

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WPS No. 6172 of 2022**

- Smt. Shirin Joseph (Before Marriage Ku. Shirin Bhoyar) W/o Ishank Joseph aged about 32 Years Posted as Staff Nurse, District Hospital Balod, R/o Ward No. 12, Shiv Colony, Amapara, Tahsil And District Balod, Chhattisgarh

-----Petitioner**VERSUS**

1. State of Chhattisgarh, through the Department of Health and Family Welfare, Mahanadi Bhavan, Mantralaya, Atal Nagar, Naya Raipur, District : Raipur, Chhattisgarh
2. Director Directorate of Health Services, Block No. 1, Indrawati Bhawan, 3rd Floor Atal Nagar, Naya Raipur, District : Raipur, Chhattisgarh
3. Director Directorate of Health Education, Old Nurses Hostel, D.K.S. Bhawan Premises, Raipur, District : Raipur, Chhattisgarh
4. Joint Director (Nursing) Directorate of Health Services, Indrawati Bhawan, 3rd Floor, Atal Nagar, Naya Raipur, District : Raipur, Chhattisgarh
5. President Counseling Committee (Nursing Courses), Directorate of Health Education, Old Nurses Hostel, D.K.S. Bhawan Premises, Raipur, District : Raipur, Chhattisgarh
6. Divisional Joint Director Health Services, Raipur Division, Old Nurses Hostel, D.K.S. Bhawan Premises, Raipur, District : Raipur, Chhattisgarh
7. Chief Medical and Health Officer District Balod, Fountain Chowk, Old District Hospital Building, Ground Floor, Balod, District : Balod, Chhattisgarh
8. Civil Surgeon- Cum- Hospital Superintendent District Hospital Balod, District : Balod, Chhattisgarh
9. Ku. Khusboo Sharma Staff Nurse, Primary Health Centre Sirsida, District : Balod, Chhattisgarh

-----Respondents

For Petitioner : Mr. Achyut Tiwari, Advocate

For Respondents-State : Mr. Sandeep Dubey, Dy. Adv. General

Single Bench: Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****30/09/2022**

1. Grievance raised in this petition is inaction on the part of Respondents in not granting 'No Objection Certificate' (NOC) to petitioner for her admission and pursuing studies in M.Sc. (Nursing).
2. Learned counsel for petitioner submits that petitioner was

appointed as Staff Nurse on 18.09.2014 and currently posted at District Hospital, Balod. He contended that *vide* Annexure P-7, Director, Health Services, issued Circular dated 12.03.2019 and issued guidelines for pursuing higher education to the officers and employees of the State Government. On 20.04.2022, Director, Health Education issued advertisement for submission of online form for M.Sc. (Nursing) course. Petitioner who is an employee of the State Government, pursuant to the Circular dated 12.03.2019, submitted her application seeking prior permission for submission of form and appearing in the entrance examination for M.Sc (Nursing). Petitioner submitted her application form on 21.06.2022 through proper channel. Along with petitioner other employees of the Department have also submitted their application forms seeking permission from the competent authority for appearing in the examination. Application of petitioner was forwarded through proper channel to Respondents No. 2, and on 26.08.2022, Respondent No. 2 considered all the applications submitted by the employees of Health Department and granted permission to petitioner to appear in entrance examination along with other applicants. Petitioner appeared in the examination and became successful candidate. Petitioner, thereafter, on 22.08.2022 submitted an application for granting NOC from the Department/ competent authority for her admission and pursuing M.Sc. (nursing) course, before the Civil Surgeon, District Hospital, Balod. Respondents No. 2 while considering the applications of others has not permitted the petitioner for her admission in M.Sc. (nursing) and in an arbitrary manner permitted Respondent No. 9 who is junior to her, in cadre, for her admission. He submits that as per the Circular dated 26.02.2019, Annexure P-7, for granting permission to the officers and employees, the permission to be granted only to 02 employees in the district based on seniority in the cadre. Date of appointment of petitioner is 18.09.2014 and that of Respondent No. 9 is 01.08.2016 and therefore Respondent No. 9 is much junior to

petitioner. As per the guidelines issued *vide* Circular dated 26.02.2019, petitioner being senior to Respondent No. 9 is having the preferential right for getting admission then that of Respondent No. 9. He submits that as today is the third and the final round of admission in the college, therefore, direction be issued to the Respondents-authority to grant NOC and permission for her admission in the M.Sc. (Nursing), otherwise, petitioner will lose her entire one year.

