

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal (Chairman)  
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. 262 of 2020

SMT. SHYAMALI GHOSH Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>3</p> <hr/> <p>21.09.2020</p>	<p>For the Applicant : Mr. G.P. Banerjee, Advocate</p> <p>For the Respondent : Mr. S. Ghosh, Advocate</p> <p>In this application, the applicant, Shyamali Ghosh has prayed for several reliefs, the relevant portion of which is as under:</p> <p>(a) A direction do issue upon the concerned respondent authorities to forthwith allow the applicant to continue her M.Sc. Nursing, 2019-2021 studies at her respective Teaching Institution on 'Study Leave' facility in terms of the order dated 27.07.2020 issued by the Director of Health Services, West Bengal after setting aside the impugned cancellation order of the same dated 03.08.2020 of the said authority, duly considering the representation dated 12.08.2020 of the applicant against such rejection, all being Annexure – 'E' herein, as well as to approve all facilities accrued thereupon and to command them to act strictly in accordance with law;</p>	

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	<p>(b)A direction do issue upon the concerned respondent authorities, particularly upon the Director of Health Services, West Bengal, the respondent No.2 herein, to forthwith set aside/cancel/rescind/withdraw the impugned Memo. No. HFW-37019(18)/1/2020-DIR-NURSING SEC-Dept. of H&amp; FW/668 dated 4<sup>th</sup> August, 2020, issued by him, in respect of the applicant herein, in considering her reply thereto dated 13.08.2020, both being Annexure-‘F’ herein and to command them to act strictly in accordance with law.”</p> <p>It appears that the applicant was admitted in the M.Sc. Nursing course for the session 2019-2021 under the West Bengal Government services and started pursuing her course. By notice dated 21<sup>st</sup> April, 2020, she was instructed to resume her duty immediately in her respective place of posting in the same capacity to combat the emergency situation. The applicant complied with the said notice and joined duty on 22<sup>nd</sup> April, 2020. Thereafter by order dated 20<sup>th</sup> May, 2020 the applicant was directed to join the respective teaching institution on 1<sup>st</sup> June, 2020. Accordingly, she rejoined the course. It appears that thereafter on 4<sup>th</sup> August, 2020 the authorities had issued a letter calling for an explanation to all inservice candidates who are continuing study for the</p>	

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	<p>M.Sc. course in an unauthorised manner and explanation was called for and authorities were directed to send a report of action by 14<sup>th</sup> August, 2020.</p> <p>Thereafter the Principal Nursing Officer, In Service Training School, Chittaranjan Seva Sadan &amp; Sishu Sadan, Kolkata by memo No. CSS/ITS/258/2020 dated 6<sup>th</sup> August, 2020 had directed the applicant to furnish an application for pursuing M.Sc. (Nursing) course allegedly without proper permission and directed to join the institution immediately. Thereafter on 18<sup>th</sup> August, 2020 the Original Application has been filed.</p> <p>Mr. G.P. Banerjee, learned advocate for the applicant submits that since the applicant had pursued her course for about one year and the High Court in a similar application in W.P.S.T. No. 71 of 2020, I.A. No. CAN 1 of 2020 : “Papiya Maity &amp; Ors. vs. The State of West Bengal &amp; Others” by an order dated 5<sup>th</sup> September, 2020 has admitted an application challenging the order of the Tribunal, appropriate order may be passed.</p> <p>Mr. S. Ghosh, learned advocate appearing on behalf of the State authorities submits on written instruction that the applicant was placed low in the merit list and is not entitled for TR. After publication of the TR list, the applicant as a government employee prayed for study leave. It is submitted that the applicant has suppressed the fact that she had already availed a leave of two years to pursue her Post Basic B.Sc. Nursing course.</p>	

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	<p>Due to such suppression of fact, her name was enlisted for getting study leave initially in a special group wherein a few, who belong to the age group of 50 to 52 years 11 months 29 days on the last date of application and did not avail any study leave during their service period, are allowed to get study leave. Submission is a government employee can avail study leave for two years only during her service period under Sub-Rule 2(b) of Appendix No.5 of W.B.S.R. Part-I, read with Rule 197 of W.B.S.R. Part-I. Since the applicant had already got study leave for two years, that is, during 2008-2010, her name has been cancelled for getting study leave in a special group. Let a copy of the written instruction filed on behalf of the State respondents be kept on record.</p> <p>In reply it is submitted by Mr. Banerjee that since the applicant has pursued the course for one year and as after the letter dated 4<sup>th</sup> August, 2020 seeking an explanation was issued, a representation dated 12<sup>th</sup> August, 2020 appearing at pages 55-56 of the application has been filed before the Director of Health Services, Government of West Bengal, the respondent no.2, it may be directed to be considered and the applicant is prepared to forego her salary.</p> <p>Having heard the learned advocates for the parties and as prayed for by Mr. Banerjee, the application is disposed of by directing the Director of Health Services, Government of West Bengal, the respondent no.2 to</p>	

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SCN.	<p>dispose of the representation dated 12<sup>th</sup> August, 2020, appearing at pages 55-56 of the application, by passing a reasoned order to be communicated to the parties within two weeks from the date of presentation of a copy of this order downloaded from the internet / website after giving an opportunity of hearing and after verifying the documents. At the time of hearing the applicant is at liberty to rely on judgements of the High Court, Supreme Court and the Tribunal along with written undertaking as prayed for and if filed, and the respondent no.2 in his reasoned order shall deal with the same.</p> <p>Since for circumstances beyond control the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	