

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO. 877 OF 2015
WITH
ORIGINAL APPLICATION NO. 930 OF 2015**

ORIGINAL APPLICATION NO. 877 OF 2015

DISTRICT :JALNA

Smt. Sulochana Manohar Padol,)
Aged 43 yrs, Working as Staff)
Nurse, Civil Hospital, Parabhani,)
R/O. Samarth Nagar, Ambad Road,)
Jalna.)
Address For Service Of Notice:)
R/O. Samarth Nagar, Ambad Road,)
Jalna.)...Applicants

VERSUS

1. The Director of Health)
Services, [M.S.], Mumbai,)
Having Office at Aarogya)
Bhavan, In the campus of)
Saint Georges Hospital,)
P.D' Mello Road,)
Mumbai - 400 001.)
2. The Joint Director [Medical])
Medical Education and)
Research, Mumbai, Having)
Office at the Directorate)
of Medical Education and)

Research, St. George's)
 Hospital Compound,)
 Near C.S.T., Mumbai-1.)

3. The State of Maharashtra,)
 Through Principal Secretary,)
 Public Health Department,)
 Having Office at Mantralaya,)
 Mumbai – 400 032.)....Respondents

WITH

ORIGINAL APPLICATION NO. 930 OF 2015

DISTRICT :THANE

Smt. Kamini Ajay Gaikwad,)
 Aged 36 Yrs, Working as Staff)
 Nurse, Central Hospital,)
 Ulhasnagar-3, Dist. Thane,)
 R/O. Shobha Avchar, Tushar Apt.,)
 Flat No.302, 3rd Floor,)
 Subhash Tekadi, Ambedkar Chowk,)
 Ulhasnagar-4, Dist. Thane.)
Address For Service Of Notice:)
 R/O. Shobha Avchar, Tushar Apt.,)
 Flat No.302, 3rd Floor,)
 Subhash Tekadi, Ambedkar Chowk,)
 Ulhasnagar-4, Dist. Thane.)...Applicants

VERSUS

4. The Director of Health)
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 Having Office at Aarogya)
 Bhavan, in the campus of)
 Saint Georges Hospital,)
 P.D' Mello Road,)
 Mumbai – 400 001.)

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5. The Joint Director [Medical])
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 Research, Mumbai, Having)
 Office at the Directorate)
 of Medical Education and)
 Research, St. George's)
 Hospital Compound,)
 Near C.S.T., Mumbai-1.)
6. The State of Maharashtra,)
 Through Principal Secretary,)
 Public Health Department,)
 Having Office at Mantralaya,)
 Mumbai - 400 032.)....Respondents

Shri B.A. Bandiwadekar, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents (in O.A.No.877 of 2015).

Shri K.B. Bhise, learned Presenting Officer for the Respondents (in O.A.No.930 of 2015).

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 6.09.2016

ORDER

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents (in O.A.No.877 of 2015) and Shri K.B. Bhise, learned Presenting Officer for the Respondents (in O.A.No.930 of 2015).

2. These O.A.s were heard together and are being disposed of by a common order as to issues to be decided are similar.


3. The Applicant in O.A.No.877 of 2015 had applied for admission in M.Sc. (Nursing) course in the year 2015-2016 in the Nurses Training Institute, J.J. Hospital, Mumbai. The Respondent No.1 by letter dated 30.9.2015 informed the Respondent No.3 that the Applicant was sent on deputation in 2009-2010 for the Diploma Course in Psychiatric Nursing (D.P.N.) to the National Institute of Mental Health and Neuro Science, Bangalore. After completion of this course, she was required to serve the Government for five years. Learned Counsel for the Applicant stated that the Applicant pursued the course of B.Sc. (Nursing) from Indira Gandhi National Open University, New Delhi (I.G.N.O.U.) from Tehmi Grant Institute of Nursing Education, I.G.N.O.U. Study Centre, Pune. The Applicant applied for earned of 54 days to the Civil Surgeon, Jalna on 14.3.2011 and later on applied for leave on 17.4.2011, 2.12.2011, 4.1.2012 and 16.5.2013. The Applicant completed her B.Sc. Nursing Course, and a certificate was granted to her. The Applicant accordingly informed Civil Surgeon, ~~Parbhani~~ who reported about acquisition of B.Sc. (Nursing) degree by the Applicant to the Respondent No.1 through Deputy Director, Health Services (Nursing), Mumbai by letter dated July, 2014. In August, 2015, the Respondent No.2 invited applications for admission to M.Sc. (Nursing) course for 2015-2016. The Applicant applied on-line for this course and was selected. The

