

SINGLE / BENCH
SERVICE/NON-SERVICE
DEPT: _____
Category Code and
Sub Category Code
Admission Court:

HIGH COURT
SPECIAL ORIGINAL JURISDICTION

W.P. NO. OF 2020

Ananthapur District

Matam Gangabhavani ..Petitioner

By
SOLOMON RAJU MANCHALA (14658)
COUNSEL FOR PETITIONER

NATURE OF APPLICATION
(Under Art. 226 of Constitution of India)

The Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the notification No: 02/2020 dated 27.06.2020 of the 2nd respondent, and not selecting the petitioner discriminating her only on the ground that she is a transgender, despite having requisite educational qualifications, which is contrary to section 9 of Transgender Persons (Protection Of Rights) Act, 2019 and Rule 7 of the Rules framed thereunder, as illegal, irregular, irrational, contrary to GO Ms.No: 20 dated 30.12.2017 and The Transgender Persons (Protection Of Rights) Act, 2019 and Transgender Persons (Protection of Rights) Rules, 2020, violative of Articles 14, 16, 19 and 21 of Constitution of India and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.

Permitted on : 07.10.2020
Presented on : 07.10.2020
Filed on : 07.10.2020

I.A..No. OF 2020

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.NO.

of 2020

Between:

Matam Gangabhavani

..Petitioner

AND

State of Andhra Pradesh & Another
.Respondents

LIST OF EVENTS
Annexure – I

S.No	Date	Description of the Events	Page Nos	Para No.
1	27.06.2020	writ petition is filed challenging the impugned Notification No. 2 /2020 dated 27.06.2020 issued by the District Medical and Health Officer, Ananthapur and also not considering the petitioner's representation dated 07.09.2020 to the respondent No: 2 herein in person and also the officials through registered post. As per the notification, there are around 95 posts, I was selected and shown in the final merit list at SNo: 2784 with 50.62%		2
2		I am an intersex person who is identified as a trans-woman, but was assigned 'male' by birth. In the year 2003, the Petitioner had undergone Sexual Reassignment Surgery. Thus, I am, now identified as a Transgender by myself and also the society. The Transgenders in our society were not recognized as a class of people until the passing of the NALSA Judgment.		3
3		I completed by SSC in the year 2008, Intermediate from A.P. Open School Society in the year 2012. I did a Multi-Purpose Health Worker certification course from A.P. Paramedical Board, Hyderabad. I completed B.Sc. (BZC) in distance mode from Sri Krishnadevaraya University in the year 2017. I also completed General Nursing and Midwifery in the year 2018 from the Directorate of Medical Education Board, Amaravathi		4

4		<p>I am able to change my gender to transgender in my Aadhar, PAN, Voter ID, and Passport. I officially changed my name from Gangadhar to Gangabhavani by way of a Official Gazette and all my identity cards show the same. I have also received the official certificate recognising myself as transgender from the State of Andhra Pradesh. I am herewith filing the said document as Exhibit for kind perusal of this Hon'ble Court.</p>		5
5		<p>2nd respondent herein issued a notification being Notification No. 02/2020 dated 27.06.2020 for the recruitment for the listed posts as per the said impugned notification. A copy of the said notification is filed herewith for the kind perusal of this Hon'ble Court. The very notification of the 2nd respondent runs contrary to the Hon'ble Supreme Court's judgement in NALSA v. Union of India, 2014 (5) SCC 1, and the direction issued by the Hon'ble Supreme Court in the said judgment to treat transgender persons as socially and educationally backward classes and extending to them all kinds of reservation in cases of admission in educational institutions and for public appointments</p>		6

ANNEXURE-II
Under Article 226 of Constitution of India.

Amaravati
DATE: 07.10.2020

Counsel for Petitioner

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P. NO.

OF 2020

Between:

Matam Gangabhavani

..Petitioner

AND

1. State of Andhra Pradesh,
Rep. by Prl. Secretary to Government,
Health, Medical & Family Welfare Department,
Secretariat, Velgapudi, Guntur Dist,

2. District Medical and Health officer,
opp.Government General Hospital,
Gulzarpet, Anantapur.

..Respondent

AFFIDAVIT

do hereby solemnly and sincerely

affirm and state as follows:

1. I am the petitioner herein and as such well acquainted with the facts of the case.
2. I submit that the present writ petition is filed challenging the impugned Notification No. 2 /2020 dated 27.06.2020 issued by the District Medical and Health Officer, Ananthapur and also not considering the petitioner's representation dated 07.09.2020 to the respondent No: 2 herein in person and also the officials through registered post. As per the notification, there are around 95 posts, I was selected and shown in the final merit list at SNo: 2784 with 50.62%. Out of the 95 posts, 77posts were filled up with contract basis Staff Nurses who were working in Community Health Centers. The entire list shows that contract basis Staff

Nurses from Community Health Centers were recruited as against Primary Health Centers. There are 18 number of posts.

