

21.02.2025
(D/L-5+6)
Ct. No.4
(B.K.N.)

W.P.S.T. 195 of 2024

Rupa Sarkar
Vs.
The State of West Bengal & Ors.

With

W.P.S.T. 193 of 2024

Rita Biswas
Vs.
The State of West Bengal & Ors.

Mr. Debashis Banerjee,
Mr. Rakesh Jana
...for the Petitioners

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mrs. Sangeeta Roy
...for the State in W.P.S.T. 195 of 2024

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Somnath Naskar
...for the State in W.P.S.T. 193 of 2024

In Re: W.P.S.T. 193 of 2024

This matter will be considered separately.

List this matter on 26th February, 2025 at
2.00 p.m.

In Re: W.P.S.T. 195 of 2024

1. The short issue which arises for consideration is founded on the following facts which are not in dispute.
2. The petitioner, a Staff Nurse Grade II applied for pursuing the degree of M.Sc. (Nursing Course). She

appeared for the Joint Entrance Test for Master in Science (M.Sc.) (Nursing) and was selected for pursuing the masters degree for the session 2021-22. She was then serving as a Nurse Grade II. In accordance with the provisions contained in the West Bengal Nursing Personnel (Placement of Trainee Reserve) Rules, 2009 (hereinafter referred to as the 2009 Rules), she was placed as a Trainee Reserve so as to enable her to pursue the post graduate degree course.

3. While she was pursuing her course, the State Government finding her to be eligible by dint of her seniority for promotion, issued an order dated 24th August, 2022, promoting her to the post of Sister Grade I. As the petitioner was pursuing her degree, she applied for release from the college where she was pursuing her M.Sc. degree to join the promoted place of posting. She joined the promoted place of posting on 30th August, 2022 at the office of the Superintendent of Canning Sub-Divisional Hospital. After submitting her joining on the promoted post, she applied for release on the very next day for returning back to pursue her post graduate degree. The Superintendent of the hospital thus issued the release order on 31st August, 2022 whereafter she has gone back to pursue her post graduate degree.

4. The petitioner is aggrieved by issuance of orders dated:

(i) 31st August, 2022 being No. HNG/4P-03-2022/1124 by the Director of Health Services, according to which the nurses of Grade II, like the petitioner, who were pursuing post graduate course as Trainee Reserve were allowed to join on promotional post only after completion of their Trainee Reserve period with prior intimation to the state headquarters. It further stipulated that they were to avail the promotional benefit with effect from the date of their joining on the promotional post.

(ii) 12th October, 2022 another order has been issued by the Director of Health Services, Government of West Bengal being No. HNG/4P-03-2022/1335. By this order it is declared that if any nursing personnel pursuing M.Sc. course is desirous to join the promotional post before completion of M.Sc. course then she has to discontinue the said course for the purposes of joining her promotional post under Grade I.

(iii) 8th September, 2023 being No. HNG/2C-04-2022/Pt-I/1348 issued by the Director of Health Services, Government of West Bengal for giving effect to the above mentioned order dated

12th October, 2022 specifically with respect of the petitioner, which reads as follows:

“After considering all related aspects, the joining of Smt. Sarkar in her promotional post as Sister-in-Charge, Gr-I(ii) at Canning SD Hospital, South 24 Pgs. is hereby disallowed as TR permission was issued in favour of her as Staff Nurse, Gr-II. She must continue her M.Sc.(Nursing) course under TR category as Staff Nurse, Gr-II as per TR Rule.

However, the incumbent will draw pay & allowances as Staff Nurse, Gr-II till completion of her M.Sc.(Nursing) course.

The incumbent will draw her pay & allowances as Sister-in-Charge, Gr-I(ii) with effect from her date of joining at Canning SD Hospital, South 24 Pgs. only after completion of her M.Sc.(Nursing) course as TR candidates and only after taking proper release from her respective College (i.e. NILD, Kolkata).

And the Superintendent, Canning SD Hospital, South 24 Pgs. is hereby directed to continue her pay & allowances as Staff Nurse, Gr-II till completion of her M.Sc.(Nursing) course and subsequent joining in Canning SD Hospital, South 24 Pgs. as Sister-in-Charge, Gr-I(ii) after observing due procedure.”

5. The petitioner being aggrieved by the orders issued by the Directorate of Health Services, Nursing Branch approached the West Bengal Administrative Tribunal (hereinafter referred as SAT). The case of the petitioner before the Tribunal was that since she had been permitted to pursue higher education as a Trainee Reserve under the 2009 Rules, the authorities cannot insist that she discharge the duties of a nurse during this period. Referring to the provisions of the Trainee Reserve Rule it is submitted that object of the Rule is to promote the

