing) in the year 1986 and she rendered for more than 26 years in the Regional Health & Family welfare Training Centre, Imphal teaching various categories of Health & Family Welfare Personnel and Tutors/Public Health Nursing Tutors, Auxiliary Nurse Midwives/Female Health Workers, etc. and hence she was eligible at the relevant time. It is further stated that to enable to start B.Sc. (Nursing) programme and also to get permission/recognition from the Indian Nursing Council, the State Government utilised the service of respondent No.2 as Vice Principal of the new College along with the faculty members of existing Nursing School who had M.Sc. (Nursing) degree vide Government Order No. 27/4/2010-M dated 07.09.2012 and INC granted the permission for starting the B. Sc. (Nursing) programme vide letter No. 02/Sept/2012 dated 25.09.2012. It is pointed out that the petitioner obtained her provisional certificate dated 14.06.2013 issued by the Principal, Regional College of Nursing, Guwahati, Assam for passing M.Sc. (Nursing) and as such she was not eligible for consideration on the date of submission of proposal by the State Government, ie, as on 07.09.2012 and also on the date of granting permission on 25.09.2012 by the INC to start new B.Sc. (Nursing) course in Manipur. It is also clarified that the posts of Senior Tutor, Sister Tutor, Public Health Nurse, Public Health Nursing Instructors, Principal of ANM/FHW Training Schools held by the petitioner in the past are not feeder posts for appointment to the Faculty posts in the new College of Nursing and as such the seniority list in the non-feeder

posts are not relevant for appointment of Faculty posts in the newly establish College of Nursing. As per the existing rules, the qualification in the Nursing School is B.Sc. (Nursing) while in the College, it is M.Sc. (Nursing).

[14] Respondent Nos. 2 & 3 also filed additional counter affidavit dated 27.02.2017 to the rejoinder affidavit of the petitioner reiterating the stands taken in their counter affidavit. The Guidelines do not prescribe that the 5 years teaching experience should be in the field of Nursing only as wrongly contended by the petitioner. On the other hand, the petitioner was not eligible as she did not possess M.Sc. (Nursing) degree at the time of consideration by the State Government and also at the time of granting of permission by the Indian Nursing Council and as such she had no locus to challenge the appointment of respondent No.2 as Professor-cum-Vice Principal of the Nursing College.

[15] In the impugned judgment and order dated 12.05.2017, learned Single Judge framed three issues for consideration as- *“(a) Whether the writ petition is maintainable or not?; (b) Whether the private respondent No.2 does possess the requisite qualification of 5 years of teaching experience for appointment by way of absorption?; (c) Whether, in facts and circumstances of the present case, the impugned order dated 01.-8.2014 issued by the State Government is bad in law?”*. Regarding the first issue, it was observed that as per the final inter-se seniority list published on 03.10.2011, the petitioner was admittedly senior to the private respondent No.2. On 23.11.2011, the petitioner was promoted to the post of Principal, FHW/GNM Training School in the Health

& Family Welfare Department, Govt. of Manipur, while the private respondent No.2 was never promoted to such post except for holding the charge thereof when the petitioner was undergoing M.Sc. (Nursing) course. Holding that the eligibility of a person for appointment by promotion or absorption is relevant at the time of consideration, the petitioner is eligible. Her appointment as Associate Professor on absorption in a lower grade will amount to demotion without any due process. It was held that the petitioner was eligible as per Guidelines of 2012 issued by INC and the writ petition was maintainable and the petitioner had locus for question the absorption of the private respondent No.2 as Vice-Principal. On the second issue, it was observed that the minimum qualifications for appointment as the Vice-Principal, College of Nursing are- (i) Master degree in Nursing, and (ii) Total 10 years experience with minimum of 5 years of teaching experience. While interpreting the expression 'teaching experience' as prescribed in Guidelines of 2012, it was held that it should be in any Nursing programmes recognised by INC and the Regional Health & Family Welfare Training Centre, Govt. of Manipur was not recognised by the INC. Further, it was observed that the private respondent No.2 could not produce any certificate that she had teaching experience of 5 years in FHW/GNM/B.Sc.(N) as mentioned in the Memorandum dated 04.03.2013 issued by the Director of Health Services, Govt. of Manipur. Accordingly, it was held that the private respondent No. 2 was not qualified for being absorbed as the Vice-Principal, College of Nursing. Consequently, impugned order dated 01.08.2014 issued by the Under Secretary (Health), Govt. of Manipur was

quashed and set aside quo the appointment of the private respondent No.2 as Professor-cum-Vice Principal, College of Nursing, Manipur and directed the State Government to constitute a special DPC within three weeks to examine and consider the case of the petitioner and recommend her name for absorption as Vice-Principal, College of Nursing or any other equivalent post in the cadre of the Principal, College of Nursing, if found eligible prior to the issuance of the impugned order dated 01.08.2014.

