

10.05.2022
Ct. 5
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ab

CPAN 290 of 2022
In
WPA 20214 of 2021

Lipika Shil
-Vs-

Mrs. Smritikana Mani, OSD(Nursing), Department of
Health & Family Welfare (Nursing Branch) & Anr.

Mr. Soumya Majumdar,
Mr. Biswaroop Bhattacharya,
Mr. Subhankar Chakraborty,
Mr. Saptarshi Bhattacharjee,
Ms. Ruchira Manna

... for the petitioner

Mr. Swapan Kumar Datta,
Mr. Rajat Datta,

... for the State

Mr. Amitava Chaudhuri,
Mr. N. Roy,

... for the alleged contemnor no. 2

The contempt petition relates to a judgment and order passed by this Court on 1st March, 2022. The respondents/State and the West Bengal Joint Entrance Board, were directed to consider the rank and score of the petitioner, who was an aspirant to the M. Sc. (Nursing) Course as per the rank obtained by the petitioner before the merit list was cancelled by the Board on 23rd November, 2021. The alleged contemnor no. 1 is the OSD to the Department of Health & Family

Welfare and the alleged contemnor no. 2 is the Chairman, the West Bengal Joint Entrance Board.

The affidavit filed by the Board states that the Board handed over of the papers of relevant examination to the State on 28th December, 2021 and hence became *functus officio* to the extent of the examination. The affidavit of alleged contemnor no. 1 states as follows:-

- (i) Certain number of posts are available both in B. Sc Nursing and M.Sc Nursing categories, but these are not of Trainee Reserve categories.
- (ii) The alleged contemnor no. 1 has complied with the direction passed by this Court by calling for and conducting physical counselling on 26th March, 2022.
- (iii) The All India admission process for the nursing Courses was concluded on 7th April, 2022.
- (iv) The alleged contemnor no. 1 was constrained to fill up the Trainee Reserve vacancies since by an interim order passed by this Court, the counselling process was directed to go on.
- (v) Paragraph 8 of the affidavit of the alleged contemnor no. 1 states as follows:-

“ As the Board could not cancel the merit list which was prepared on the basis of wrong answers of the candidates including that of the petitioner, the State was compelled to follow the revised merit rank list during the counselling”.

Upon considering the submissions of the learned counsel appearing for the alleged contemnors and the affidavits filed on their behalf, this Court is of the view that the act of contempt is writ large on the part of the alleged contemnors. While the alleged contemnor no. 2 (Board) has conveniently passed the onus on the State, the alleged contemnor no. 1 has admitted to the act of contempt in paragraph 8 of its affidavit, which has been extracted above. Both the alleged contemnors seek to provide a justification for their acts of contempt of the direction passed by this Court.

The non-compliance would be evident from the two following factors. First, by the interim order dated 14th December, 2021 by which the Board had been directed to keep one seat vacant till the matter is considered on affidavits. The prayer made on behalf of the petitioner for stay of counselling was denied upon considering the fact that stalling the counselling would derail the entire selection process in which a large number of candidates had participated. The

observations in the interim order make it clear that the rank obtained by the petitioner before the same was refused on 23rd November, 2021, was sufficient to qualify the petitioner for the Trainee Reserve category seat. The interim order has merged into the final judgement of 1st March, 2022 and hence, both the order and the judgment must be read together for ascertaining the true purpose of the direction given by the Court on 1st March, 2022. The purpose was to keep one seat vacant for the petitioner whose rank was revised by the Board without affidavits and without explanation. The interim order for keeping one seat vacant has also to be read with prayer (c) of the writ petition which prays for inducting the petitioner as a trainee reserve in the M. Sc Nursing Course.

Hence, the position now taken by the alleged contemnors, particularly, the alleged contemnor no. 1 that all the Trainee Reserve category seats were subsequently filled up in view of the counselling process being directed to continue shows the clear contempt on the part of the alleged contemnors.

It is clear from the affidavits of alleged contemnors that besides passing the buck from one to the other, the alleged contemnors seek to go round in circles trying to justify their non-compliance. There is no doubt that the Court in contempt petition can seek to undo the wrong and pass orders in the nature of

restitutive measures. This would be clear from the decision reported in (2017) 5 SCC 506 (*Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) Vs. Baranagore Jute Factory PLC.*), where the Supreme Court held that the Court has a duty to issue appropriate directions for remedying or rectifying the things done in violation of orders. The tenor of *Baranagore Jute Factory PLC Mazdoor Sangh (BMS) (supra)* can also be found in Division Bench decision of this Court in *Ranjit Kumar Haider Vs. State of West Bengal*, reported in (2006) 1 Cal LT 355.

In view of the above reasons, the alleged contemnors are directed to keep one seat in M. Sc Nursing in Trainee Reserve category vacant for the purpose of considering the eligibility of the petitioner in admission to the course in the Trainee Reserve Category. The alleged contemnors shall of course evaluate the eligibility of the petitioner in accordance with the requisite standards under the relevant Rules but the consideration must be in relation to the Trainee Reserve category seat. If the petitioner is found to be eligible in accordance with the rank/score of the petitioner, as obtained before 23rd November, 2021, the alleged contemnors shall ensure that the petitioner gets a berth in the M. Sc Nursing Course against the Trainee Reserve category seat.

Since the physical counselling has already been conducted on 26th March, 2022, the whole exercise should be completed within a period of fortnight, as prayed for by learned counsel appearing for the alleged contemnor no. 1. The submission that the selection process has been closed by the Indian National Council of Nursing on 7th April, 2022, is of little relevance since the respondents were directed to act on the basis of the judgment dated 1st March, 2022. The alleged contemnor no. 1 is hence directed to sort out the said issue with the Indian National Council of Nursing for effective compliance of the direction passed by this Court.

CPAN 290 of 2022 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)