3. I submit that I am an intersex person who is identified as a trans-woman, but was assigned 'male' by birth. In the year 2003, the Petitioner had undergone Sexual Reassignment Surgery. Thus, I am, now identified as a Transgender by myself and also the society. The Transgenders in our society were not recognized as a class of people until the passing of the NALSA Judgment. Thus, I had to undergo a lot of troubles and I faced severe discrimination from my childhood age. I was also necked out by my parents in the year 2007.

4. I submit that I completed by SSC in the year 2008, Intermediate from A.P. Open School Society in the year 2012. I did a Multi-Purpose Health Worker certification course from A.P. Paramedical Board, Hyderabad. I completed B.Sc. (BZC) in distance mode from Sri Krishnadevaraya University in the year 2017. I also completed General Nursing and Midwifery in the year 2018 from the Directorate of Medical Education Board, Amaravathi. However, all of these educational qualifications are not helpful to me when it comes to employment, as despite NALSA Judgment which was delivered on 15.04.2014, directing for the introduction of reservations for Transgenders, the state has not come forward with any reservations for Transgender People like me.

5. I submit that I am able to change my gender to transgender in my Aadhar, PAN, Voter ID, and Passport. I officially changed my name from Gangadhar to Gangabhavani by way of a Official Gazette and all my identity cards show the same. I have also received the official certificate recognising myself as transgender from the State of Andhra Pradesh. I am herewith filing the said document as Exhibit for kind perusal of this Hon'ble Court.

6. I submit that the 2nd respondent herein issued a notification being Notification No. 02/2020 dated 27.06.2020 for the recruitment for the listed posts as per the said impugned notification. A copy of the said notification is filed herewith for the kind perusal of this Hon'ble Court. The very notification of the 2nd respondent runs contrary to the Hon'ble Supreme Court's judgement in NALSA v. Union of India, 2014 (5) SCC 1, and the direction issued by the Hon'ble Supreme Court in the said judgment to treat transgender persons as socially and educationally backward classes and extending to them all kinds of reservation in cases of admission in educational institutions and for public appointments. While such being the case, the respondents are not providing any percentage of reservation for public appointments to the transgenders. I submit that since I am personally interested in the subject matter, I cannot maintain a public interest litigation, as the PIL Rules, 2015 of our High Court clearly prohibits any person having personal interest from filing a public interest litigation.

7. I submit that I have gone through the notification of the 2nd respondent dated 27.06.2020 for recruitment for the given posts of Nurses who have qualifications of GNM under the said notification. As per the impugned notification, the required qualification to apply for the post of Staff Nurse would be GNM (General Nursing and Midwifery) or B.Sc Nursing from a Government-recognized Nursing Institute and the applicant/candidate must be registered in the Andhra Pradesh Nursing Council.

8. I submit that I completed my Diploma in General nursing and Midwifery in the year 2018. Hereto annexed and marked as EXHIBIT D is a copy of the Petitioner's Diploma certificate of GNM from Andhra Pradesh Paramedical Board. I am also registered with the Andhra Pradesh Nursing Council as per the requirement of the said notification. I am herewith

filing the copy of the certificate of Registration with the Andhra Pradesh Nurses, Midwives, Auxiliary Nurse-Midwives and Health Visitors Council.

9. Thereafter, Petitioner applied for the said post following due procedure as mentioned in Notification No. 2/2020. Furthermore, the notification mentions that selection for the posts will be made purely based on merit, and in, complete and due regard to the rules of reservations. However, the same did not project any reservations for the Transgenders, since I am registered with the The Andhra Pradesh Nurses, Midwives, Auxiliary Nurse-Midwives and Health Visitors Council, I applied.

10. It is submitted that the results of the selection process were declared by the District Collector and District Magistrate, Ananthapur and I was not selected on the ground that I am a transgender, despite being shown in the merit list. I am herewith filing the copy of the results declared by the District Collector and District Magistrate. Results show that reservation policy has been followed for SC, ST and OBCs, but no reservation was applied in respect of Transgenders and the Hon'ble Apex Court judgment in NALSA, has not been considered and acknowledged at all. I was unfairly and illegally deprived from selection for the post of staff nurse on contract basis to earn my livelihood. When I approached the Respondent No: 2, he clearly informed that the notification doesn't show and thus he cannot help. Despite, I had shown registration of Andhra Pradesh Nurses, Midwives, Auxiliary Nurse-Midwives and Health Visitors Council and thus I am qualified, the 2nd respondent explained that there is no recognition to transgender. Thus, I am aggrieved. There is no written exam, its only an oral interview for selection and thus, I am being denied orally.

