

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN  
AND  
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.23245 of 2019  
and WMP.Nos.22939 and 28873 of 2019

- 1.Union of India, through Secretary,  
Rep. By Ministry of Labour & Employment,  
Govt. of India (Social Security Division),  
Shram, Shakti Bhawan,  
New Delhi-110 001.
- 2.The Director General,  
Employees State Insurance Corporation (ESIC),  
Panchdeep Bhawan (CIG Marg),  
New Delhi-110 002.
- 3.The Dean,  
E.S.I.C. Model Hospital,  
Medical College and PGIMSR,  
K.K.Nagar, Chennai-600 078.
- 4.The Deputy Director (Admn.)  
ESIC Model Hospital,  
K.K.Nagar, Chennai-600 078. ... Petitioners

Versus

T.Anantha Jothi .. Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order passed by the learned Central Administrative Tribunal, Chennai Bench passed in O.A.No.310/479 of 2018 dated 13.11.2018 and quash the same as illegal and arbitrary.

For Petitioners : Mr.K.C.Ramalingam

For Respondent : Mr.S.Senthil Nathan

## ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.  
through video conferencing]

The official respondents in O.A.No.310/00479/2018 filed by the respondent herein are the writ petitioners. The respondent/Original Applicant filed the said Original Application praying for an appropriate direction directing the respondents 2 to 4 therein to sanction the study leave sought for vide her representations dated 14.10.2017 and 28.10.2017 respectively for two years to pursue M.Sc., Nursing Course during the academic year 2017-2019 along with Relieving Order, Experience Certificate and Character Certificate. The Central Administrative Tribunal, Chennai Bench, vide impugned order dated 13.11.2018, has quashed the order dated 15.02.2018, rejecting the said request and allowed the Original Application and consequently, granted the relief. Challenging the legality of the same, the present writ petition is filed.

2. Facts leading to the present round of litigation have been narrated in detail and in extenso in the impugned order dated 13.11.2018 passed in O.A.No.310/00479/2018 by the Central Administrative Tribunal, Chennai Bench and therefore, for the sake of brevity, those facts are not stated once again.

3. The fact remains that the respondent was granted no objection dated 20.10.2017 to participate in the counseling process on 23.10.2017 and subsequently, rejected the said request vide communication dated 10.11.2017. The petitioner, challenging the legality of the said communication, filed O.A.310/01799/2017 before the Central Administrative Tribunal, Madras Bench and the Tribunal, vide final order dated 23.11.2017 has allowed the said Original Application and directed the official respondents to reconsider the application submitted by the respondent/Original Applicant for grant of Study Leave for the period from 01.11.2017 to 31.10.2019 by passing a reasoned and speaking order.

4. In compliance of the same, the Medical Officer of the Employees State Insurance Corporation [in short 'ESIC'], New Delhi has passed an order of rejection dated 15.02.2018 stating that Staff Nurses having B.Sc., (Nursing) degree are already more qualified than the basic requirement of ESIC and candidates with M.Sc., (Nursing) are not required for imparting services in the hospitals and even if any of the Nursing Staff acquires higher qualification, the nature of work will remain the same and there is no post which requires M.Sc., (Nursing) degree in hospitals, and despite the acquirement of Post Graduate Degree

in Nursing, the work will remain the same. Further, the provision of Study Leave has also been incorporated in the said order and as per the said provision, if an individual is willing to pursue M.Sc., (Nursing), then the concerned applicant may be allowed to EL/EOL due in their account for study leave and that apart, there is an overall shortage of Nurses in ESIC Health Institutions.

5. In the challenge made to the said order by the respondent/Original Applicant in O.A.No.479 of 2018, the official respondents had filed their counter statement and took a stand that no objection is given only for appearing for counselling for M.Sc., (Nursing) and it does not assure sanction of study leave or any other leave nor should it be construed as recommendations of the third respondent for study leave. The counter statement also reiterated the stand taken by the concerned official respondents in the impugned order/letter dated 15.02.2018 and if at all the respondent/Original Applicant wants to pursue further studies, she may be at liberty to avail EL/EOL and do so and even if the respondent/Original Applicant acquires higher qualification/degree, it may be of no use in discharge of duties.

6. The Tribunal, taking note of the rival submissions and materials, found that persons similarly placed viz., Ms.Anita, Ms.Meenakshi, Ms.Anita Krishnan and Ms.Neha Prakash Desai were granted Study Leave to pursue their higher qualification and also relied upon the judgement rendered by the Central Administrative Tribunal, Ahmedabad in O.A.No.432/2016 dated 15.07.2016 as well as judgement of the CAT, Calcutta Bench dated 09.10.2014 in O.A.No.1093/2014 [Dipannita Hazra Ghosh v. Union of India] and also the judgement of the High Court of Calcutta dated 05.09.2014 in WPCT.No.145 of 2014 in the case of The Medical Superintendent, ESIC Hospital v. Pronoti Roy and ultimately quashed the said order/proceeding and allowed the said Original Application.

