

15.12.2023
Item No.29
Court No.11
Avijit Mitra

WPST 180 of 2023

In re: An application under Article 226 of the Constitution of India;

And

Rupa Sarkar
- Versus -
The State of West Bengal & ors.

Mr. Debashis Banerjee,
Mr. Rakesh Jana

....for the petitioner

Mr. Tapan Mukherjee, Ld. A.G.P.,
Ms. Sangeeta Roy

....for the State respondents

The present writ petition has been preferred challenging an order dated 12th October, 2023 passed by the learned tribunal in the original application being OA 691 of 2023. Let the affidavits exchanged by the parties be kept on record.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the petitioner was appointed as a Staff Nurse, Grade II attached to Malda Medical College and Hospital, Malda and thereafter she was released as a Trainee Reserve to undergo M.Sc. (Nursing) Course for the session 2021-2023. She thereafter qualified for promotion and by an order dated 24th August, 2022 issued by the respondent no.3, she was promoted to the post of Sister-in-Charge, Grade-I(ii) at Canning Sub-Divisional Hospital, 24 Parganas (South). On 29th August, 2022 she was released on promotion from the Malda Medical College

and Hospital and she joined the promotional post on 30th August, 2022. On the very next date she was again released for undergoing the M.Sc. (Nursing) Course. Subsequent thereto, the respondent no.3 issued a memo dated 31st August, 2022 stating *inter alia* that Government Sponsored Trainee Reserve candidates, who have been promoted to next higher post will be allowed to join their respective posts only after completion of M.Sc. (Nursing) Course. Such fact was reiterated in a subsequent memo dated 12th October, 2022 and in a memo dated 8th September, 2023 communicated to the petitioner.

According to Mr. Banerjee, the said impugned memoranda cause severe prejudice to the petitioner and the same had been issued with an intent to compromise her seniority in the promotional post in which she is entitled to continue from the date of her promotion i.e. 24th August, 2022. Such issue, as urged, before the learned Tribunal was glossed over and no finding was returned on the same and the petitioner's prayer for *interim* order was refused. Such infirmity warrants interference of this Court.

Per contra, Mr. Mukherjee learned Additional Government Pleader appearing for the State respondents submits that indisputably the petitioner is a trainee reserve. During the period she continues her post-graduate studies, no service is availed from her by the

Government. It is only after completion of the post-graduate course she would be allowed to join the promotional post and there is no infirmity in such decision.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The subject matter of the original application is as to whether the petitioner would be treated to have been promoted from 24th August, 2022 or from the date she completes her post-graduate course. Such issue has to be decided by the learned Tribunal upon exchange of affidavits.

The issuance of the *interim* order as prayed for, in our opinion, will cause a greater loss and prejudice to the respondents than the loss and prejudice, the absence thereof, is likely to cause to the petitioner.

In the said conspectus, the petitioner's prayer for *interim* order is refused.

The learned Tribunal is requested to expeditiously dispose of the original application without granting any unnecessary adjournment to either of the parties.

The writ petition is, accordingly, disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Gaurang Kanth, J.)

(Tapabrata Chakraborty, J.)