

04.01.2023
DL-17
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26199 of 2022

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

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.,
Mr. Jamiruddin Khan,
Ms. Sayanti Sengupta
.... for the petitioners.

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee
....for the State.

Mr. Goutam Chakraborty,
Mr. Kartik Kumar Ray
....for the respondent no.24.

Affidavit of service filed in Court today is retained with the records.

The petitioners have duly passed Auxiliary Nursing Midwifery (in short, "ANM") (R) courses and were appointed as Health Assistant (Female) under the Directorate of Health Services, Government of West Bengal. All the 31 petitioners have completed more than three years of continuous service. The petitioners aspire to pursue higher education, General Nursing Midwifery (in short, "GNM"). The petitioners have appeared for common entrance test for GNM courses - 2022 held by the West Bengal Joint Entrance Examination Board. The petitioners have achieved good ranks and have appeared for

counselling for seat allotment. During the counselling process, the petitioners have been allotted seats in various colleges. However, authorities concerned did not grant the petitioners approval for placement on Trainee Reserve (TR). The petitioners claim that the authorities concerned have acted in violation of the rules stipulated under the West Bengal Nursing Personnel (Placement on Trainee Reserve) Rules, 2009.

Initially, the petitioners filed an application under the West Bengal Administrative Tribunal Act, 1985 challenging the refusal of the authorities concerned to provide placement as Trainee Reserve to the petitioners. The said application OA 630 of 2022 was disposed of by an order dated September 21, 2022 directing the Director of Health Services, Government of West Bengal/the respondent no.2 to consider the applications of the petitioners for granting of Trainee Reserve within the ambit of 2009 Rules, subject to the eligibility and exigencies of medical service. The Director of Health Services, Government of West Bengal was also directed to protect the seats which have been allotted to the applicants till the disposal of their representations by the respondents.

Pursuant to the order passed by the Administrative Tribunal on September 21, 2022, the impugned order was passed by the Director of Health Services/respondent no.2 on October 18, 2022. The respondent no.2 rejected the granting of Trainee Reserve (TR) facility/placement in favour of the petitioners since the Health Assistants (F) are already ANM (R) qualified candidates and such qualification was sufficient for the purpose of serving at the post of HA (F) and did not require any higher studies. In the event, the T.R. facility was granted, the applicants may shift from their present post which would obviously create a dearth of service providers in the field of nursing.

Challenging the impugned order dated October 18, 2022, the petitioners have filed the present writ petition.

Mr. Bhattacharya, learned senior counsel appearing on behalf of the petitioners argued that since a composite prayer has been made in the writ petition for keeping necessary seats vacant in various colleges along with setting aside and/or quashing of the impugned order passed by the Director of Health Service/respondent no. 2, the writ petition is maintainable.

Mr. Chattopadhyay, learned counsel appearing on behalf of the respondents submits that the writ petition is not maintainable in its present form. The appropriate authority to adjudicate the dispute between the parties was the State Administrative Tribunal. The Administrative Tribunal by its order dated September 21, 2022 had directed the seats to be kept vacant in respective colleges till the disposal of the petitioners' applications. Therefore, there was no question of the seats not being protected by the Administrative Tribunal. Furthermore, the impugned order was passed on October 18, 2022 and the petitioners have approached this Hon'ble Court on November 24, 2022 and the delay in filing of the writ petition itself would lead to denial of the prayers granted in favour of the petitioners.

Mr. Goutam Chakraborty, learned counsel appears on behalf of the respondent no. 24/private college and submits that the seats that were allotted to some of the petitioners in the said college have already been filled up.

It has also been submitted on behalf of the petitioners that the West Bengal Administrative Tribunal is not functional as on date. By an office order passed on November 23, 2022 by the Officiating Chairperson, West Bengal Administrative Tribunal,

the Tribunal is functioning as a Single Member Bench subject to certain restrictions. In order for the matter to be taken up by a Single Member Bench, both the contesting parties have to submit to the jurisdiction. The order dated September 21, 2022 has also been passed by a Single Member Bench of the Tribunal. Therefore, this Court observes that the parties may again choose to submit to the jurisdiction of the Single Member Bench of the Tribunal.

This Court is of the view that even though composite prayers have been made by the parties, the same should have been made before the West Bengal Administrative Tribunal. The petitioners should have approached the Tribunal before filing the instant writ petition.

This Court is not unmindful to the fact that the petitioners have approached this Court more than one month after the passing of the impugned order by the respondent no. 2 but considering the prejudice that may be suffered by the petitioners in case their allotted seats are released in favour of other candidates this Court directs such seats to be protected for a period of three months from the date of order.

In the event, the seats are not already filled up, the same should be kept vacant for a period of three

months from date or until any further orders that may be passed by the appropriate authority. The interim protection is granted to the petitioners by this Court in public interest of having more GNM catering to the citizens and in consideration of the fact that valuable rights of the petitioners will be prejudiced if the allotted seats are released by the colleges.

With the directions aforesaid, **W.P.A. 26199 of 2022** is **disposed of**.

The petitioners will be at liberty to approach the appropriate forum, if so advised.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained therein are deemed not to have been admitted by the parties.

It is made clear that in the event the petitioners approach the appropriate authority, the authority will be free to decide the case of the petitioners on merits.

All parties shall act on the server copy of this order duly downloaded from the *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)