

State Of Rajasthan & Anr vs Shantilal Etc on 2 August, 1989

Equivalent citations: 1989 SCC, SUPL. (2) 777 JT 1989 (3) 273, AIR 2002 GUJARAT 144, 1998 (9) SCC 656, AIR ONLINE 1989 SC 117, (1989) 2 LAB LN 974, (1989) 3 JT 273 (SC), 1989 SCC (SUPP) 2 777, 1990 SCC (L&S) 204, (1998) 99 ELT 197, (1999) 82 ECR 1, (2002) 2 ARBILR 317, (2002) 2 GCD 1142 (GUJ), (2002) 2 GUJ LH 29, (2002) 3 CURCC 72, (2002) 4 GUJ LR 3554

Author: Kuldip Singh

Bench: Kuldip Singh, K.J. Shetty

PETITIONER:

STATE OF RAJASTHAN & ANR.

Vs.

RESPONDENT:

SHANTILAL ETC.

DATE OF JUDGMENT 02/08/1989

BENCH:

KULDIP SINGH (J)

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SHETTY, K.J. (J)

CITATION:

1989 SCC Supl. (2) 777 JT 1989 (3) 273

1989 SCALE (2) 185

ACT:

Rajasthan Medical and Health Subordinate Service Rules, 1965: Creation of two cadres--Nursing Cadre (Nursing Superintendent Grade I/Grade II, Assistant Nursing Superintendent, Nursing Tutor) and Compounder Cadre (Compounder Grade I/Grade II/Grade III) Whether valid and legal.

HEADNOTE:

Bansi Lal Sharma, respondent in one appeal, was appointed as Male Nurse in 1941 and was officiating as Sister Tutor in March 1966 when the Rajasthan Medical and Health subordinate Service Rules, 1965 came into force. Shanti Lal Jain, respondent in the second appeal, was appointed as Compounder Grade I in the year 1959 and was holding the post of Sister

Tutor in March 1966. In their separate petitions filed in the Rajasthan High Court, the respondents challenged the creation of two separate cadres Nursing Cadre and Compounders Cadre--under the Rules as arbitrary and as such violative of Articles 14, 15 and 16 of the Constitution of India. It was pleaded that hitherto there was combined channel of promotion for compounders and nurses but the Rules had arbitrarily deprived Compounders Grade I of their right to promotion to higher posts of Assistant Nursing Superintendent and Nursing Superintendent Grade II/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.

The writ petitions were dismissed by the learned Single Judges who held that creation of two separate cadres was not arbitrary, did not infringe the equality clause, and was not discriminatory on the ground of sex. 'The Division Bench, on appeal, upheld the findings of the learned Single Judges on Article 5 but set aside their judgments and found that there was no justification for creating separate cadres and denying channel of promotion to Compounders Grade I to the higher posts in the Nursing Cadre. The Division Bench accordingly held the Rules to be arbitrary and violative of Articles 14 and 16 of the Constitution.

Allowing the appeals filed by the State, this Court,
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HELD: 1. Prior to 1966 there was 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. [673F]

2. Even assuming 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. [673G-H]

Reserve Bank of India v. N.C. Paliwal & Ors., [1977] 1 S.C.R. 377; referred to.

3. A bare reading of the Rules show that the composition of the two cadres including designations, qualifications and methods of appointment to various posts, is entirely different. This Court does not agree with the High Court that Nurses and Compounders belong to one class and as such must be encadred together. [678B]

4. 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. [678G]

5. 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 the Nursing Cadre. Thus the grievance of the Compounders that they were denied channel of promotion to the higher posts in Nursing Cadre has also been removed. [679B-C]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6 147-6 148 of 1983.

From the Judgment and Order dated 17.1.83 of the Rajasthan High Court in D.B. Spl. Appeal No. 43 of 1978 & D.B.S.A. No. 14 of 1975.

B .D. Sharma for the Appellants.

Dalveer Bhandari, K.R.R. Pillai, Surya Kant, P.T. Mathur and Sambandhan for the Respondents.

The Judgment of the Court was delivered by KULDIP SINGH, J. 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. 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. 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 in- fringe 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.

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 group 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."

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 justification 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.

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 was 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 & others*, [1977] 1 S.C.R. 377 this Court held as under:

"It is now well settled, as a result of the decision of this Court in *Kishori Mohanlal Bakshi v. Union of India*, A.I.R. 1962 S.C. 1139 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."