[16] As directed by the learned Single Judge in the impugned judgment and order dated 12.05.2017 in WP(C) No.512 of 2015, a Special DPC was constituted vide order dated 23.10.2017 and a meeting was convened on 28.10.2017. The Special DPC did not recommend the petitioner for absorption to the post of Professor-cum-Vice Principal of Nursing College or to any other equivalent post in the cadre of the Principal, College of Nursing on the grounds that- (a) The petitioner did not possess the requisite qualification of M.Sc.(Nursing) prescribed for the post of Professor-cum-Vice Principal at the time of establishment of the Nursing College in September, 2012 and she was holding the post of Principal, School of GNM with the qualification of B.Sc.(Nursing). Even though the order of absorption was on 01.08.2014, the consideration for the posts was based on the eligibility at the time of establishment of the College of Nursing in September, 2012.; (b) As per Guidelines of 2013, the petitioner was also ineligible.; (c) Guidelines of 2013 stated that the experience should be acquired after the receiving of the M.Sc.(Nursing) degree.; (d) The Committee sought the clarification from Indian

Nursing Council regarding the qualification and experience of the petitioner and the same was awaited.; (e) No post equivalent to the Professor-cum-Vice Principal, in the cadre of the Principal, College of Nursing was available. A formal order dated 28.10.2017 was issued by the Under Secretary (Health & FW), Govt. of Manipur in terms of the proceedings of the Special DPC not recommending the name of the petitioner for absorption.

[17] The petitioner challenged the order dated 28.10.2017 intimating non-recommendation of her name by way of writ petition being WP(C) No. 872 of 2017. Vide impugned order dated 05.12.2018, learned Single Judge held that the Special DPC did not consider the observations made in para 10 of the judgment and order dated 12.05.2017 in WP(C) No. 512 of 2015. Since the Guidelines was purportedly extended upto April 2014, the eligibility of the petitioner ought to be examined prior to issuance of order of absorption dated 01.08.2014. Accordingly, the impugned order dated 28.10.2017 issued on the basis of the proceedings of the Special DPC was set aside. However, there was no further direction for considering the name of the petitioner for absorption.

[18] Private Respondent No.2 and State challenged the impugned order dated 12.05.2017 passed by learned Single Judge in WP(C) No. 512 of 2015 by filing separate writ appeals being WA No. 37 of 2017 and WA No. 38 of 2017 respectively. Respondent No.2 also challenged the impugned order dated 05.12.2018 passed by learned Single Judge in WP(C) No. 872 of 2017 by filing another writ appeal being WA No. 3 of 2019. As these appeals are

relating to the same issue, they are being heard together and disposed of by a common judgment.

[19] Mr. S. Nepolean, learned Government Advocate submits that as per the Guidelines of 2012 issued by the Indian Nursing Council, the Qualification of Teaching Staff for B.Sc.(Nursing) programme with 60 students intake (Relaxed till 2012) for 'Principal-cum-Vice Principal are - Master Degree in Nursing; Total 10 years of experience out of which with minimum of 5 years of teaching experience; Desirable: Independent published work of high standard/doctorate degree/ M.Phil'. The qualification as per Guidelines of 2013 is M.Sc.(N) with 12 years experience after M.Sc.(N) out of which 10 years should be teaching experience with minimum of 5 years in collegiate programme and Ph.D. is desirable. Learned GA has highlighted the important fact that the qualification as stipulated in the Guidelines of 2012 should be acquired as on the date of utilisation of the Teaching Faculty of School of GNM, Imphal; FHW Training School, Imphal and FHW Training School (FW) for establishing a new Nursing College by the State Government vide order dated 07.09.2012; or on 25.09.2012 when the Indian Nursing Council gave permission for starting B.Sc.(Nursing) programme for the academic year 2012-13; or in the month of November, 2012 when the B.Sc.(Nursing) course actually commenced. It is vehemently submitted that on these relevant dates, the petitioner did not possess the requisite qualification of M.Sc.(N) degree and as such she was not eligible for consideration for appointment by absorption as Professor-cum-Vice Principal in the newly established Nursing College. The

