



2024:DHC:8067



\$~116

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 30th September, 2024*

+ W.P.(C) 12470/2024 and CM APPL. 51895/2024

ARUN G S

.....Petitioner

Through: Mr. Robin Raju, Advocate.

versus

DR RAM MANOHAR LOHIA HOSPITAL
& ANR.

.....Respondents

Through: Ms. Shagun S. Chugh and Mr. Utsav A. Magotra, Advocates with Dr. Manoj Kr. Jha (Addl. M.S.), Mr. Vijay Sharma (Admin Officer) and Mr. Subhash Kr. Yadav (UDC) for R1.
Mr. Tushar Sannu, Standing Counsel with Mr. Utkarsh Mishra, Advocate for R2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner directing Dr. Ram Manohar Lohia Hospital/Respondent No.1 to grant relieving order to the Petitioner for pursuing M.Sc. Nursing Psychiatric (Mental Health) Course at Institute of Human Behaviour and Allied Sciences ('IHBAS')/Respondent No.2.
2. Facts to the extent necessary and as averred in the writ petition are that Petitioner joined Respondent No.1 after clearing the Staff Nurse Recruitment Examination on 08.02.2012. Realising the importance of pursuing Masters courses which help in timely promotions as also appointment in Nursing Specialist Cadres, Petitioner sought and was granted



2024:DHC:8067



No Objection Certificate ('NOC') by Respondent No.1 for appearing in entrance examination for enrolment in M.Sc. Nursing Psychiatric (Mental Health) Course. Petitioner appeared in the Written Test-2024 conducted by IHBAS and secured Rank 9 when the result was declared on 30.07.2024. On the same day, IHBAS issued general instructions to the candidates appearing for counselling/documents verification and Clause 3 thereof mandated the in-service candidates to submit relieving orders from the current employers.

3. It is averred that on 31.07.2024, Petitioner gave a letter to Respondent No.1 to grant relieving order. Counselling was conducted by IHBAS on 16.08.2024 and result was published on 28.08.2024 wherein Petitioner was among the 8 candidates who had been selected for M.Sc. Nursing Psychiatric (Mental Health) for the session 2024-26. IHBAS issued a letter to the Petitioner on 28.08.2024 instructing him to report to the Institute on the next day to complete necessary formalities of admission before 30.08.2024 failing which his candidature was liable to be cancelled. Petitioner submitted an application to Respondent No. 1 on 29.08.2024 again requesting for relieving order and grant of study leave for the higher studies. Since Petitioner had given an undertaking to IHBAS to submit the relieving order from Respondent No. 1 by 06.09.2024 and the relieving order was not forthcoming, Petitioner has approached this Court.

4. Learned counsel for the Petitioner submits that despite qualifying the M.Sc. Nursing examination for the second year in succession, he is being denied study leave on the frivolous ground that it can only be granted after selection and on first come first serve basis. In 2023 also, Petitioner was selected for M.Sc. Nursing in an examination conducted by Government of Kerala and had applied to Respondent No. 1 for sanction of study leave on



2024:DHC:8067



11.08.2023 but due to delay by Respondent No. 1 in responding, the admission process closed. This year Petitioner had given timely intimation to Respondent No. 1 and was granted NOC for appearing in the examination and even the application seeking relieving order was made on 31.07.2024 i.e. the very next day of declaration of the result and yet Respondent No. 1 has neither issued the relieving order nor sanctioned study leave till date as a result, Petitioner is likely to lose his second chance for undertaking the Masters course.

5. It is urged that the procedure adopted by Respondent No. 1 for sanctioning study leave on first come first serve basis is wholly erroneous and contrary to the procedure in similar Central Government Institutions, where preference is given to seniority. The restriction imposed in the Circular dated 05.03.2024 which lays down the guidelines for study leaves that in a year only 30 nursing personnel will be allowed to pursue higher studies with study leaves of which 10 are for M.Sc. Nursing, is unjustified and violates O.M. dated 02.11.2012 issued by Ministry of Health and Family Welfare as per which in an Institution with a sanctioned strength of over 100 Medical Officers, 10% can be permitted to join post-graduate courses at any point in time.

6. It is further argued that Petitioner is even otherwise at a disadvantage compared to those selected in private colleges where results of the examinations are declared expeditiously and therefore the probability of such candidates coming first for seeking study leave is always higher. Even amongst the Government colleges, 3 out of the 8 persons selected have received their relieving orders but Respondent No. 1 has once again delayed the sanction for study leave as well as issuance of the relieving order.



