

\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11405/2018**

EMPLOYEE STATE INSURANCE CORPORATION Petitioner
Through: Ms. Pragya Agrawal, Advocate for
Mr. V.K. Singh, Advocate.

versus

MRS ANITA SHARMA AND ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
% **23.10.2018**

CM No. 44114/2018 (Exemption)

Exemption allowed, subject to just exceptions. Application stands disposed of.

W.P.(C) 11405/2018, CM No.44112/2018 (for stay) and 44113/2018 (seeking permission to file additional documents on record)

The petitioner has preferred the present writ petition to assail order dated 04.09.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.3256/2018.

By the impugned order, the Tribunal has directed the petitioner to grant study leave to the respondent-Mrs. Anita Sharma to pursue the M.Sc. Course which started on 05.09.2018 i.e. the day following the date of the order. The Medical Superintendent, ESIC Hospital, Manesar, Gurugram where the respondent No.1 was working initially granted the No Objection

Certificate (hereinafter 'NOC') for grant of study leave vide letter dated 23.07.2018. On that premise, the respondent No.1 took effective steps and appeared in selection examination and interview. She was selected for the M.Sc. Nursing Regular Course. However, when the time came for grant of study leave, her application remained unactioned. Consequently, she preferred O.A. No.100/3256/2018 before the Tribunal which came up for hearing before the Tribunal on 30.08.2018. It was represented before the Tribunal that in case the respondent No.1 does not join the M.Sc. Nursing Course on 05.09.2018, her admission was likely to be cancelled. Since the petitioner had not replied to the request of respondent No.1 for grant of study leave, the notice was issued to the respondents therein for a short date i.e. 04.09.2018. Despite receipt of notice, the petitioner did not have any satisfactory answer when it appeared before the Tribunal on 04.09.2018. In this background, the impugned order was passed by the Tribunal directing grant of study leave to the respondent No.1. On our query, it is informed that the study leave was granted to the respondent No.1 in pursuance of the impugned order, where after she has not reported for duty, the obvious implication being that she has joined the M.Sc. Nursing Course.

Learned counsel for the petitioner submits that the original NOC was provisional and study leave is granted keeping in view the exigencies of service and the petitioner was not obliged to grant study leave in all cases. Firstly, it has been observed that there was not much time gap between the date when the NOC was granted on 23.07.2018 and the date when the Course was to begin i.e. 05.09.2018. It is not shown by the petitioner that the situation materially and drastically changed between the said dates so as to justify the change of mind on the part of the petitioner with regard to

grant of study leave. Secondly, the petitioner did not take any action on the respondent's application for grant of study leave after she got admission to the said Course. Despite issuance of notice by the Tribunal, the petitioner offered no explanation in not granting study leave to the respondent No.1. In this background, the Tribunal is justified in passing the impugned order. Moreover, considering the fact that the respondent No.1 has already joined the said Course as early as 05.09.2018 and more than a month has already passed, in the exercise of our discretionary jurisdiction we are not inclined to interfere with the impugned order.

Writ petition is dismissed along with pending application.

VIPIN SANGHI, J

A. K. CHAWLA, J

OCTOBER 23, 2018

nn