petitioner, being ineligible, had no locus to challenge the appointment of private respondent No.2. Learned GA clarifies that the learned Single Judge committed patent error in holding that the petitioner was eligible as on the date of issue of absorption order dated 01.08.2014. It is stated that the cutoff date should be at most on 25.09.2012, the date on which INC granted permission to start B.Sc.(N) and the incumbents should possess all the requisite qualifications on such date. It is also pointed that Guidelines of 2012 did not prescribe that 5 years teaching experience should be in any Nursing Course such as FHW/GNM/B.Sc.(N) courses as indicated in Memorandum dated 04.03.2013 issued by the Director, Health Services, Manipur. In short, it is submitted that the petitioner did not possess the requisite qualifications as stipulated in the Guidelines of 2012 as on the date of approval of the new B.Sc.(N) course by INC and actual starting of the classes in November, 2012. Accordingly, the petitioner was not eligible and the private respondent No.2 was eligible as she had 33 years of experience out of which teaching for 26 years after Master degree in various Nursing Schools. Learned GA refers to the decision of Hon'ble Supreme Court in the case of **Dr. Umakant Saran v. State of Bihar: (1973) 1 SCC 485** to the effect that writ of mandamus does not lie when the petitioner did not have the requisite teaching qualification and he is not an aggrieved person.

[20] Learned GA has pointed out that since the petitioner was not eligible at the relevant time for consideration for putting up proposal for utilizing Teaching Faculty of the existing School of GNM, FHW Training School and FHW Training School (FW) as Teaching Faculty for the proposed Nursing

College, her name was not included in the list issued vide order dated 07.09.2012 issued by Commissioner (Health & FW), Government of Manipur. It is an admitted fact that the petitioner appeared in the M.Sc.(N) final examination held in December, 2012 and her provisional certificate dated 14.06.2013 issued by Regional College of Nursing, Guwahati for passing M.Sc.(N) was submitted later on. Since there was still vacancy when the final absorption order dated 01.08.2014 (impugned order in the writ petition), the name of the petitioner was considered for the available seat of Associate Professor. It is also clarified that the teaching faculty in the existing Nursing Schools are not feeder cadre for the corresponding posts in the newly established Nursing College. Instead of fresh creation of new posts for the College, the posts in the Schools have been upgraded and eligible candidates are absorbed. As the petitioner was not eligible at time of sending proposal, her name was not considered for the post of Vice Principal. It is stated that the pay scale of the Principal of Nursing School is Rs.9300-34800 + GP Rs.4400 while that of Associate Professor of College is Rs.9300-34800 + GP Rs.5400. It is stressed by learned GA that pay scale of Associate Professor of College is more than that of the Principal of the School and hence, learned Single Judge was wrong in holding that the petitioner was demoted. It is prayed that the impugned order dated 12.05.2017 passed in WP(C) No. 512 of 2015 be set aside by dismissing the prayers in the writ petition. If WA No. 38 of 2017 is allowed, WA No. 3 of 2019 will be infructuous.

[20] Mr. N. Ibotombi, learned senior counsel submits that the private respondent No.2 passed M.Sc.(N) in the year 1986 from University of Delhi. As per the Certificate of Teaching Experience by the Principal, Regional Health & FW Trg. Centre, Imphal, the private respondent No.2 has teaching experience of 33 years and out of which 26 years after Master degree in various Nursing Schools. It is pointed out that the petitioner appeared in M.Sc.(N) final examination held in December, 2012 and submitted her provisional certificate dated 14.06.2013 issued by Regional College of Nursing, Guwahati for passing M.Sc.(N) examination. This shows that the petitioner was not eligible for considering against the post of Professor-cum-Vice Principal of the proposed new Nursing College as on 07.09.2012, the date on which existing faculty members of the Schools were utilized in the new College and she was not rightly considered.