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Principal, Nursing Training Institute, Mumbai by letter dated 31.8.2015 informed the Applicant that she was admitted to M.Ss. (Nursing) course which was to commence on 1.9.2015. The Applicant submitted an application dated 16.9.2015 to the Respondent No.1 to relieve her to enable her to join the course. The Respondent No.1, sent a report on 30.9.2015 to the Respondent No.3, declining to send the Applicant on deputation to prosecute M.Sc. (Nursing) course. Learned Counsel for the Applicant argued that the reasons given in the impugned communication dated 30.9.2015 are wrong. It was stated that (a) in 2009-2010, the Applicant had completed Diploma Course in Pshychiatric Nursing and M.Sc. (Nursing) is not the higher course and it was a case of 'cross-registration'. (b) she had completed B.Sc. (Nursing) course in 2014 from I.G.N.O.U. for which she had not taken permission from the Director of Health Services and (c) this degree of I.G.N.O.U. is not recognised by Indian Nursing Council and Maharashtra Nursing Council. The Applicant was said to be ineligible for being sent for M.Sc (Nursing) course on deputation.

4. The Applicant has challenged this communication dated 30.9.2015 from the Respondent No.1 before this Tribunal. These issues were examined while considering the request of the Applicant for interim relief. During the hearing on 28.10.2015, learned P.O. informed that B.Sc. degree of I.G.N.O.U. is recognised by the Indian Nursing Council. This Tribunal directed the Respondents to relieve the Applicant to enable her to join M.Sc. (Nursing) course



before 31.10.2015. The Applicant has accordingly joined the course, but the issue whether she is entitled to be sent on deputation for the said ^{course} remains to be decided.

4. Learned P.O. argued that the Applicant cannot be sent on deputation for following reasons, viz:-

- (i) The Applicant didnot obtain permission of the Respondent No.1 to pursue B.Sc. (Nursing) course from I.G.N.O.U.
- (ii) After doing B.Sc. (Nursing), the Applicant was required to serve the Government for five years, before being eligible for any further training, and
- (iii) Generally, if an employee is sent on deputatin for one training, he is not eligible for being sent for another training on deputation for second time. The Applicant is, therefore, not eligible to get salary during the period for which is pursuing M.Sc..(Nursing) course.

5. It is seen that the issue regarding the Applicant not taking prior permission to pursue B.Sc. (Nursing) Course was briefly discussed in the interim order dated 28.10.2015. The Applicant in para 6.3 of O.A. had stated that she applied for and was granted leave by Civil Surgeon, at least on four occasions to pursue B.Sc. (Nursing) course. These facts have not been denied by the Respondents in para 8 of the affidavit in reply of the Respondent Nos. 1 and 3 dated 3.2.2016. The Respondents are relying on Government letter dated 23.4.2013 (Exhibit R-1 on page 58 of the Paper Book), which provides that once a traing course is completed, application for another course cannot be made, till the candidate fulfills


the conditions of Bond executed by him/ her, which is ^{serving} ~~saving~~ the Government for five years. In the present case, the Applicant had given Bond to serve the Government after completion of Diploma in Psychiatric Nursing in April 2010. The Bond period expired in April 2015. The Applicant has not violated this condition. As regards permission to join B.Sc. (Nursing) course of I.G.N.O.U., admittedly it is not a full time course. The Applicant had informed Civil Surgeon, Jalna, her head of office, that she was pursuing B.Sc. (Nursing) course from I.G.N.O.U. and was granted leave to pursue the studies by the Civil Surgeon. It was for the Civil Surgeon to seek and forward the application of the Applicant in this regard to the Respondent No.1. In fact, Civil Surgeon, Jalna, in July, 2014, had informed Deputy Director of Health Services (Nursing) Mumbai that the Applicant has completed B.Sc. Nursing Course of I.G.N.O.U. This letter is at Exhibit 'D' (page 25 of the Paper Book). This fact is mentioned in para 6.5 of the O.A. and is admitted by the Respondents in para 10 of their affidavit in reply. If the Applicant had violated any rules, her explanation should have been called by the Respondent No.1. However, it is clear that due note was taken by the Respondent No.1 that the Applicant had passed B.Sc. (Nursing) course in 2014. It was not a full time course. The Applicant had paid fee etc. for the course herself. The question of executing any Bond for this course, doesnot arise when the Applicant didnot avail herself of any concession by the Government for executing this course.

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6. Learned Counsel for the Applicant argued that many employees have been sent by the Respondents on deputation for training on more than one occasion. This fact is confirmed by the Respondent No.1 in short affidavit in compliance with order dated 8.8.2016. In para 2, it is stated that:-


"In reply to the contents of the para no.9 of the rejoinder filled by the Applicant dated 20-03-2016 I say and submit that Manisha Patil and Pratibha More are treated on deputation on both times as they have taken the permission for the same from the competent authority i.e. from Govt. and Director as well but in the case of the applicant she has not taken the permission of competent authority i.e. Director of Health Services which is mandatory as per the Government Resolution issued by Public Health Department dated 23.04.2013."

