

24.04.2023

WPST 31 of 2023

Court : 04
Item : 02
Matter : WPST
Status : DO
Bench ID : 266048
Transcriber: NANDY

Moumita Marjit & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Jamiruddin Khan, Advocate
Mr. Sayanti Sengupta, Advocate

.....for the Petitioners

Ms. Chaitali Bhattacharya, Advocate
Mr. Kartick Chandra Kapas, Advocate

.....for the State

The writ-petitioners conjointly filed the Tribunal application being OA 44 of 2023 before the West Bengal Administrative Tribunal, but were excluded from the benefit of the ultimate decision taken therein as they never applied for treating them as 'Trainee Reserve'. The dispute arose when all such applicants of the tribunal application were denied to pursue the higher courses so as to acquire better knowledge and expertise in a relevant field. The refusal constrained such applicants who were admittedly Health Assistants (Female) after completing Auxiliary Nursing Midwifery (ANM) and intended to pursue higher courses by GNM, to file the instant writ-petition.

In the course of hearing our attention is drawn to a Rule framed by the Government namely West Bengal Nursing Personnel (Placement on Trainee Reserve) Rules, 2009 which is applicable to all categories of nursing personnel employed in the Department of Health and Family Welfare, Government of West Bengal and borne in the cadre of West Bengal Nursing Service. Rule 4 (a)(ii) postulates that Nursing Personnel who had acquired or passed Auxiliary Nurse Midwifery (Revised) Course or General Nursing Midwifery Course or B.Sc. Nursing or M.Sc. Nursing or M.Phil Nursing, irrespective of the fact whether the same was acquired with or without Government sponsorship prior to entry in Government service, shall

only be entitled to undergo corresponding higher course i.e. General Nursing Midwifery Course.

Taking aid of the provisions contained under the said Rules, the Tribunal found that the moment they complete the term as 'Trainee Reserve', no discretion left to the Government to deny the permission to them to pursue the higher courses in such capacity. It is held by the Tribunal that the statutory Rules bestowed right to undertake higher courses, which cannot be defeated provided they fulfill the conditions as 'Trainee Reserve'.

The Tribunal quashed and set aside the order of the authority refusing to grant permission to undertake the higher courses and passed directions upon the authorities to approve the application seeking 'Trainee Reserve' facilities under the aforesaid statutory Rules in the light of the Notification dated December 8, 2009 subject to fulfillment of all other conditions as quote therein.

Since the petitioners could not annex the application seeking their status as 'Trainee Reserve' they were excluded from the purview of the said direction. The writ-petitioners filed the instant writ-petition and annexed the documents evincing that they undertook the courses as 'Trainee Reserve' but inadvertently those documents were not included in the tribunal application. Obviously, the reason being that several applications were jointly filed in the said tribunal application and there may be omission in not including such applications therein.

Since new documents sought to be relied upon for the first time in the writ-petition which has a direct bearing on the core issue, we directed the learned Advocate for the State to take instruction in this regard.

Learned Advocate for the State submits, on instruction, in fact, those applications are found on record which shows that the petitioners are *at per* with the other applicants of the tribunal application but she submitted that the reason for non-enclosure of the aforesaid documents are still unknown.

Be that as it may, the moment the right is crystallized by virtue of a statutory provision and such right has been recognized by the Tribunal in the impugned order and extended the benefit thereof, such right cannot be defeated nor can be allowed to be diminished because of such inadvertent lapses. Furthermore, the State has not challenged the impugned order and, therefore, we do not find any impediment in extending the same benefit to the petitioners as they stand on the same pedestal that of the other applicants of the tribunal application.

Accordingly, the last portion of the impugned order is hereby set aside.

The competent authority is directed to treat the petitioners as *at par* with the other applicants of the tribunal application and shall complete the exercise within two weeks from the date of the communication of this order.

The writ-petition being **WPST 31 of 2023** is **allowed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