[21] Learned senior counsel for the private respondent No.2 has drawn the attention of this Court to a very important fact that the petitioner did not specifically plead how the respondent No.2 was not eligible and how the petitioner was eligible. No document is annexed in this regard. It is only in the rejoinder affidavit that the petitioner alleged that the respondent No.2 did not have 5 years teaching experience in FHW/GNM/B.Sc.(N) courses as mentioned in the Memorandum dated 04.03.2013 issued by the Director of Health Services, Manipur. It is pointed out that this document was produced by the respondent No.2 in her counter affidavit for the first time to indicate calling of certain documents by the government. It is vehemently submitted that

Director of Health Services, Manipur has no authority to define the qualification for appointment of Teaching Faculty of the Nursing College. The same is to be issued by the Indian Nursing Council in terms of the mandate of Section 16(g) of the Indian Nursing Council Act, 1947 and no other authority has no power to enlarge and/or restrict the essential qualifications of the Teaching Faculty. Mr. N. Ibotombi, learned senior counsel has highlighted the fact that the Guidelines of 2012 issued by the INC does not contain the teaching experience in FHW/GNM/B.Sc.(N) courses as mentioned in the Memorandum dated 04.03.2013 issued by the Director of Health Services, Manipur. He argues that this memorandum cannot lay down the essential qualification of teaching faculty of Nursing College against the mandate of Section 16(g) of the Act of 1947. It is also submitted that if the respondent No.2 was not eligible at all, then INC would not have approved the Nursing College vide letter dated 25.09.2012 when her name was recommended by the State Govt. for utilizing as Professor-cum-Vice Principal vide order dated 07.09.2012. Reliance is placed on the decisions reported as **AIR 1979 SC 1676** and **(1998) 8 SCC 469** to harp that statutory rules cannot be overridden by execution order.

[22] Mr. N. Ibotombi, learned senior counsel has also raised the question of maintainability of the writ petition filed the petitioner on the grounds of non-challenging of - (a) Order dated 07.09.2012 issued by the Commissioner (Health & FW), Govt. of Manipur for utilisation of the existing Faculty Member of the Schools for the new College, (b) Letter dated 25.09.2012 issued by the Indian Nursing Council permitting to start B.Sc.(N) programme in the new

Nursing College in Manipur for the academic year 2012-13, (c) Letter dated 29.12.2012 sent by the Principal, College of Nursing to the Director of Health Services Manipur regarding the absorption of faculty and starting of class wef 05.11.2012, and (d) Order dated 30.01.2015 issued by the Deputy Secretary (Health & FW), Govt. of Manipur for absorption, upgradation and redesignation of posts.

[23] In short, the submissions of Mr. N. Ibotombi, learned senior counsel are that- (i) the petitioner was not eligible in the year 2012 when the names of Teaching Faculty of the Schools were utilised for the College and sent to the Indian Nursing Council, (ii) she was also not eligible when INC gave permission to start the B.Sc.(N) courses for the academic session 2012-13, (iii) the petitioner was considered only in the year 2014 in the vacancy of Associate Professor and she was eligible by this time, and (iv) the writ petition is not maintainable due to non-challenge of the orders of utilisation dated 07.09.2012 and approval letter dated 25.09.2012 issued by INC and Order dated 30.01.2015. It is prayed that the impugned order dated 12.05.2017 in WP(C) No. 512 of 2015 be set aside and consequently impugned order dated 05.12.2018 in WP(C) No. 872 of 2017 also be set aside.

[24] Mr. Kh. Tarunkumar, learned senior counsel for the petitioner has supported the impugned orders. He submits that the petitioner was appointed as Sister Tutor in the School of Nursing, Lamphelpat, Imphal vide order dated 20.10.1981. As per Inter-se Final Seniority List of Sister Tutors, Public Health Nurses and Public Health Nurse Instructors issued by the Director of Health

Services, Manipur as on 03.10.2011, the petitioner was senior to the private respondent who was appointed on 26.03.1982. Vide order dated 23.11.2011 issued by the Under Secretary (Health), Govt. of Manipur, the petitioner was promoted to the post of Principal FHW/GNM Training School and vide order dated 01.12.2011 she was posted as Principal of School of GNM, Imphal. It is pointed out that the respondent No.2 was never appointed as Principal of any Nursing School and she was made as i/c Principal of School of GNM, Imphal when the petitioner was on study leave for undergoing M.Sc.(N) till January, 2013. It is further stated that the petitioner appeared in the final examination of M.Sc.(N) conducted in the month of December, 2012 and her provisional certificate of passing M.Sc.(N) course dated 14.06.2013 was issued by Regional College of Nursing, Guwahati, Assam.

