

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 193 of 2024

Rita Biswas

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Debashis Banerjee,
Mr. Rakesh Jana

For the Respondents : Mr. Tapan Kr. Mukherjee, Ld. AGP,
Mr. Somnath Naskar

Judgment on : April 10, 2025.

Madhuresh Prasad, J.:

1. The petitioner was the applicant before the West Bengal Administrative Tribunal (SAT) in O.A. No. 628 of 2022. The Original Application has been rejected by the Tribunal by its order dated 30.07.2024, which is the subject matter of the present proceedings.

2. The brief factual background is that the petitioner was posted as a Staff Nurse Grade II at the Tehatta Sub-Divisional Hospital. In 2021 the petitioner participated in the Joint Entrance test for Master in Science (M.Sc.) Nursing (N.G.) course for the 2021-22 Academic Session conducted by the West Bengal Joint Entrance Examinations

Board. She appeared for the test on 17.07.2021. She was declared selected for the M.Sc. (N.G.) course and she got admitted to the Nil Ratan Sarkar Medical College and Hospital (hereinafter referred to as “NRSMCH”) on February 9, 2022 as a Trainee Reserve candidate.

3. Provision in this regard is contained in the West Bengal Nursing Personnel (Placement on Trainee Reserve) Rules 2009 (hereinafter referred to as “2009 Rules”). The Rule has been framed in exercise of powers under the proviso to Article 309 of the Constitution of India. The Rules provide that in-service nurses, such as the petitioner may be placed on Trainee Reserve for admission to courses specified therein including the Post Graduate degree course in which the petitioner was admitted. The same, however, is subject to fulfilment of the criteria contained in the 2009 Rules.

4. While the petitioner was pursuing her Post Graduate degree on Trainee Reserve the Deputy Director of Health Services (Nursing) issued a notice on 11.05.2022 whereby and whereunder the qualified nurses were required to submit their bio-data on a proforma prescribed therein. The petitioner was eligible in terms of the notice and submitted her bio-data. The bio-data had been solicited for the purposes of considering the eligible nursing personnel for promotion.

5. As a result of such consideration the Director of Health Services Nursing Branch issued an order dated 24.08.2022 containing a list of the nursing personnel found fit for promotion. The petitioner’s

name appeared in the said list at serial 187 promoting her as a Nurse Grade I (II). She was thus posted on the promoted post in Nazirpur Block Primary Health Centre (hereinafter referred to as “BPHC”) at Nadia.

6. The petitioner who was substantially posted at Tehatta Sub-Divisional Hospital, was pursuing her Post Graduate degree on Trainee Reserve at NRSMCH. The promotion order required the promoted nursing personnel to join the promoted post within 21 days. The petitioner thus sought a Release Order from her substantial place of posting i.e. Tehatta Sub-Divisional Hospital. The Release Order was issued by the Superintendent on 26.08.2022. Being released as such the petitioner went to join the promoted post at Nazirpur BPHC at Nadia. She submitted her written request before the Chief Medical Officer of Health (hereinafter referred to as “CMOH”), Nadia on 29.08.2022 for joining on her promotional post at the Nazirpur BPHC at Nadia. The CMOH, Nadia accepted the petitioner’s request. The CMOH, Nadia after accepting her joining, released the petitioner in the afternoon of 29.08.2022 and directed her to report to the transferred place of posting on the promoted post.

7. Before the petitioner could submit her joining at Nazirpur BPHC at Nadia the Director of Health Services, West Bengal issued an order dated 31.08.2022 which reads as follows:

“It has been observed that among these Gr. II Nursing personnel some are presently pursuing Post Graduate Course being placed on Trainee Reserve.

Now it is ordered that above stated Gr. II Nursing Personnel, presently placed on Trainee Reserve are allowed to join to their promotional post after completion of their Trainee Reserve period with prior intimation to state head quarter and they will avail the promotional benefit with effect from the date of their joining in the promotional post.

All concerned are being informed accordingly.”

8. As a result of this order dated 31.08.2022, the petitioner's joining before the CMOH, Nadia was cancelled/ recalled by the CMOH by an order dated 01.09.2022.

9. The petitioner thereafter made representation to the respondent authorities requesting them to allow the petitioner the benefit of the promoted post and requested them to withdraw the order dated 31.08.2022 issued by the Director of Health Services and 01.09.2022 issued by the CMOH, Nadia. The petitioner's representations evinced no response. She thus approached the Tribunal by filing the O.A.

10. It was submitted on behalf of the petitioner, before the Tribunal that the 2009 Rules permitted an in-service nurse to pursue educational degrees from the colleges/ institute recognized under the Rules. The petitioner has already been pursuing the M.Sc. course while serving as Nurse Grade II. The 2009 Rules does not make any distinction that a nurse in Grade I(II) (the promoted post) is in any way ineligible for pursuing an educational degree in-service. There is

no provision which contemplates the beneficiary of a promotion earned by dint of merit to be deprived because he/she is studying a course under the 2009 Rules. The Tribunal has rejected the submission advanced on behalf of the petitioner.

11. The learned Counsel for the petitioner has reiterated the submissions made before the Tribunal in the present proceedings also. He has submitted that the obvious scope and object of the 2009 Rules is to allow acquisition of better qualifications by in-service nurses to serve the larger public interest, upon completion of such course/ degree. The 2009 Rules thus contemplates execution of a bond prior to proceeding on Trainee Reserve. The bond is required to state that the nursing personnel will serve the State Government for a minimum period prescribed commensurate to the duration of the course being pursued. The 2009 Rules further contemplates that in case the nursing personnel fails to serve the State Government for the duration specified in Rule 5 thereof then the same would entail a refund to the State Government of an amount which has been specified at Rs. 3 lakhs for the course having duration of more than 2 years, Rs. 2 lakhs for a course of duration of 2 years and Rs. 1 lakh for the course of duration of less than 2 years. Rule 5 further contemplates that the nursing personnel who proceeds on Trainee Reserve shall not be allowed to resign or retire voluntarily or be deputed to any other service, during the period of service required in terms of the bond unless the amounts specified therein is paid.