Therefore, there is an inherent flaw in the Circular dated 05.03.2024 as also the manner in which the same is being implemented.

7. It is argued that even if Respondent No. 1 is to follow the principle of first come first serve, Petitioner had intimated on 31.07.2024 itself that he had been selected and was at Rank 9, which implied that he was to be relieved on grant of study leave and no further intimation was required. The others who have been granted study leave had applied much later and therefore, even applying the principle of first come first serve, Petitioner was entitled to grant of study leave/relieving order, his application being prior in time. Stand of Respondent No. 1 that at this stage, Hospital is unable to spare the Petitioner on account of deficiency in the nursing staff as also the workload, is incorrect. As a matter of fact, even going by the Circular dated 05.03.2024, 30 nursing personnel can be relieved in a given year and as of today the number of persons relieved is less than 30 and in fact, Respondent No. 1 has been relieving people for courses such as Nursing Practitioner Critical Care, which is not even mentioned in the Circular for grant of study leave. It is therefore prayed that direction be issued to Respondent No. 1 to grant study leave to the Petitioner for pursuing higher education which will inure to the advantage of the Institution itself.

8. *Per contra*, learned counsel for Respondent No.1 relying on the affidavit filed submits that the answering Respondent has acted in consonance with the established procedure specified in Circular dated 05.03.2024, which was formulated after extensive deliberation and consultation with the nursing staff. Respondent No. 1 has made significant efforts to provide opportunities for professional growth of its employees but a balance must be maintained and offering such opportunities should not



2024:DHC:8067



impair or hamper hospital's functioning as any disruption would ultimately affect the patients. It is explained that as per Circular dated 05.03.2024, in a year only 30 nursing personnel (15 for Post Basic B.Sc. Nursing, 10 for M.Sc. Nursing and 5 for Ph.D. Nursing) are allowed to pursue higher studies with study leaves. NOC is to be granted in the ratio of 1:4 according to seniority and after admission, study leave is granted on first come first serve basis till the availability of seats. The decision of the Medical Superintendent in this context is final.

9. It is submitted that NOC was granted to the Petitioner on 23.04.2024 to appear/apply for entrance examination to pursue the M.Sc. regular course. Result of the Petitioner was declared by IHBAS on 28.08.2024 and on 29.08.2024, an application was submitted by the Petitioner to Respondent No. 1 requesting to provide the relieving order and sanction the study leave. However, prior to Petitioner's application dated 29.08.2024, the maximum number of seats for which study leave could be permitted under the Circular were exhausted. As per the Circular only 10 students could be granted study leave, however, Respondent No. 1 after consulting the nursing staff decided to allocate an additional 5 seats to applicants seeking admission to M.Sc. programme as no application had been received for Ph.D. programme. Consequently, the 5 seats initially reserved for Ph.D. programme were re-assigned to M.Sc. candidates making the total number of seats for grant of study leave to M.Sc. candidates as 15. In light of this, Petitioner was not granted study leave as his application was after the seats were exhausted. It is also explained that there is shortage of nursing staff and any further shortage will seriously compromise the functioning of Respondent No. 1 for which reason the Circular was issued to streamline the process of grant of



study leaves and a cap was placed on the maximum number of personnel who can be granted study leaves in a given year.

10. Mr. Sannu, learned counsel appearing for IHBAS prays that the interim order granted by this Court on 12.09.2024 directing the Institute not to fill-up the seat in M.Sc. Nursing Psychiatric (Mental Health) Course be vacated as one selected candidate is waiting for his course to commence.

11. Heard learned counsels for the parties and examined their contentions.

12. By this petition, Petitioner seeks a direction to Respondent No. 1 to grant relieving order after sanctioning study leave for pursuing M.Sc. Nursing Psychiatric (Mental Health) Course at IHBAS. On 12.09.2024, Court had passed an interim order directing IHBAS not to fill-up the seat in M.Sc. Nursing Psychiatric (Mental Health) Course.