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 X eleven groups. The right of promotion shall be confined to each group except the extent specified in the Schedule. S. Name of Source of Minimum Post from Minimum remarks No. Post recruitment qualification which pro- qualifica with and motion is tion & percentage experience to be experience for direct made required recruitment for promotion 1 2 3 4 5 6 7 GROUP A

1. Nursing 50% by 1. R.N.C.R. Nursing 3 years Supdt. direct or its Supdt. service as Gr.I recruitment equivalent Gr. II Nursing with per- qualification Superin-

centage & 50% by promotion	recognised by Govern- ment 2. Regd. 'A'	tendent Gr.II
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grade Nurse
3. Sister
Tutor course
passed
4.12 years
experience
out of which
4 years must
be as Sister
Tutor & 3
years as
Nursing
Supdt.
Gr. II or
at an equi-
valent post

2. Nursing 25% by 1. R.N.C.R. Asstt. 2 years Supdt. direct or its equi- Nursing service as Gr. II recruitment valent quaIi- Supdt. Asstt. 75% by fication re- Nursing promotion cognised by Supdt. Government

2. Regd. 'A' Grade Nurse

3. Sister Tutors' course passed

4. 10 years' experience out of which 4 years' should be as sisters Tutor & 3 years as Asstt. Nursing Supdt. or at an equi-

valent post.

3. Asstt. 25% by 1. R.N.C.R. Sister 2 years Nursing direct or its equi- or Nursing service as Supdt. recruitment valent quali- Tutor Sister or and 75% by fication re- Nursing promotion cognised by Tutor Government

2. Regd. 'A' grade Nurse.

3. Sister Tutors course passed 4.7 years exper-

ience out of which at least 3 years should be as Nursing Tutor 1-. Sister or 25% by 1. R.N .C.R. Staff 5 years Nursing direct or its equi- Nurse/ service Tutor recruitment valent quali- Comp. as Staff and 75% by fication re- Gr. II Nurse/ promotion cognised by Comp.Gr.

Government	II or 4
2.Regd. 'A'	years ser-
grade Nurse	vice as
3. Sister	Staff Nurse
Tutors	out of
Course passed.	which 3
	years con-
	tinuous
4.3 years	service
experience	should be
as staff	
	in opera-
Nurse/Comp.	tion Thea-
Gr.II	tre or 3
	years ser-
	vice as
	Staff Nurse
	with Sister
	Tutor Certif-
	icate

Note: For the post of Sister Tutor, Sister Tutor's Certificate will be compulsory

5. Staff 75% by PNRC or Midwife & 7 years Nurse direct its equi- Auxiliary service as Comp. recruitment valent Nurse Midwife or Gr.II & 25% by qualification Midwife Auxiliary promotion Recognised Nurse by Midwife Government 6, Midwife 100% by Auxiliary -- --

& Auxli- direct Nurse liary Nurse recruitment Midwifery Midwife trained and VIII standard passed GROUP 'E'

1. Compoun- 100% by -- Compoun- PNRC or der Gr. I promotion der Gr. II its equi-

valent qualifica-

tion recog-

nised by Govern-

ment with 5 years service as Compoun- der Gr. II.

2. Compoun- -do- Compoun- PNRC or der Gr. II der Gr. III its equi-

valent qualifica-

tion recog-

nised by Govern-

ment

3. Compoun- 100% by Matriculate der Gr.III direct or equivalent recruitment qualification recognised by Government.

A bare-reading of the Rules show that the composition of the two cadres including designations, qualifications and methods of appointment to various posts, is entirely differ- ent. 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 to- wards the qualifications prescribed for the nursing cadre and it was argued that the compounders do not possess the said qualifications and hence are not eligible to be consid- ered for promotion in nursing cadre. The High Court repelled the argument with the following reasoning:

"Special qualification in midwifery is re- quired 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 P.N.C.R. or its equivalent qualification recognised by Government was eligible for direct recruitment or 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 pro- moted to all the higher nursing posts enumer- ated 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 pro- moted 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 Gr. III."

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 com-

pounders 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.

We may mention that by amending the Rules in 1978 an opening has been provided for compounders Grade 11 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 the nursing cadre. Thus the grievance of the compounders that they were denied channel of promotion of the higher posts in nursing cadre has also been removed.

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.

R.S.S.
allowed.

Appeals