It is admitted that the Respondent No.1 had approved deputation in many cases for deputation for training on more than one occasion. The only ground to deny the deputation to the Applicant is that she had not taken permission from Director of Health to pursue B.Sc. (Nursing) and M.Sc. (Nursing) courses. As regards B.Sc. (Nursing) course, it is seen that it was not a full time course. The Applicant used her own time after office hours and sometime on leave, which was duly granted to her, to pursue the studies of B.Sc. (Nursing). She paid her own fee. Her Superior Officer, viz. Civil Surgeon, Jalna was fully informed and probably gave her permission, at least impliedly by granting her leave periodically and informing the higher authorities about her obtaining B.Sc. (Nursing) degree. It cannot be held that the Applicant had not obtained necessary permission to pursue



B.Sc. (Nursing). In fact letter of Government dated 23.04.2013 (it is not a G.R.) is regarding selection of Nurses for various training programmes, which necessarily mean that expenses for such programmes are borne by the Government. The Applicant did not seek any Government help in pursuing B.Sc. (Nursing) course and the provisions of letter dated 23.04.2013 would not apply in that case. As regards, permission to pursue M.Sc.(Nursing) course, the Respondent No.1 denied the permission to the Applicant by communication dated 30.09.2015, which is challenged in the present O.A. Once it is held that the aforesaid communication was bad in law, it would clear that the Applicant was eligible to send for training to pursue M.Sc. (Nursing) course. It is quite clear that the Applicant could not be denied permission to pursue the M.Sc. (Nursing) course as per letter dated 23.04.2013, as discussed above. The impugned communication dated 30.09.2015 is quashed and set aside. The Applicant is eligible to be sent on deputation to pursue M.Sc. (Nursing) course. Denial of that facility would amount to discrimination and such order would be arbitrary, not being in consonance with Government policy as enunciated in letter dated 23.04.2013.

7. Coming to O.A.No.930/2015, the Applicant had obtained admission in B.Sc. (Nursing) for the year 2015-16. It was informed by the Respondent No.1 to the Respondent No.3 by impugned communication dated 30.09.2015 that the Applicant had already completed training course in 2009 on Government sponsorship for the Public Health Nurse. She



completed her Bond of 5 years in 2013. Learned Counsel for the Applicant argued that the Applicant's request for training in P.B. B.Sc.(Nursing) was rejected on the ground that she can be appointed as Public Health Nurse by promotion or direct recruitment. On perusal of Government letter dated 23.04.2013, I do not find any condition that if a candidate is eligible for promotion, he /she should not be sent for further training. It is also mentioned that P.H.N. and P.B. B.Sc. (Nursing) are different training programmes, and P.B. B.Sc. is a Cross-Registration. The Respondents have not clarified why Cross-Registration will prevent a person from pursuing higher studies. Only ground that the Applicant was earlier sent for one training on deputation, so cannot be sent again, is also not in accordance with letter dated 23.04.2013, Clause 6 of the aforesaid letter reads :-

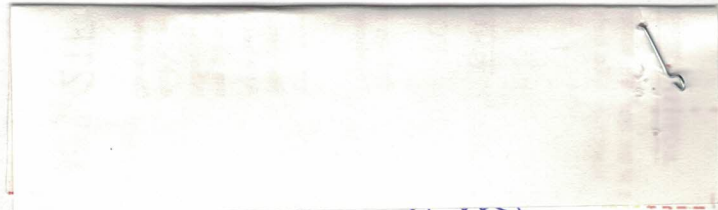
“(६) उमेदवारांना एक अभ्यासक्रम प्रशिक्षण पूर्ण केल्यानंतर त्या अभ्यासक्रमासाठी दिलेले बंधपत्र पूर्ण (किमान पाच वर्षे) झाल्याशिवाय दुस-या प्रशिक्षणासाठी अर्ज करता येणार नाही.”

This condition clearly implies that after completion of Bond of earlier training, a candidate can be sent for another training. The Applicant had completed her Bond which she had executed while being sent for training for P.H.N. She is eligible to be sent for second training, as she has applied and was selected for P.B. B.Sc. (Nursing) course. The Respondents had admitted that many Nursing candidates have been sent for deputation for more than one training. There is no reason not to give such permission to the Applicant. Denial of permission to the Applicant to be sent for training (B.Sc. Nursing Course) will be discriminatory and

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arbitrary, being not in accordance with Government policy as reflected in Government letter dated 23.4.2013.

8. Having regard to the aforesaid facts and circumstances, both the Applicants are held eligible to be sent on deputation to pursue M.Sc. (Nursing) and B.Sc. (Nursing) courses, respectively from the year 2015-2016. The Applicants will be eligible for all the facilities given to such candidates sent on deputation of training. These O.A.s are allowed accordingly with no order as to costs.



(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 06.09.2016

Place : Mumbai

Dictation taken by : SBA

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