13. There is no dispute between the parties that grant of study leaves to nursing personnel pursuing higher studies is regulated by Circular dated 05.03.2024. As per the said Circular, only 30 nursing personnel (15 for Post Basic B.Sc. Nursing, 10 for M.Sc. Nursing and 5 for Ph.D. Nursing) may be allowed to pursue higher studies with study leaves. It is also stipulated in the Circular that Government colleges and top 10 All India Ranking private colleges, recognised by INC and decided by the Competent Authority will only be considered. All interested applicants are to apply for NOC within the stipulated time and NOC will be granted in the ratio of 1:4 according to seniority and after admission, study leave will be granted on first come first serve basis till the availability of seats and in this context, decision of the Medical Superintendent will be final. It is explained in the counter affidavit filed by Respondent No. 1 that *albeit* under the Circular only 10 students could be granted study leaves, however, in the current year no applications



2024:DHC:8067



were received for Ph.D. programme and consequently after deliberation with the nursing staff, 5 seats reserved for Ph.D. applicants were assigned to M.Sc. candidates making the total number of seats available for grant of study leave as 15.

14. It is thus clear that the procedure for grant of study leave has been streamlined and is governed and regulated by Circular dated 05.03.2024. The issue that arises for consideration is whether Petitioner was eligible for grant of study leave on first come first serve basis since there is admittedly no challenge to the Circular and the guidelines enumerated therein. While the Petitioner claims that he had applied for study leave/relieving order on 31.07.2024, Respondent No. 1 claims otherwise and emphasises that Petitioner had applied only on 29.08.2024 after final result was declared on 28.08.2024 by IHBAS. The application made by the Petitioner on 31.07.2024 is on record as Annexure P-12 to the writ petition. Plain reading of the handwritten letter shows that Petitioner had only intimated that he had cleared the M.Sc. Nursing Entrance Examination conducted by IHBAS with 9th Rank and was called for counselling. This letter/application, in my view, as rightly contended by counsel for Respondent No. 1, cannot be construed as an application for study leave/relieving order in terms of the Circular dated 05.03.2024 as the same was required to be made after the final result was declared and admission was granted as also because the Petitioner did not seek study leave vide the said application. The others who applied after the final declaration of their results and admissions and sought study leave were therefore considered and granted study leaves on first come first serve basis, their applications being prior in time.



15. It also needs a mention that during the course of hearing, the Medical Superintendent of Respondent No. 1 as well as the Additional Medical Superintendent had joined the Court proceedings virtually and were requested to examine if the case of the Petitioner could be reconsidered. After due deliberation, Court is informed that prior to Petitioner's application on 31.07.2024, 6 other candidates had submitted their applications but they were also not considered as their applications were prior to declaration of the final result of the entrance examination undertaken by them/admission and therefore, no special treatment can be granted to the Petitioner as that would amount to violation of the principle of first come first serve. It is also explained that granting study leave to the Petitioner at this stage would not only violate the guidelines formulated in the Circular dated 05.03.2024 but would also add to an already existing deficiency in the nursing staff in Respondent No. 1, which will be detrimental to the working of the hospital and patient care. Court agrees with the submissions made on behalf of Respondent No. 1 and cannot be a party to violation of the guidelines laid down in the Circular and cannot be called upon to pass a direction to relieve the Petitioner on study leave in view of the existing deficiency of the nursing staff, especially, when Petitioner is unable to make out a case on merit. Respondents have clearly demonstrated that the final result was declared by IHBAS on 28.08.2024 and therefore, the letter given by the Petitioner on 31.07.2024 was meaningless, in light of the requirement of the Circular dated 05.03.2024. Moreover, a direction to grant study leave to the Petitioner would also violate the rights of 6 applicants who had applied prior to the Petitioner but whose applications were not entertained as they were made prior to the admission to the higher courses



2024:DHC:8067



and confirmation of their seats. Though subtly, learned counsel for the Petitioner has also argued that if Respondent No. 1 was ultimately not inclined to grant study leave, it should not have issued the NOC for appearing in the examination. This contention also deserves to be rejected for the reason that in the NOC itself, it was specified that the NOC was being granted subject to the conditions that grant of permission to appear in the examination will not imply a commitment with regard to sanctioning study leave and final view with regard to study leaves would be taken only after selection as per approved policy and on first come first serve basis till the availability of the sanctioned seats i.e. 10 only and that the permission could be withdrawn at any time without assigning any reasons.

16. Petitioner has therefore been unable to make out a case for grant of study leave/relieving order and the writ petition is accordingly dismissed. Pending application also stands disposed of.

17. Interim order dated 12.09.2024 stands vacated in view of the dismissal of the writ petition.

18. Court appreciates the efforts put in by the Medical Superintendent and the Additional Medical Superintendent and his team for making a sincere attempt to resolve the matter.

JYOTI SINGH, J

SEPTEMBER 30, 2024/jg/shivam