

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Justice Soumitra Pal, Hon'ble Chairman****& The Hon'ble Dr. Subesh Kumar Das, Administrative Member.****Case No –OA-253 of 2020.****Smt. Sucheta Ghosh Chowdhuri and 23 others. –Vs- The State of West Bengal & Others.**

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| <p style="text-align: center;"><u>1</u> 10.8.2020.</p> | <p>For the Applicant : Mr. G. P. Banerjee, Advocate.</p> <p>For the State Respondent : Mr. S. Ghosh, Nos. 1 to 5. Advocate.</p> <p>Affidavit of service filed today be kept on record.</p> <p>The matter was mentioned on this day by Mr. G. P. Banerjee, learned advocate for the applicants, for hearing today pleading urgency and the Tribunal on being satisfied granted leave to move the application. The Registry has published a supplementary cause list and the matter has appeared under the heading "New Application". Let a copy of the supplementary daily cause list be kept on record.</p> <p>Mr. S. Ghosh, learned advocate appearing on behalf of the State respondent nos. 1 to 5 appears on instruction from the said respondents.</p> <p>At the outset, Mr. Banerjee, learned advocate prays for leave to file supplementary application containing additional facts and additional prayers for the grant of interim relief and final relief. Leave granted to file supplementary application. Let supplementary application filed be kept on record. Let</p> | |

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| | <p>a copy of the same be served on Mr. Ghosh, which is served and accepted.</p> <p>In this application, 24 applicants, the nursing staff in the Department of Health and Family Welfare, Government of West Bengal, have prayed for certain reliefs, the relevant portion of which is as under :-</p> <p><i>“a) A direction do issue upon the concerned respondent authorities to forthwith allow the applicants to continue their M.Sc Nursing course 2019-2021 at their respective Teaching Institutions after granting them Study Leave facilities in terms of Rule 197 of the WBSR, Part-I, 1971 as well as to accord all facilities accrued thereupon and to command them to act strictly in accordance with law ;”</i></p> <p>In the supplementary application further relief has been sought for, which is as follows :-</p> <p><i>“(e) A direction do issue upon the concerned respondent authorities to forthwith set aside/cancel/withdraw the impugned Memo. No. HFW-</i></p> | |

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| | <p><i>37019(18)/1/2020-DIR-NURSING SEC-Dept. of H&FW/668 dated 4th August, 2020, issued by the Director of Health Services, West Bengal, being Annexure-'J' herein and to command them to act strictly in accordance with law."</i></p> <p>Interim Order prayed in the Original Application is as under :-</p> <p><i>"An interim order do issue upon the concerned respondent authorities restraining them from giving any effect and/or further effect to the impugned letter dated 6th August, 2020 being Annexure-'I' herein and to allow the applicants to pursue their studies of M.Sc Nursing, 2019-2021 uninterruptedly pending disposal of the instant Original Application."</i></p> <p>The Interim Order, as prayed for, in the supplementary affidavit is as follows :-</p> <p><i>"An Interim Order be passed restraining the concerned</i></p> | |

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| | <p><i>respondent authorities from giving any effect and/or further effect to the impugned Memo. No. HFW-37019(18)/1/2020-DIR-NURSING SEC-Dept. of H&FW/668 dated 4th August, 2020, issued by the Director of Health Services, West Bengal, being Annexure-'J' herein pending disposal of the instant Original Application."</i></p> <p>It appears that the applicants pursuant to the advertisement in the information booklet, being annexure-A to the application, had applied before West Bengal University of Health Sciences, the respondent no. 6 for enrolling their names for undergoing M.Sc Nursing. They deposited a sum of Rs. 3000/- for registration and after being enrolled had joined their respective institutions "after obtaining due permission / no objection from the competent authorities on 20th September, 2019" (paragraph 6 (b) of the application) and their respective classes started from 1st October, 2019.</p> <p>It has been further stated that on 23rd October, 2019 - the Joint Director of Health Services (Nursing)</p> | |

