

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH



M.A.NO.060/00116/2020 IN
 O.A.NO.060/01329/2019
 Chandigarh, this the 23.1.2020
 (Order reserved on: 22.01.2020)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. Praveen Thomas age 33 years S/o Sh. Thomas PT, R/o #462, Phase-6, Mohali-160055, Group-B.
2. Ms. Divya Elizabeth Philip, age 30-1/2 years D/o Philip T George, R/o # 199, Village Milkha Opposite Govt. Primary School, Post Office Mullanpur, Tehsil Kharar, District Mohali-140901, Group B.
3. Ms. Priya T, Age 30 years, D/o Sh. Thomas, R/o Keerikkattil house, Airapuram post office, Ernakulam, Kerala-683541, Group B.
4. Ms. Salini Raj Age 29-1/2 years, D/o S.P. Raja R/o #404/1, Phase-6, Mohali-160055, Group B.
5. Ms. Nimisha PN, Age 25-1/2 years D/o Narayanan CK, R/o # 392, Second Floor, Sector 38-A, Chandigarh-160014, Group B.

Applicants

(BY: MR. BARJESH MITTAL, ADVOCATE)

Versus

1. Union of India through Secretary, Department of Health & Family Welfare, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi-110011.
2. Director, Post Graduate Institute of Medical Education and Research (PGIMER), Sector 12, Chandigarh-160012.

(BY MR. SANJAY GOYAL, ADVOCATE).

Respondents



ORDER
[HON'BLE SANJEEV KAUSHIK, MEMBER (J)]

1. The present Miscellaneous Application (MA) has been filed by the applicants for issuance of ad-interim order staying the impugned order dated 18.1.2020 (Annexure A-9), giving appointment to the students of National Institute of Nursing Education (NINE) to the posts of Nursing Officer, in the respondent Post Graduate Institute of Medical Education and Research (PGIMER).
2. The Original Application (OA) has been filed by the applicants for restraining the respondents from filling up any post of in the cadre of Nursing officer in PGIMER from amongst the students/candidates of NINE run by PGIMER and for issuance of direction to the respondents to fill 84 vacant posts of Nursing Officer from open market.
3. The facts are to be narrated in view of the complexity of the case. The applicants herein are the aspirants for the posts of Nursing Officers, Group B, having applied pursuant to the advertisement dated 22.10.2019 (Annexure A-2), inviting online applications for 78 posts, on regular basis, in the



PGIMER. The PGIMER runs NINE, which awards degrees in B.Sc. Nursing. It is submitted that students of NINE are appointed as Nursing Officers in PGIMER through backdoor entry, instead of open competition. 82 Nursing officers were promoted as Senior Nursing Officers, thus, those posts with 2 others (84) have also become available, which are sought to be filled up from students of NINE, which is alleged to be illegal and arbitrary. It is claimed that all posts 78+82 should be filled up from open market and till such time the respondents may be restrained from filling up the 84 posts from students having passed B.Sc. Nursing Degree of 4 year Course from NINE, run by the PGIMER.

4. A short Notice of M.A. was issued on 21.1.2020 when Mr. Sanjay Goyal, accepted notice and sought time till today to have instructions and argue the matter.

5. Mr. Barjesh Mittal, learned counsel for the applicants argued that the action of the respondents in offering appointment to their own candidates who pursued B.Sc. Nursing (4 years) Course from NINE (PGIMER), without notifying the vacancies for general



public is in violation of Articles 14 and 16 of the Constitution of India and law declared by the Lordship in the case of **RENU AND OTHERS VS. DISTRICT AND SESSION JUDGE, TIS HAZARI AND ANOTHER**, 2014 (3) JT 1. He further submits that neither the students of NINE were working on adhoc basis nor on contract basis and as such without even judging their suitability, they cannot be appointed against the public posts. He thus, prayed that pending the O.A. the operation of impugned order, Annexure A-9, relating to offer of appointment to students from NINE (PGIMER), be stayed.

6. On the other hand Mr. Sanjay Goyal, learned counsel for the respondents sought time to file reply to the M.A as well as O.A. and submitted that staying of the order, Annexure A-9, would amount to allowing of the O.A. itself which is not permissible. He drew attention of the Bench to order dated 18.1.2020, which contains a clear stipulation that the appointment would be subject to final outcome of this O.A. Thus, he submitted that interest of applicants can be taken care of at the time of final decision of the O.A. He also apprised this Court that a conscious decision has been



taken by the competent authority to offer appointment against indicated vacancies to candidates of NINE (PGIMER), in view of the exigency of services and also in view of the earlier practice. Thus, he submits that M.A. for stay may be dismissed at this stage and matter be decided finally otherwise it would amount to allowance of the O.A. at the threshold itself.

7. I have given my thoughtful consideration to the entire matter and am in agreement with the submissions made by learned counsel for the respondents that allowance of prayer of applicants for stay would amount to allowing the O.A. itself at this preliminary stage. Moreover, the applicants are candidates against the advertisement dated 22.10.2019 and the subsequent 84 vacancies, which became available on promotion of incumbents to higher post or for any other reason, are sought to be filled from candidates / students of NINE (PGIMER), by taking a conscious decision by the competent authority as has been done in the past by them and in that process they have offered appointment making them aware that their appointments would be subject to outcome of this O.A.



8. Considering the factual scenario in this case, I do not find that applicants have been able to make out a case in their favour. The balance of convenience also does not lie in their favour. Moreover, out right stay cannot be granted against individuals, who are not even party before us. In these circumstances, the M.A. for stay is dismissed. However, the question raised by the applicants that the indicated posts should be filled up through open competition, shall be considered at the time of final arguments. Needless to mention that the observations made hereinabove would not have any impact on the ultimate merits of the case.

10. As prayed, the respondents are granted four weeks time to file reply, with copy in advance to other side, who may file replication, if any, within two weeks thereafter.

11. List on 16.03.2020, the date already filed in main case.

**(SANJEEV KAUSHIK)
MEMBER (J)**

Place: Chandigarh
Dated: 23.01.2020

HC*