3. Mr. Sandeep Dubey, learned State counsel submits that as per the instruction received by him on 28.09.2022, the claim of petitioner was under consideration. He contended that he has been informed by the authorities that NOC for admission of petitioner was not granted only because the petitioner applied late. In support of this contention, he submits that the petitioner submitted her application for permission to appear in the entrance examination, much after the submission of application of Respondent No. 9. As per the Circular/ guidelines issued by the State Government, the cut-off date seeking permission to appear in the examination is 31.03.2022, whereas petitioner has submitted the application only on 21.06.2022 and Respondent No. 9 submitted her application on 29.03.2022. Application seeking permission for appearing in the entrance examination by Respondent No. 9 was on earlier point of time. He also pointed out that after declaration of result also, petitioner submitted her application only on 22.08.2022 seeking permission/ NOC for her admission in the college and, therefore, the claim of petitioner has rightly been not considered by the Respondent-authorities. However, Mr. Sandeep Dubey, learned counsel submits that though in the Circular, last date for making application for permission to appear in the entrance examination was prescribed as 31.03.2022 but looking to the post covid-19 affect, the Department, taking lenient view, accepted the applications from the employees even after the prescribed cut-off

date ie. 31.03.2022.

4. At this stage, learned counsel for petitioner submits that as per the document obtained by him, application submitted by Respondent No. 9 shows receipt of office/ Department on 01.04.2022 and therefore, Respondent No. 9 has not submitted her application within cut-off date.
5. I have heard learned counsel for the parties.
6. The submission of learned counsel for petitioner with regard to seniority, that the petitioner is senior to Respondent No. 9 is not disputed by the learned State counsel. The only ground for not considering the claim of petitioner is that the application submitted by petitioner was only on later point of time then that of Respondent No. 9, I find it hard to accept the submission of learned State counsel that the claim of petitioner is not considered only because petitioner has submitted her application on later point of time. When the submission of learned State counsel is that the application has been accepted even after the prescribed date ie. 31.03.2022 because of the post covid-19 effect, once the Department has taken recourse of accepting the application seeking permission for appearing in the entrance examination even after the prescribed date then the Respondents-authorities are not permitted to turn around saying that the petitioner is not entitled for the NOC from the Department to pursue her M.Sc. (nursing) course from the college even though she cleared in the examination, moreso when, the petitioner appeared in the examination only after grant of permission *vide* order dated 26.08.2022. This order dated 26.08.2022 was issued by the Respondent No. 2 on one date, considering all the applications submitted by the employees of the State Government. The permission was granted only on one date ie. 26.08.2022 to petitioner as also to other employees.
7. It is not the case of Respondent-State that on the date of granting

permission for appearing in the examination on 26.08.2022, application of the petitioner was not placed before the competent authority. All applications were considered on one and the same date ie., 26.08.2022, Respondent No. 2 had passed the order in favour of petitioner only granting her permission to appear in the entrance examination. whereas with respect to other employees, the permission is granted for appearing in examination and for admission as well, which is *prima facie* arbitrary and discriminatory action on the part of Respondent-authorities.

8. Even if the guidelines/ Circular of the State Government is taken note of, it clearly prescribes that 02 candidates/ employees of the department in a district will be granted permission considering their seniority in the cadre. Clause 5(च) of the said guidelines is extracted below for ready reference:

"5. (च) प्रत्येक कोर्स हेतु जिले की वरिष्ठता के आधार पर केवल 02 ही अभ्यर्थियों का नाम प्रेषित किया जाएगा. जिसका गोसवारा संलग्न प्रारूप (परिशिष्ट-5) में संचालनालय को प्रेषित किया जावेगा."

9. Accordingly, in the opinion of this Court, when on the date of considering of applications of all the employees, the application of petitioner was also placed before Respondents No. 2 competent authority, petitioner being senior to Respondent No. 9, in cadre, is having the preferential right over Respondent No. 9 to get permission for her admission in the college.
10. In view of the aforementioned undisputed fact with regard to accepting applications of other employees also within extended period, consideration of the applications of all the employees on one and the same date ie., 26.08.2022 by Respondent No. 2. Petitioner being senior to Respondent No. 9, as also clause 5(च) of the guidelines and also the submission made by learned counsel for petitioner and not disputed by Respondents that today is the last date for getting admission in the nursing college, I find it

appropriate to dispose of this writ petition directing Respondents No. 2 and 4 to grant permission to petitioner for her admission in M.Sc. (Nursing), today itself.

11. In view of the above, writ petition stands disposed of.

Certified Copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

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