

22.08.2024

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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 15352 of 2024

Sumitra Hembram & Ors.

-Vs-

The State of West Bengal & Ors.

Mr. Anjan Bhattacharjee

... for the petitioners

Mr. Anirban Roy,
Mr. Biswabrata Basu Mallick,
Mr. Tanay Chakraborty,
Mr. Saptak Sannayal

... for the State

The petitioners, 105 in number, are Health Assistant (Female). The petitioners say that they have been posted in nearby districts of their home districts but are required to travel 200-300 kms., from their place of residence to the place of work. The petitioners, therefor, demanded to be transferred to their home districts wherein vacancies in the post of Health Assistant (Female) are existing. The petitioners had made representations to the Director of Health Services (respondent no. 2) but such representations remain unresolved.

Before the matter could be considered on merit, the State respondents have raised a point of jurisdiction of this Court to receive, try and determine the writ

petition. The respondents say that the petitioners are holding civil posts under the State and as such, for redressal of their grievances, the Administrative Tribunal, West Bengal constituted under the provisions of the Administrative Tribunals Act, 1985 (hereinafter referred to as the 'said Act') is the appropriate forum. The respondents have drawn the attention of this Court to the provisions of Sections 14, 28 and 3(q) of the said Act in support of their contentions. The respondents have also relied upon the provisions of West Bengal Nursing Personnel (Placement on trainee Reserve) Rules, 2009 (hereinafter referred to as '2009 Rules') to further submit that the provisions of the said Rules are applicable to Health Assistant (Female) and Health Supervisor (Female). Referring to various other portions of the said Rules, the respondents say that the petitioners are Government employees and as such, the grievance concerning service matter has to be ventilated before the Administrative Tribunal, West Bengal. The writ petition, therefor, is not maintainable before this Court.

In order to circumvent the objection as to the jurisdiction raised by the respondents, the petitioners say that they are nursing personnel, who had acquired or passed Auxiliary Nurse Midwifery (Revised Course) and as such, cannot be construed at par with nursing personnel in the West Bengal Nursing Services or West

Bengal General Services. The petitioners were never born in the nursing cadre and as such, are neither the Government servants nor belong to the cadre of nursing personnel. The petitioners have relied upon a Memo dated 19th May, 2022 issued by the Deputy Director of Health Services (Nursing) West Bengal and several other documents to substantiate that they do not fall within the admit of 2009 Rules or the various circulars/notifications issued by the Directorate of Health Services, West Bengal. That apart, this Court in several other matters in the past has entertained writ petition of Health Assistant (female) and have placed several orders to that effect.

After considering the submissions made by the parties and the materials placed before the Court, some of which are annexed to the writ petition and the report in the form of an affidavit filed by the respondents whereas other have placed in course of hearing of the matter, it is clear that Health Assistant (Female), Health Supervisor (Female) and Auxiliary Nurse Midwifery belong to three different cadre. Health Supervisor (Female) is in other-B Cadre while Health Assistant (Female) is in other-C Cadre and Auxiliary Nurse Midwifery is in the cadre of West Bengal Nursing Services-C. It is also explicit from the documents placed before the Court that the petitioners are Government employees placed in a particular nursing cadre and are

attached to either Block Primary Health Centres or Sub-centres. Furthermore, they are governed by the provisions of 2009 Rules and the notifications issued in terms thereof.

In the aforesaid facts and circumstances, there can be no doubt that the petitioners are not holding civil posts under the State. The respondents have further clarified that the nurses engaged under the National Rural Health Mission (NRHM) having the same qualification are not Government employees like the petitioners. The preliminary objection raised by the respondents is sustained. Even though the petitioners have cited some orders wherefrom it is apparent that writ petitions were entertained by this Court and orders have been passed but in none of the cases except one the issue of jurisdiction was raised. In the matter where such objection was raised the same was not considered and dealt with

This Court does not have the jurisdiction to receive, try and determine this writ petition. The writ petition is, therefor, dismissed for lack of jurisdiction of this Court.

The petitioners shall, however, be free to approach the Administrative Tribunals, West Bengal on the self-same issue provided they are otherwise eligible in law to file and maintain the same. The time spent between filing of the writ petition (11.06.2024) till date

(22.08.2024) shall be construed to have been proceeded bona fide before a Court without jurisdiction.

Since I have not called for any affidavits, save and except the report in the form of affidavit, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

(Arindam Mukherjee, J.)