

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPST 71 of 2020
with
CAN 1 of 2020

Papiya Maiti & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Subir Sanyal
Mr. Dibyendu Chatterjee
Ms. Reshmi Dutta
Ms. Piyali Paul
... For the petitioners

Mr. Swapan Kumar Datta
Mr. Tapas Kumar Dey
... For the State

The matter pertains to 19 nursing personnel of the State and their aspiration to pursue a post-graduate course.

The 19 writ petitioners herein have come up against an order dated August 10, 2020 passed by the West Bengal Administrative Tribunal rejecting their petition at the initial stage.

Before addressing the merits of the case carried by the petitioners to this Court, a word has to be said on the judgment and order impugned. A copy of the order has been appended at pages 364 to 372 of the papers. From page 364 to page 370, the impugned judgment records the submission made before it on behalf of the claimants and the State. The paragraph thereafter, running into some 12

lines, summarises the case without clearly indicating the matters in issue. The following two paragraphs indicate how the mind of the Tribunal was at work to arrive at the conclusion and dismiss the petition. So that no injustice is done to the Tribunal, the exact words are quoted:

“It appears from the application that overwhelming number of students are continuing M.Sc. Nursing course after getting formal release order which has not been obtained by the applicants. Merely because some candidates are continuing their studies in an unauthorised manner, as evident from paragraph 4 of the supplementary application, cannot confer a right on applicants to further their case. A wrong, if any, done by others cannot confer right on the applicants. Hence, no order can be passed on this application. The application is dismissed.

Since for circumstances beyond control the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.”

This Tribunal deals with the veritable lives and, certainly, livelihoods of State Government employees and, after their death, of the families of such employees. Matters pertaining to the claims of employees in various situations, their entitlement, their positions at their places of duty and the like call for an in-depth appreciation of the functioning of the State Government, its various rules and the law applicable in every particular case. Most importantly, the business that the Tribunal undertakes is one of adjudication that has been carved out from the jurisdiction of the High Court. Adjudication, in judicial parlance, is the assessment of the matters in issue by weighing the facts

against the applicable law and giving cogent reasons to arrive at a rational and reasonable conclusion. Adjudication is the journey that commences with the narration of facts; the discovery of the law that is applicable to such facts; the application of such law and the exercise ends with the conclusion being expressed by indicating reasons which are the links between the facts and the conclusion. Adjudication, in any judicial proceedings, is said to have been completed upon the culmination of a judicial process that envisages an assessment of the material facts against the milieu of the applicable law and arriving at a considered conclusion supported by reasons. In a constitutional democracy governed by the rule of law, the *ipse dixit* of a judge or an adjudicator counts for little or nothing. What is of paramount importance is the reasons that are indicated in support of a conclusion for it is the 'why' of the reasons that gives legs to the 'what' of the order to stand on. Without the 'why', the 'what' is not worth the paper it is printed on.

It must be said, with considerable diffidence and concern, that the judgment and order impugned herein is singularly lacking in the paramount feature that it ought to have portrayed: an adjudication. The order does not trace the route that the judicial mind takes in applying the relevant law to the essential facts to arrive at a conclusion by indicating cogent reasons. The essential facts are not captured, the applicable law is not disclosed, why the

petitioners were not entitled to the order that they sought is not indicated, how the petitioners breached any rule in conducting themselves is not expressed.

However, the easy way out in such a situation may not be taken so as not to vex the parties again by remanding the matter and commanding the Tribunal to undertake the exercise that it was obliged to do in the first place. The assessment, per force, has to be undertaken at this level so as not to cause further prejudice to the parties.

Now, to the merits of the case.

The simple case run by the 19 nursing personnel is that they acted in terms of the applicable rules to apply to their immediate superior authorities for permission to undergo a Master's course. The course was to begin sometime in October, 2019 and it is undeniable that prior to the commencement of the course, applications were duly made by the writ petitioners to their immediate superiors seeking prior permission in accordance with the applicable rules. The documents appended to the petition also reveal that the immediate superiors of these writ petitioners vetted the documents and forwarded the same to the State Government, which was the authority to accord permission for study leave to be obtained by the writ petitioners to undergo the post-graduation course.

For the purpose of the present matter, the West Bengal Nursing Personnel (Placement on Trainee Reserve)

Rules, 2009, need to be seen. Such Rules instruct as to the courses to which nursing personnel may apply and in what circumstances placement orders would be issued for treating the nursing personnel as trainee reserves. The criteria, the modalities and the procedure for application, the consideration and fulfilment of the conditions are all enumerated in the short piece of delegated legislation running into some three or four pages.

Under Rule 3(2) of the said Rules of 2009, the State Government is obliged to determine, from time to time, the number of nursing personnel who would be placed as trainee reserves for the different courses run by the West Bengal Nursing Council, the West Bengal University of Health Sciences and other Universities. Rule 4 provides for the qualifications that the nursing personnel must possess to seek admission in one of the several courses which are open to them. Rule 5 requires a bond to be executed and such bond must be executed “prior to proceeding on trainee reserve”; and, the durations of the bonds are also stipulated.

Rule 6 of the said Rules of 2009 charts out the procedure for applying for permission and the manner of placement of trainee reserves. Since this is the key Rule, the entirety thereof must be seen:

“6. Procedure for application and placement on trainee reserve, — The following shall be the procedure for applying and placement on trainee reserve:—

the Nursing Personnel when eligible under the foregoing rules can directly apply to any

University or Institution for appearing in the Diploma Course (General Nursing Midwifery), graduate and post-graduate and M.Phil, entrance Examination and simultaneously shall apply to the Director of Health Services for sponsorship certificates. After observing required formalities in accordance with law, the placement orders for trainee reserve will be issued and thereafter such personnel will proceed on trainee reserve and execute bonds as specified in rule 4 of the rules.”