7. The learned counsel appearing for the petitioners would submit that the grant of Leave especially Study Leave is not a matter of right and depends upon exigency of the services and it is for the employer either to grant or reject the leave and for performance of duties as a nurse, it is enough the concerned employee possess Diploma in Nursing and in the case on hand, the respondent/Original Applicant possess B.Sc., (Nursing) Degree and that itself is a higher qualification and her request to pursue M.Sc., (Nursing) Course in the nature of employment with ESIC is not at all required. It is the further submission of the learned counsel appearing for the petitioners that in the light of the statutory rules, discretion is vest with the employer and if at all the respondent/Original Applicant is interested in pursuing her goal in the form of acquiring Post Graduation in Nursing, she is always at liberty to avail EL/EOL

and moreover, there is already shortage of nurses in ESIC and if the respondent is granted Study Leave, it would definitely affect the functioning of ESIC and therefore, the impugned order came to be passed rightly rejecting the said request and the Tribunal, without taking note of the factual aspects and rule position, has erroneously allowed the Original Application and since it is in the nature of precedent, it may work out hardship and difficulty for smooth running of ESIC and hence prays for allowing of this writ petition and consequential, quashment of the impugned order passed by the Tribunal.

8. Per contra, Mr.S.Senthil Nathan, learned counsel appearing for the respondent has drawn the attention of this Court to the counter affidavit dated 20.09.2019 and would submit that the course of study is between 01.11.2017 and 31.10.2019 and the interim order in this writ petition was granted on 08.08.2019 and at that point of time, the respondent/Original Applicant had only two months to complete the course and she has also completed the Post Graduation in Nursing and joined the ESIC and as on date, she is working. The learned counsel appearing for the respondent has drawn the attention of this Court to para 7 of the impugned order passed by the Tribunal and would submit that the Tribunal has taken note of the fact that it is also a right of an individual for upgrading his / her degree and qualification and that apart, the Tribunal has taken note of the similar orders passed by various CATs as well as the High Court of Calcutta and rightly reached the conclusion and in the light of the facts and circumstances and subsequent development, prays for dismissal of this writ petition.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it.

10. No doubt, grant of Leave is the discretion vest with the employer. The fact remains that the respondent/Original Applicant, in order to fulfil her dream of getting higher qualification has applied for M.Sc., (Nursing) and No Objection Certificate was also granted by the employer to participate in the counselling and it was also indicated that No Objection was granted only for appearing for counselling and it will not be no objection for joining the said course.

11. The primordial submission made by the learned counsel appearing for the petitioners that the minimum qualification prescribed for Nurses is only a Diploma in Nursing and since the respondent has already having degree in the form of B.Sc., (Nursing) and further he has acquired Post Graduation in Nursing, which is not at all required, as it is not going to add anything on the functional ability of the institution. It is also the submission of the learned counsel appearing for the petitioners that if at all the respondent/Original Applicant persists that she should acquire higher qualification, it is

always open to her to apply for EL/EOL and inspiteof doing so, she wants study leave and the same is impermissible and also in the light of the fact that there is already shortage of staff nurses in ESIC hospitals. As rightly pointed out by the Tribunal in the impugned order, a person/employee is entitled to pursue her dream in the form of higher qualification and it cannot be said that the possessing of higher qualification would not lead to the functional efficiency of the organization. Acquirement of additional qualification is always a deciding factor especially in the case of emergency situation and Staff Nurses always play a vital role while treating patients suffering from serious ailments and without their services, it may not be possible for the Physicians/ Surgeons to discharge their duties.

12. Grant of Study Leave is a discretion vest with the employer and the request made for grant of study leave have to be decided on case to case basis and it cannot be cited as a precedent.

13. The fact remains that the respondent/Original Applicant had successfully completed M.Sc., (Nursing) Degree and at present working in the services of ESIC and the interim order in this writ petition came to be passed on 08.08.2019 and at that point of time, the respondent/Original Applicant had completed almost 90% of the academic career and she cleared the course successfully also. The petitioners/official respondents may be under the apprehension that the orders passed as to the grant of study leave would be cited as a precedent in future and in order to dispel the said apprehension, this Court has already observed that the process of consideration for grant of study leave, has to be done on case to case basis and can be cited as a precedent, especially in the light of the reason that the grant of study leave is at the discretion of the employer.

14. The Tribunal, has also taken note of the fact that persons similarly placed have been granted such a relief by various CATs, as affirmed by the High Court of Calcutta and in the light of the above facts and circumstances, the Tribunal has rightly came to the aid of the respondent/Original Applicant by quashing the impugned order and allowed the Original Application.

15. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent on the face of the record or infirmity in the reasons assigned by the Tribunal in allowing the Original Application.

16. In the result, this Writ Petition is dismissed, confirming the order dated 13.11.2018 made in O.A.No.310/00479/2018 on the file of the Central Administrative

Tribunal, Chennai Bench. No costs. Interim Order already granted stands vacated and consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Secretary,  
Ministry of Labour & Employment,  
Govt. of India (Social Security Division),  
Shram, Shakti Bhawan,  
New Delhi-110 001.
- 2.The Director General,  
Employees State Insurance Corporation (ESIC),  
Panchdeep Bhawan (CIG Marg),  
New Delhi-110 002.
- 3.The Dean,  
E.S.I.C. Model Hospital,  
Medical College and PGIMSR,  
K.K.Nagar, Chennai-600 078.
- 4.The Deputy Director (Admn.)  
ESIC Model Hospital,  
K.K.Nagar, Chennai-78.
- 5.The Central Administrative Tribunal,  
Chennai Bench, Chennai.

+3cc to Mr.S.Senthil Nathan, Advocate, S.R.No.20427

+1cc to Mr.K.C.Ramalingam, Advocate, S.R.No.20438

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GPL(CO)  
KM(16/04/2021)