11. I submit that I am aggrieved by the selection process and made representation to the Variou State Government Officials requesting to

implement guidelines of NALSA Judgement and GO Ms. No. 20 of Andhra Pradesh dated 30.12.2017 requesting to provide 2% reservation to transgender person in recruitments. However, no positive response was received. In addition, the Central Government issued an Office Memorandum dated 20.04.2020 to include Transgender as a separate category of gender and in furtherance, the Civil Services Examination Rules, 2020 were also modified. I am herewith enclosing the copy of representation dated 7.9.2020 addressed to various officials including 2nd respondent.

12. I submit that aggrieved by the non-inclusion of transgender persons in the reservation policy for the listed post as per the said notification and also for all further recruitment notifications by the State Government, I am challenging the said notification on the following and other grounds:

GROUND

a. The Notification No. 2/2020 dated 27.06.2020 by 2nd respondent doesn't extend any reservations to the Transgenders and despite fulfilling all the qualifications, the petitioner is denied of fair and reasonable opportunity of employment as Staff Nurse, which is prejudicial and contrary to law and is in violation of Articles 14, 16, 19 and 21 of the Constitution of India.

b. The Respondents have failed to comply with the direction set out by the Hon'ble Supreme Court in its judgment dated 15.04.2014 in NALSA v. Union of India and relevant directions as set out by the Hon'ble Supreme Court.

c. The respondents 1 and 2 having provided reservations to SC, ST and BCs are under a legal obligation to comply with the Judgment of Hon'ble Apex Court in NALSA v. Union of India and to provide reservations to Transgenders.

d. The Hon'ble High Court directed the State Government to look into the question of a post or percentage-based reservation in educational institutions and public employment for transgender persons in furtherance to the NALSA judgment in the case of Swapna & ors. v. the Chief Secretary, W.P No. 31091 of 2013. Accordingly, the State of Tamil Nadu provided reservations of 4% to Transgenders in all public posts. Out of 26 states.

e. This Hon'ble High Court in the case of Matam Gangabhvani v. State of Andhra Pradesh & Anr. W.P No.16770 of 2019 passed an interim direction to keep one post reserved for transgender person i.e. the petitioner in Sub-Inspector of Police (Civil) in Police Department.

f. The petitioner submits that Section 9 of Transgender Persons (Protection of Rights) Act, 2019 prohibits any discrimination in employment. Section 9 states as follows:

“No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues”.

13. I submit that I worked with various departments of 1st respondent at different periods as Village Accountant of Velugu Department, at Yadiki Primary health Center and as Research Assistant at National Institute of Rural Development & Panchayat Raj (NIRD& PR). Apart from all these, I have the requisite qualification and thus, the 2nd respondent cannot discriminate me from giving employment. I submit that Rule 7 of Transgender Persons (Protection of Rights) Rules, 2020 distinctly prescribes that Transgenders shall be included within the definition of Other Backward Classes to enable them to avail the benefits of vertical reservation provided for the other backward classes.

11. In the circumstances stated above, the petitioner has no efficacious alternative remedy, except to seek the redressal before this Hon'ble Court seeking the indulgence of this Hon'ble Court to exercise the extraordinary original jurisdiction vested in this Hon'ble Court by virtue of Article 226 of the Constitution of India. The petitioner has not filed any writ petition, suit or other proceedings for the relief or relieves sought herein.

It is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the notification No: 02/2020 dated 27.06.2020 of the 2nd respondent, and not selecting the petitioner discriminating her only on the ground that she is a transgender, despite having requisite educational qualifications, which is contrary to section 9 of Transgender Persons (Protection Of Rights) Act, 2019 and Rule 7 of the Rules framed thereunder, as illegal, irregular, irrational, contrary to GO Ms.No: 20 dated 30.12.2017 and The Transgender Persons (Protection Of Rights) Act, 2019 and Transgender Persons (Protection of Rights) Rules, 2020, violative of Articles 14, 16, 19 and 21 of Constitution of India and pass such other order or orders may deem fit and proper in the circumstances of the case.

It is also just and necessary that this Hon'ble Court may be pleased to direct the respondents to consider the merit, qualifications and social background of the petitioner in Notification No. 2/2020 dated 27.06.2020 issued by 2nd respondent and finalize the selection process without any discrimination to Transgenders pending disposal of the above writ petition and pass such other order or orders may deem fit and proper in the circumstances of the case.

It is also just and necessary that this Hon'ble Court may be pleased to direct the respondents to provide reservations of minimum 4% in matters of public employment of the 1st respondent State in all future