

HIGH COURT OF KERALA

BENCH : MR. JUSTICE A.MUHAMED MUSTAQUE

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

Date of Decision: 21 FEBRUARY 2024

OP (CAT) NO. 83 OF 2016

Fayazkhan H.K. & Anr.PETITIONER/S

Versus

The Director of Medical & Health Services, Kavaratti & Ors..

.RESPONDENT/S:

Legislation and Rules:

Administrative Tribunals Act, 1985 – Section 14

Subject:

The subject matter of the petition involves the challenge to the selection of respondents 3 and 4 as staff nurses under the Lakshadweep Administration on the basis of alleged irregularities and the authenticity of their nursing certificates.

Headnotes:

Adjudication Scope of CAT – Original petition raising questions about the Central Administrative Tribunal's (CAT) authority to adjudicate the authenticity of certificates for staff nurse selection under the Lakshadweep Administration – Issues related to the genuineness of certificates from statutory authorities

like the Kerala Nurses and Midwives Council and the Tamil Nadu Nurses and Midwives Council [Para 1].

Challenge Against Selection – Allegations of irregular and illegal appointments of respondents 3 and 4 as staff nurses – Dispute centered around the genuineness of their nursing certificates – Employment notice requiring candidates to have registration with the Nursing Council [Para 2].

Genuineness of Certificates – The High Court examined the scope of adjudication by the Central Administrative Tribunal concerning the genuineness of certificates for selection to the post of Staff Nurse. The Tribunal found no jurisdiction to directly challenge the validity of certificates issued by statutory councils, emphasizing the difference between a direct and a collateral challenge. [Paras 1-4]

Issue of Delay in Filing Challenge and Tribunal's Jurisdiction – The Tribunal originally declined to interfere due to delay in challenging the selection. The High Court directed the Tribunal to rehear the matter, focusing on the merit and condoning the delay. The Tribunal affirmed the registration by Kerala and Tamil Nadu Nursing Councils, emphasizing its lack of jurisdiction in probing violations in certificate issuance. [Paras 2-3]

Challenge on Grounds of Late Submission of Credentials – The petitioner contended that the selected candidates submitted their credentials after the cut-off date. The Court found no requirement in the notification for submitting originals by the cut-off date, dismissing this challenge. [Para 5]

Decision – Dismissal of Petition – High Court of Kerala upheld the Tribunal's decision, affirming the order and dismissing the original petition due to lack of merit in the allegations and the CAT's limited jurisdiction on the matter of certificate genuineness. [Paras 5, 7]

Referred Cases:None.

Representing Advocates:

**Petitioners: M.P.Krishnan Nair, R.Sudhir, Mathai M Paikaday (Sr.),
Rajeswari Krishnan, Seema Krishnan, M.J.Wilfred Das**

**Respondents: Shri.Manu.S, DSGI, SCGC, Administration of the Union
Territory of Lakshadweep, Sri.Sreelal N.Warrier, Smt.K.P.Ambika,
N.Raghuraj, Smt.R.Jagada Bai, Shri.Sajith Kumar V., SC, Lakshadweep
Administration, P.K.Ibrahim, A.L.Navaneeth Krishnan, A.A.Shibi, Martin
G.Thottan**

J U D G M E N T

A.Muhamed Mustaque, J.

This original petition raises a question as to the scope of adjudication by the Central Administrative Tribunal (CAT) concerning the genuineness of the certificates produced by the candidates for the purpose of selection to the post of Staff Nurse in the service covered under the Administrative Tribunals Act.

2. The original application was filed by the petitioners herein challenging selection of respondents 3 and 4 to the post of staff nurse under the Lakshadweep Administration, alleging that the appointments were irregular and illegal. Respondent No.3 was selected to the post of staff nurse. He possessed a Diploma in General Nursing and Midwifery and was registered under Kerala Nurses and Midwives Council, a statutory body. Respondent No.4 had obtained a similar diploma and was registered with the Tamil Nadu Nurses and Midwives Council. Now, the dispute is centered around the genuineness of the certificates issued by the statutory authorities. The employment notice issued stipulates that the candidates must have registration with the Nursing Council.

3. The notification was issued on 12/2/2007. The challenge was raised before the Tribunal in the year 2010. The Tribunal refused to interfere with the matter noting delay. The review application was also dismissed. There upon, a challenge was made before this Court in O.P.(KAT).No.1490/2012. This Court set aside the orders of the Tribunal and directed the Tribunal to dispose of the main matter on merits, treating the delay as condoned. The Kerala Nurses and Midwives Council was also suo motu impleaded by this Court in O.P.(KAT).No.1490/2012. The matter was reheard by the Tribunal after impleading Tamil Nadu Nursing Midwives Council as well. The Kerala Nursing and Midwives Council affirmed the issuance of registration. The Tamil Nadu Nursing and Midwives Council also affirmed the registration. Noting the above, the Tribunal repelled the challenge. The Tribunal particularly noted that it has no jurisdiction to enquire into any allegation of violation of rules in issuing certificates by the Council.

4. When a statutory Council accords registration, it has to be presumed that all acts have been done in compliance with the Rules. As rightly noted by the Tribunal, it cannot entertain a direct challenge as against the validity of the certificate; such a dispute will not fall within the jurisdiction, powers and authority of the Central Administrative Tribunal under Section 14 of the Administrative Tribunal Act, 1985. In a matter like this, a distinction has to be drawn between a direct challenge and collateral challenge regarding the validity of qualifications. A direct challenge must be relatable to service matters, including matters concerning recruitment. In that process, the Tribunal has power to collaterally consider challenges to the qualification. However, the Tribunal has no jurisdiction to entertain a direct challenge regarding genuinity of a qualification, as it has nothing to do with recruitment or service of such candidates. The challenge in those circumstances is in regard to the validity of the qualification and it has nothing to do with the matters competent to be adjudicated by the Tribunal. The substantial issue in this matter is between the registration granted by the statutory authority and a complaint against such registration by a third party. Therefore, this is not a matter raising a collateral challenge but a direct challenge contending that registration was granted in violation of the rules.

5. The petitioner in yet another challenge contended on the ground that selected candidates produced originals of their credentials after the cut-off date, and therefore, any proof of educational qualifications produced after 12/3/2007, the cut off date fixed in the notification, was inadmissible. We perused the notification. It only states about producing and attaching copy of

certificates and marklist etc. There was no requirement of producing originals along with application. The petitioner has no case that the selected candidates will have to produce the originals before the cut-off date.

In the above circumstances, we affirm the order of the Tribunal. The original petition fails, and it is accordingly, dismissed.

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