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| | <p>the respondent no.-3, had issued a notice publishing a list of in-service nursing candidates eligible for pursuing M.Sc Nursing course wherein the names of the applicant no. 1 and other two applicants appeared against serial nos. 117, 116 and 115. The said respondent no. 3 issued a further notice dated 18th December, 2019 seeking certain informations which according to the applicants were complied with.</p> <p>It appears that on 21st April, 2020, the Director of Health Services, West Bengal, - the respondent no.-2, instructed all in-service nursing personnel attached to different teaching institutions to resume their duty in their respective place of posting to combat the present emergency situation in the State which was, according to the applicant, was duly complied with and thereafter being subsequently released with an instruction to the applicants to join their respective teaching institutions on 1st June, 2020 which was complied with.</p> <p>It has been further stated that the Assistant Registrar, West Bengal University of Health Services had issued letter to the applicants asking them to submit the required Trainee Reserve letter or leave</p> | |

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| | <p>letter along with attendance record from the concerned Institute where they had joined M.Sc. Nursing course at the earliest failing which the applicants were advised to tender their resignation from service which according to the applicants was an act of indecision.</p> <p>According to the applicants as till date as they have been attending classes regularly, prayer was made personally and as well as jointly to grant study leave in terms of the Rule 197 read with Appendix-V of WBSR- 1971 as after getting admitted in the colleges they have exhausted the leave to their credit. Referring to page 87 of the application it is submitted that since prayer has been made by the applicants for TR study leave with salary, appropriate order may be passed. According to the applicants in the facts and circumstances of the case the memo dated 4th August, 2020, being Annexure-J the supplementary affidavit, calling for explanation to 39 in service candidates which includes the applicants by 14th August, 2020 is uncalled for and illegal.</p> <p>According to Mr. G. P. Banerjee, as with the full knowledge of the respondent no. 1 to 5 the applicants were prosecuting M.Sc. Nursing courses, requirement</p> | |

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| | <p>of formal release order from the higher authorities is not required.</p> <p>Submission is as no objection was issued for appearing in the entrance examination by the State respondent nos. 1 and 2 and during admission no objection was raised by the State respondents and a sum of Rs. 3000/- was deposited by each of the applicants with the West Bengal University of Health Sciences and since candidates other similarly situated are still continuing with their studies, which is an example of nepotism, as evident from paragraph 4 of the supplementary application appropriate interim order may be passed. According to the applicants formal release order is not required from the authorities.</p> <p>Mr. S. Ghosh, learned advocate appearing for the State respondent nos. 1 to 5 submits that mere admission in M.Sc. Nursing or deposit of Rs. 3,000/- with the West Bengal University of Heath Sciences do not make the applicants eligible for continuing with nursing course and as formal release order from the department is mandatory, which has not been granted by the competent authorities, no order may be passed.</p> | |

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| | <p>Heard learned advocates for the parties. Admittedly the applicants had applied for M.Sc. Nursing course. They were selected and deposited the fees with the West Bengal University of Health Sciences and continued with their studies, which according to the applicants, was within the knowledge of the respondents. According to the applicants since it is the convention for long that formal release order is not required, the memo dated 4th August, 2020 is unjust and illegal. Further as it is an act of discrimination and nepotism at least 5 candidates similarly situated are pursuing M. Sc (Nursing) course.</p> <p>It appears from the application that overwhelming number of students are continuing M.Sc. Nursing course after getting formal release order which has not been obtained by the applicants. Merely because some candidates are continuing their studies in an unauthorised manner, as evident from paragraph 4 of the supplementary application, cannot confer a right on applicants to further their case. A wrong, if any, done by others cannot confer right on the applicants. Hence, no order can be passed on this</p> | |

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| Sourav | <p>application. The application is dismissed.</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>(DR. SUBESH KUMAR DAS) MEMBER (A)</p> <p>(SOUMITRA PAL) CHAIRMAN</p> | |