[25] It is the specific case of the petitioner that the private respondent No.2 did not the minimum teaching experience of 5 years as stipulated by the Indian Nursing Council in its Guidelines of 2012, as she never taught in any nursing courses recognised by INC. Mr. Kh. Tarunkumar, learned senior counsel draws the attention of this Court to the fact that there are pleadings on behalf of the State respondents for cut-off date for absorption and upgradation of teaching faculty of various Nursing Schools as faculty of the new Nursing College. It is stated that the plea of cut-off date as 07.09.2012 (date of utilisation) or 25.09.2012 (date of permission to start B.Sc.(N) course by INC) cannot be accepted and is an afterthought. It is submitted that as on 01.08.2014 (date of absorption of various faculty of Nursing Schools as faculty of the

Nursing College including the petitioner), the petitioner was eligible as per Guidelines of 2012. Mr. Kh. Tarunkumar, learned senior counsel supports the finding of the learned Single Judge to the fact that the petitioner was eligible on 01.08.2012, when faculty members for the Nursing College were finally absorbed. If the petitioner was not eligible on 01.08.2014, her name would not have been considered for the post of Associate Professor. It is pointed out that eligibility criteria for the Associate Professor is also Master degree in Nursing and the petitioner ought to be considered for absorption as Professor-cum-Vice Principal.

[26] Regarding the admissibility of the teaching experience in FHW/GNM/B.Sc.(N) stipulated by Memorandum dated 04.03.2013 issued by the Director of Health Services, Manipur, Mr. Kh. Tarunkumar, learned senior counsel submits that there is nothing wrong in prescribing these criteria in addition to the ones that prescribed by INC as the same is for selecting better candidate. He further states that the Memorandum dated 04.03.2013 is produced by the private respondent No.2 herself for the first time in her counter affidavit as Annexure-C/23 and she cannot dispute the same as invalid. Learned senior counsel clarifies that by order dated 07.09.2012, the services of the faculty members of the existing Nursing Schools were utilised for the new College as an interim measure and final absorption was done as per the impugned Order dated 01.08.2014. The second order of absorption dated 30.01.2015 is in continuous of the earlier order dated 01.08.2014 (impugned in

the writ petition) which is clarificatory in nature and not in supersession. Hence, it is sufficient to challenge the main order dated 01.08.2014 alone.

[27] Mr. Kh. Tarunkumar, learned senior counsel distinguishes the decision reported as **(1973) 1 SCC 485** cited by learned GA as the posts are not equivalent. He refers to the case of **Shankar K. Mondal v. State of Bihar: (2003) 9 SCC 519** regarding the cut-off date for appointment as prescribed by relevant rules; if not by advertisement; if not by last date of receiving the application. In the case in hand, learned senior counsel has pointed out that there is no cut-off date and hence 01.04.2014 should be the cut-off date. Reliance is placed on the recent judgment of **State of HP v. Rajkumar: (2023) 3 SCC 773 @ Para 82.2** to highlight that a candidate has a right for consideration as per the existing rules on the date of consideration. Reference is made to the judgment in the case of **RS Garg v. State of UP: (2006) 6 SCC 430** which laid down the ratio that experience in the feeder cadre is essential for promotion to the higher post and mere experience in the service is not sufficient. It is pointed out that the private respondent No.2 did not have minimum 5 years teaching experience in any Nursing course recognised by the INC and hence, she is not eligible. It is submitted that the impugned order dated 12.05.2017 in WP(C) No. 512 of 2015 does not suffer from any illegality and hence, the writ appeals being WA Nos. 37 of 2017 and 38 of 2107 may be rejected. As the impugned order dated 05.12.2018 in WP(C) No. 872 of 2017 is for implementation of the earlier order dated 12.05.2017, writ appeal being WA No. 3 of 2019 may also be dismissed.

[28] Mr. HS Paonam, learned senior counsel appearing on behalf of other private respondents adopts the submissions of learned GA and learned senior counsel for private respondent No.2. He has pointed out that in para 11 of the impugned order dated 12.05.2015, the quashing and setting aside of order dated 01.08.2014 for absorption was confined to the absorption of the private respondent No.2 alone and the same does not affect the absorption of his clients.