The writ petitioners also rely on the application forms issued by the West Bengal University of Health Sciences and the instructions contained therein. According to the writ petitioners, they applied simultaneously for permission to enroll themselves in the post-graduate course with the West Bengal University of Health Sciences and applied to the said University to seek admission. The writ petitioners labour to suggest that there was nothing further that the writ petitioners as applicants were required to do and it was for the State Government or the appropriate authorities to do their bit in terms of the Rules of 2009.

The State refers to the West Bengal Service Rules and the requirement for obtaining study leave thereunder. According to the State, it is only upon the State Government allowing a candidate to pursue a course, would the question of study leave arise. The State points out that the mere application by any aspiring post-graduate candidate would not amount to permission being obtained, without such permission actually being granted. The State emphasises on the wording in Rule 5 of the said Rules of 2009 that a candidate had to execute a bond prior

to proceeding as a trainee reserve. The State asserts that, in such a scenario, there was no question of the writ petitioners presuming or assuming anything without obtaining the permission in cold print from the State Government.

It must be said at the outset that the problem is the State's doing. On a meaningful reading of the said Rules of 2009, it is evident that the State may declare a particular number in terms of Rule 3(2) thereof which would hold good for a number of years or the State may indicate a particular number which would be valid for that particular year. There is no denying that Rule 3(2) of the said Rules calls for the relevant number to be indicated well in advance of the courses commencing. Again, on a constructive reading of the Rules, it is apparent that the names of the selected candidates ought to be indicated by the State well in advance of the commencement of the courses.

In the present case, though the State declared the number of nursing personnel who could proceed for further studies, it did not publish the list of the candidates till several months after the courses had commenced. The number of 74 seats was indicated in or about June, 2019; but the names of the successful nursing personnel were, however, declared in or about June, 2020. As aforesaid, the relevant course in this case had commenced in October, 2019. Thus, the writ petitioners and other similarly-placed personnel had

been enrolled and had participated in the course for nearly nine months before the list of approved or successful candidates was put up by the State. The State was clearly in error. It is hoped that such error is not repeated in future and every element of confusion is avoided.

Since the writ petitioners had done all that was within their power, to apply both for permission and for enrolment in the relevant course; upon the list of permitted candidates not being published before the commencement of the course, they had to, willy-nilly, take admission and start the curriculum. All others who had applied may or ought to have followed the same course of action. However, upon the list being published, those who found their names on the list could have continued further; those who did not, could not have. It was open to those who found their names not in the list to challenge the list or the exclusion of their names therefrom; but till they succeeded in the challenge, such persons could not have pursued the course notwithstanding having completed eight or nine months thereof.

The effect of Rule 6 of the said Rules, in the imperfect scenario of the State Government publishing the list at a belated stage, is that all candidates who had obtained admission would be notionally allowed to continue to pursue the course; but upon the list being

published, only such personnel whose names figured in the list could proceed further, the others could not.

Though the writ petitioners here claim that they had challenged the list that was published in June, 2020 on the ground that their names ought to have been included and others who may not have been meritorious or eligible should not have been included, the Tribunal does not record such argument to have been made before it. Such an argument has not been canvassed at any great length before this Court, at least prior to this Court reminding the writ petitioners that such a case had not been run before the Tribunal. Though the writ petitioners purport to suggest that not all of what had been submitted on their behalf was recorded by the Tribunal, there does not appear to be any specific ground in the present writ petition indicating which part of the submission had not been recorded or considered at all by the Tribunal. In such a scenario, particularly considering the status of the Tribunal which passed the judgment and order impugned, this part of the writ petitioners' case has to be negated.

What remains for consideration is the right of the writ petitioners who duly applied for permission but were denied such permission *ex post facto* after they had enrolled in the course and had participated therein for a period of not less than nine months. Ideally, such a situation ought to have been avoided, and such situation could have been avoided if the State was diligent in

publishing the placement list prior to the commencement of the course. However, despite the fact that the State was in the wrong for publishing the list at a belated stage, the moment it appeared that some of the nursing personnel had not been given permission or included in the list, the inescapable consequence was that they had to abandon the course and try their luck later. There was no question of such personnel continuing with their studies.

There is only one further aspect of the matter which has to be dealt with. In the event the State Government had published the list of the candidates permitted to participate in the Master's course, before the commencement of the course, there would have been no question of anyone who was not named in the list enrolling for any course. However, as a result of the State Government's delay, all or most of those who had applied may have enrolled for the course in the hope that their names would ultimately figure in the list. In adopting such course of action, all the hopeful candidates would have missed their usual hospital duties and would have been engrossed in their studies. This period during which these petitioners or others similarly-placed did not attend to their usual duties cannot be counted against them because it was the delay on the part of the State in publishing the list which induced the action.

Thus, even though the relief sought by the writ petitioners – of allowing them to complete the remainder

of their course upon study leave being granted – cannot be granted, the period till the publication of the list when they missed attending office or their regular duties, has to be treated as if they were in service and allowed to attend office, without any leave being deducted therefor or any absence or discontinuity of service being attracted.

In fine, the writ petitioners are found not to be entitled to pursue the post-graduate course that they had embarked on in October, 2019. However, if the writ petitioners still want to pursue their studies, because they have already invested substantial time therein, the completion of the remainder of the course will be subject to the State Government being entitled to treat the period of absence, after deducting all permissible leave, as extraordinary leave during which the relevant writ petitioners will not be entitled to any pay or benefits, but which will not amount to discontinuity in service.

WPST 71 of 2020 with CAN 1 of 2020 are disposed of on the above basis.

There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties, upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)