acquisition of higher educational qualifications by the nurses for betterment of Health Services rendered by them. The 2009 Rules provides for fixing a specified quota of the total strength of nurses that may be permitted to proceed for higher education as a Trainee Reserve. Trainee Reserve nurses are also required to execute a bond giving an undertaking that after acquiring higher educational qualification they will serve the State Government in the Health Services for a specified period of time. The Rule contemplates for payment of salary for the post substantially held by the nurse during such period. In fact emphasis has been laid on the provisions contained in Rule 5(3) to submit that the 2009 Rules in fact contemplates penalising a Trainee Reserve that if she discontinues or drops out of any course, then the period which she spent as a Trainee Reserve shall be adjusted against her admissible leave. There was no scope for the petitioner to leave the education being pursued by her as a Trainee Reserve under the 2009 Rules, which mandates completion of the same, backed by a bond to serve the Health Services thereafter with the enhanced skill. There is also no Rule prohibiting a Trainee Reserve from joining on the higher promotional post. Learned counsel for the petitioner submits

that the joining was done after taking due leave from the concerned authorities and, therefore, there is no occasion for the State Government to insist that she cannot get benefits of the promotional post or that for availing the benefits of the promotional post she must drop out or leave the higher education being pursued by her.

6. The learned State Counsel on the other hand submits that it is settled law that the benefits attached to a promotional post are available to an incumbent only from the date he assumes the duties and responsibilities attached to the office of the promotional post. When the promotional order was issued, the petitioner was a Trainee Reserve. Since she continued as a Trainee Reserve she cannot be permitted to join on the higher promotional post as it cannot be conceived that she will be getting a benefit of promotional post without discharging the duties attached to the promoted post; and at the same time pursue her educational qualification for improving her future prospects.
7. We have considered the rival submissions. At the very outset we take into consideration the scope and object of the 2009 Rules, based on a plain reading of the Rules. The Rule provides that nurses employed in the department of Health and Family Welfare of the State Government and born in the

cadre of West Bench Nursing Service, the West Bengal General Service and such other nursing personnel posted as Health Assistant (Female) and Health Supervisor (Female) shall be eligible to be placed on **“Trainee Reserve”** for admission to all Post Graduate or Graduate Level Degree or Diploma Courses recognized by the Indian Nursing Council and the West Bengal Nursing Council only within the State. It further provides for placement as Trainee Reserve for admission to courses recognized by the Indian Nursing Council, outside the State. Rule 3(2) provides that the State Government shall determine, from time to time and specify by an order, the exact number of candidates to be placed on Trainee Reserve, for the different courses. Rule 4 specifies the criteria for placement on Trainee Reserve. This Rule provides their requisite qualifying service for being placed on Trainee Reserve. It also provides that once a nurse is placed as a Trainee Reserve, then she shall not be allowed any other facilities of Trainee Reserve for pursuing similar course in any other discipline, unless permitted by the State Government **“in the exigencies of public services”**. This Rule further provides that for being placed on a Trainee Reserve, a nurse must not be more than 53 years of age on the date of submission of application for admission.

The Rule further provides that nursing personnel shall not be placed as a Trainee Reserve, in excess of a total period of 7 years during the entire service tenure.

8. Rule 5 of the 2009 Rules provides for execution of a bond prior to proceeding on Trainee Reserve. The bond is to be issued to the effect that the nurse shall serve the State Government for a minimum period of 3 years in case she has pursued a course as Trainee Reserve for 2 years or less. In case a nurse pursues a course as a Trainee Reserve for a duration of 3 years or more, then on completion of such course she is required to serve the State Government for 5 years, failing which the nursing personnel is held liable under Rule 5 to refund to the State Government a sum of Rs. 3 lakhs in case the nurse has pursued a course of duration of more than 2 years. It also provides for refund of money (Rs. 2 lakh), for courses of duration of 2 years; and Rs. 1 lakh to be refunded if the course pursued by the nursing personnel was less than 2 years. Rule 5(2) also imposes an embargo upon the nursing personnel who has pursued educational course on Trainee Reserve to resign or retire voluntarily. It also prohibits such nursing personnel to be deputed to any other service or to be placed on lien during the period of service required in the bond

unless the nursing personnel has made payment of the above specified amount. Rule 5(3) stipulates that in case a nursing personnel discontinues or drops out of any course in which she has been placed on Trainee Reserve, she shall forego any further privilege of being placed on Trainee Reserve, and the period which she has spent on Trainee Reserve shall be adjusted against her admissible leave.

9. The Object of the 2009 Rules is thus apparently for allowing acquisition of skills by pursuing education/ higher education to as many nursing personnel as may be specified by the State Government. The Rule thus gives the State Government the discretion to periodically assess the number of nursing personnel who may be spared for being placed on Trainee Reserve, without compromising and maintaining the requirement of nurses in the health service. Once such number is determined and an application is made by a nursing personnel for being placed on Trainee Reserve, the Rule allows the State Government the discretion to consider whether such nursing personnel has the requisite qualifying service for being placed on Trainee Reserve, and if she is found eligible, then the Rule requires the execution of the bond to serve the State Government after

completion of the educational courses. The Rule thus also ensures that the acquisition of the educational qualification, while placed on Trainee Reserve is ultimately for the betterment of health services in the State Government, to achieve the larger public interest. In case a nursing personnel does not serve the State Government after acquiring such educational qualification, the Rule ensures that such a nursing personnel is made to refund money to the State Government. So as to ensure that the nursing personnel after acquiring the higher educational qualification serves the State Government the Rule prohibits such a nursing personnel to resign or retire voluntarily. It also prohibits deputation in any other service or to be placed on lien during the period of service required under the bond. The interest of health services as well as the larger public interest, sought to be achieved is thus safeguarded by the provisions contained in the Rules.