[29] We have considered the rival submissions made bar, the materials on record and case laws cited. It is an admitted fact that the petitioner was senior to the private respondent No.2 in the inter-se seniority list of faculty members in Nursing Schools. It is also an admitted fact that the petitioner did not possess M.Sc.(N) degree when the utilisation order dated 07.09.2012 was issued and also when the permission for the new Nursing College was granted by INC on 25.09.2013 and the faculty of School are not feeder for the College.

[30] For getting permission from the Indian Nursing Council, the State Government has to submit a list of eligible faculty members for the proposed Nursing College. It is also admitted fact that the Guidelines of 2012 is the relevant rules prescribing minimum qualifications for various teaching posts in a Nursing College. The Guidelines prescribe M.Sc.(N) with 10 years' experience including 5 years teaching experience. By the order dated 07.09.2012 issued by the Commissioner (Health & FW), Manipur, 14 nos. of teaching faculty of the existing Nursing College were utilised as faculty for the proposed Nursing College and the proposal was submitted to the Indian

Nursing Council which gave permission vide its letter dated 25.09.2012 to start B.Sc.(N) course from the academic year 2012-2013. From this, it is clear that the cut-off date or the relevant date for consideration would be either 07.09.2012 or 25.09.2012 and not 01.08.2014 as wrongly held by learned Single Judge. Accordingly, we are of the considered view that the petitioner was not eligible for consideration for the post of Professor-cum-Vice Principal of the Nursing College. As rightly pointed out by learned GA, the name of the petitioner was considered for absorption in the vacant post of Associate Professor in the order dated 01.08.2014. The same will not make the cut-off date for absorption of other posts including that of Vice-Principal as 01.08.2014. In the case of **Umakant Saran v. State of Bihar: (1973) 1 SCC 485**, Hon'ble Supreme Court held that a person who is not eligible for consideration for appointment at the relevant point of time has no right to question the appointments made under the rule, since he is not an aggrieved person. Hence, the writ petition is not maintainable on this point alone.

[31] Admittedly, the petitioner did not challenge the order dated 07.09.2012 of utilising the faculty for the new Nursing College, the letter dated 25.09.2012 issued by the INC permitting the State Government to start B.Sc.(N) course and letter dated 29.12.2012 issued by the Principal of Nursing College for absorption of 14 faculty members of Nursing Schools. It is also held that quashing of the absorption of the private respondent No.2 is not proper without challenging the above orders/letter.

[32] With respect to the finding of the learned Single Judge of ineligibility of the private respondent No.2 for not having required 5 years teaching experience, we are of the view that the Memorandum dated 03.04.2013 issued by the Director of Health Services cannot override or restrict the eligibility criteria laid down by the Indian Nursing Council in Guidelines of 2012. It is seen that the Guidelines of 2012 prescribe teaching experience of 5 years only and do not contain teaching experience of 5 years in FHW/GNM/B.Sc.(N) as prescribed in the Memorandum dated 04.03.2013. We are of the opinion that Director of Health Services, Manipur does not have any power to restrict the essential qualification for Professor-cum-Vice Principal stipulated by INC, as the power to make such rule is to the INC alone in view of mandate of Section 16(g) of the Indian Nursing Council Act, 1947 **[Kindly see AIR 2023 SC 126]**. Accordingly, it is held that the respondent No.2 was eligible for appointment as Professor-cum-Vice Principal as per the Guidelines of 2012.

[33] When the petitioner was considered for the post of Associate Professor vide order dated 01.08.2014, she could not be absorbed against Vice Principal as she was not eligible at the relevant date and that post had already been adjusted by the private respondent No.2. It is the settled proposition of law as held in the case of **R Prabha Devi v. Government of India: (1988) 2 SCC 233** that a senior has to be eligible for consideration for promotion and seniority will be relevant only amongst persons eligible. It is wrong to hold that the faculty of Nursing College were feeder cadre for the College and the post Associate Professor of College is inferior to that of Principal of School.

[34] Accordingly, writ appeals being WA No. 37 of 2017, WA No. 38 of 2017 and WA No. 3 of 2019 are allowed and judgments and orders dated 12.05.2017 in WP(C) No. 572 of 2015 and judgment and order dated 05.12.2018 in WP(C) No. 872 of 2017 are set aside. No cost.

JUDGE

JUDGE

FR/NFR

joshua

KH.
JOSHUA
MARING

Digitally signed by
KH. JOSHUA
MARING
Date: 2023.12.13
10:19:28 +05'30'