12. In order to ensure that the nursing personnel who has proceeded on Trainee Reserve completes the course in which he/ she has been admitted, Rule 5 further provides that if a Trainee Reserve discontinues, or drops out of any course where he or she has proceeded as Trainee Reserve then in such case the nursing personnel shall forego any further privilege of being placed on Trainee Reserve. Under such circumstance, the period spent on Trainee Reserve was to be adjusted as leave admissible to the nursing personnel. Rule 5 being referred to by the learned Counsel for the petitioner reads as follows:

“5. Execution of bond

(1) Nursing Personnel shall have to execute a bond in triplicate prior to proceeding on trainee reserve, to such effect that she shall serve this State Government for a minimum period of three years for course of duration of two-years or less, and five years for courses of duration of three years or more on completion of the course as trainee reserve, failing which, such Nursing Personnel shall refund to the State Government the amount of money, in the manner prescribed below:-

(i) for courses of duration of more than 2 years – three Lakh rupees,

(ii) for courses of duration of two years – two Lakh rupees;

(iii) for courses of duration of less than two years – one Lakh.

(2) No Nursing Personnel shall be allowed to resign or retire voluntarily or deputed to any other service or to be placed on lien, during the period of service required in the bond unless she has paid such amount as specified in sub-rule (1) of this rule.

(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. The learned Counsel for the petitioner has thus submitted that the impugned orders are unsustainable.

14. 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/she 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.

15. 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 Bengal 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 Counsel and the West Bengal Nursing Counsel only within the State. It further provides for placement as Trainee Reserve for admission to courses recognized by the Indian Nursing Counsel, 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”*** (*emphasis ours*). 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.

16. Rule 5 of the 2009 Rules extracted above, provides for execution of a bond prior to proceeding on Trainee Reserve. The bond is to be executed 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.

17. Thus, the Object of allowing in-service nursing personnel to pursue higher education under the 2009 Rules is apparently for allowing acquisition of skills 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 from discharging full time duties for being placed on Trainee Reserve, without compromising on, and maintaining the requisite number 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 before the nursing personnel is allowed to proceed for acquiring a higher qualification as a Trainee Reserve. The Rule also ensures that the acquisition of the educational qualification, while placed on Trainee Reserve is ultimately utilised 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 by the 2009 Rules is thus safeguarded by the provisions contained in the Rules.

18. As noticed above Rule 5(3) ensures that once a nursing personnel is placed as a Trainee Reserve she continues to pursue the course. It thus stipulates that if such nursing personnel discontinues or drops out of any course, she shall forego further such privileges and the period she has spent on Trainee Reserve is to be adjusted against her admissible leave.

19. The unambiguous aim and object of the Rule appears to be for allowing the nurses to acquire better higher qualifications as an in-service trainee reserve. For facilitating acquisition of higher qualification, the Trainee Reserve, while pursuing the higher educational qualification continues to be entitled to the benefits attached to the post on which she is substantially posted during the period.

20. 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

quoted above. The 2009 Rules, therefore, lays emphasis on completion of the higher education qualification being pursued by the Trainee Reserve.

21. In so far as the submission of the learned AGP 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. As considered above, the 2009 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. The Rule as noted above contains provisions to ensure that after acquiring the higher qualification, the nursing personnel serves the public. It is not in dispute that as a Trainee Reserve she is allowed to continue 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 the substantial post as a nursing personnel, or the promotional benefits.

22. The impugned order dated 31.08.2022 issued by the Director of Health depriving a nursing personnel from benefit of her substantial posting on a promotional post, by postponing her joining on the promotional post till after she completes her post graduate degree, in our opinion, is thus 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.

23. 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.

24. Apart from the fact that the impugned orders are, in fact, substantially opposed to the provisions of the 2009 Rules, by frustrating the object and intention of the Rules, we further find that there is no other provision under which the Director of Health Services can derive any power for restraining a nurse (the petitioner) on Trainee Reserve under the 2009 Rules, to join on the promoted post and avail benefits of the promoted post.

25. 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 for promoting health care for the public. Such object and intention of a 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, 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 and the consequential order dated 01.09.2022 issued by CMOH, Nadia purporting to cancel the petitioners joining on the promotional post are unsustainable and are hereby quashed.

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

27. During pendency of the Original Application before the SAT the petitioner had completed her M.Sc. (N.G) course on 26.12.2023. Thereafter she again joined on her promotional post at BPHC Tehatta on 27.12.2023. We thus hold the petitioner entitled to receive salary for the promoted post of Nurse Grade-(II) and direct payment of arrears of such pay from 31st August, 2022 till 26.12.2023 i.e. the period during which her joining dated 29.08.2022 on the promotional post was cancelled as a result of the two impugned orders dated 31.08.2022 issued by the Director of Health Services and the consequential order dated 01.09.2022 issued by the CMOH, Nadia. The payment be made along with a calculation chart showing details of such payment. The respondents are also obliged to continue pay salary for the post of Nurse Grade-(II) month to month hereinafter, in accordance with law. The entire exercise be completed by the respondents within eight weeks from the receipt/production of a copy of this order.

28. The writ petition stands allowed.

29. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)