10. As noticed above Rule 5(3) ensures that once a nursing personnel is placed as a Trainee Reserve she continues to pursue the course. Rule 5(3) thus stipulates that if such nursing personnel discontinues or drops out of any course, she shall forego further such privileges and also be visited with a consequence, which is apparently penal in

nature, according to which the period she has spent on Trainee Reserve is to be adjusted against her admissible leave.

11. The aim and object of the Rule appears to be for allowing the nurses to acquire better higher qualifications and for facilitating such acquisition of higher qualification, the Trainee Reserve, pursuing the higher educational qualification continues to draw the benefits attached to the post on which she is substantially posted during the period.

12. We further take notice of the fact that it is apparent from a bare reading of the Rules and also not in dispute that there is no bar whatsoever in the Trainee Reserve Rule for a nurse placed as a Trainee Reserve to join on a promotional post during the period she is a Trainee Reserve. On the contrary, it provides that if a Trainee Reserve aborts the course being pursued in between, then whatever period she has spent as a Trainee Reserve shall be adjusted against her admissible leave, which is specified in Rule 5(3) of the Rules which reads as follows:

“(3) Any Nursing Personnel who discontinues or drops out of any course in which she had been placed on trainee reserve, shall forgo any further privilege of being placed on trainee reserve, and the period which she has spent on trainee reserve shall be adjusted against her admissible leave.”

13. Mr. Mukherjee has also argued that the petitioner has joined the promoted post by resorting to suppression of the fact that at the relevant time she was a Trainee Reserve. We find no force in such submission as it is apparent from the order dated 31st August, 2022 issued by the Superintendent of the Canning Sub-Divisional Hospital that after joining the promotional post she has been relieved for undergoing the M.Sc. (Ng) for the session 2021-23 with a direction to report to the Principal, College of Nursing, NILD, Kolkata. From perusal of the release order issued by the Canning Hospital it is obvious that the transaction of joining on the higher post was completed by the petitioner without resorting to any misrepresentation or suppression of the fact that she was pursuing an educational course as Trainee Reserve.
14. In so far as the submission that it is not conceivable that she can draw the salary of the post of Nurse Grade I and at the same time pursue her educational qualification for betterment of future, we find no force in such submission also. As considered above the Rule itself provides for acquisition of such higher qualification by nurses and that during such period the nurses is to be placed as Trainee Reserve. It is not in dispute that

as a Trainee Reserve she continues to draw pay and emoluments of the substantial post held by her. There is no provision in the Rule to even suggest that a nursing personnel while placed on Trainee Reserve, is to be deprived of benefits attached to be substantial part as a nursing personnel, or promotional benefits.

15. The impugned action of the respondents in depriving a nursing personnel from benefit of her substantial posting on a promotional post, in our opinion, is in fact in conflict with the aims and objects, as apparent from a reading of the 2009 Rules, discussed above. If the impugned action is allowed to sustain, the same would discourage nursing personnel from enhancing their skill/ educational qualification by being placed on Trainee Reserve.

16. Thus, if the impugned actions are allowed to sustain that would also be opposed to the larger public interest, sought to be achieved by the 2009 Rules, for ensuring the enhancement of skills and acquisition of higher qualifications by nursing personnel to serve the public availing health service in the State of West Bengal.

17. There is another aspect of the matter. The 2009 Rules have been framed by the State Government in exercise of powers under the proviso to Article

309 of the Constitution of India. As considered above, the same has a laudable objective of increasing the quality and efficiency of the nursing personnel to better serve the public interest. Such object and intention of Rule framed under the proviso to Article 309 of the Constitution of India cannot be scuttled by issuance of the impugned orders dated 31st August 2022, 12th October 2022 and 8th September 2023 issued by the Director, Health Services. We are of the view that the impugned order dated 31st August, 2022 being No. HNG/4P-03-2022/1124 issued by the Director of Health Services; 12th October, 2022 being No. HNG/4P-03-2022/1335 issued by the Director of Health Services; and 8th September, 2023 being No. HNG/2C-04-2022/Pt-I/1348 issued by the Director of Health Services are unsustainable and are hereby quashed.

18. The order of the SAT dated 30th July, 2024 is thus set aside.

19. We thus hold the petitioner entitled to receive salary for the promoted post of Nurse Grade-I and direct payment of arrears of such pay from 30th August, 2022 till date of payment along with a calculation chart showing details of such payment. The respondents are also obliged to pay salary for the post of Nurse Grade-I month to month

hereinafter. The entire exercise be completed by the respondents within eight weeks from the receipt/production of a copy of this order.

20. The writ petition stands allowed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)