

The High Court Of Madhya Pradesh**WP-10924-2021***(NAGRIK UPBHOKTA MARGDARSHAK MANCH AND OTHERS Vs THE STATE OF MADHYA PRADESH AND OTHERS)***3****Jabalpur, Dated : 07-07-2021****Heard through Video Conferencing.**

Shri Dinesh Upadhyay, learned counsel for the petitioner.

Shri Ashish Anand Barnard, Deputy Advocate General for the respondents nos.1 /State.

Shri Anoop Nair, learned counsel for the respondent no.2.

Shri Atul Choudhary, learned counsel for the respondent nos.4 and 5.

The dispute pertains to the nurses working in different Government Hospitals/Dispensaries/CHCs/PHCs of the State, who have proceeded on strike on 14.06.2021. This petition has been filed by the petitioner- Nagrik Upbhokta Margdarshak Manch *inter alia* with a prayer that the strike by nurses in the State called by the respondent no.4 Joint Forum Nursing Association, be declared illegal.

Shri D.K.Upadhyay, learned counsel for the petitioner submitted that approximately 50000 Nurses of the State are on strike, which is causing huge inconvenience to the people of the State.

When the matter was last listed before the Court on 05.07.2021, we directed for impleadment of Ms. Rekha Parmar, President of Nursing Association of M.P. as respondent no.5. Shri Atul Choudhary, Advocate, who was already appearing for respondent no.4- The Joint Forum Nursing Association, was asked to seek instructions for the newly impleaded respondent no.5.

Shri Atul Choudhary, has sought instructions and on instructions, now he appears today on behalf of both respondent nos.4 and 5. The matter was heard at some length .

Shri Ashish Anand Barnard, learned Additional Advocate General has cited the order passed by this Court recently on 03.06.2021 declaring the

strike called by the PG Doctors' Association as illegal and requiring the State Government to take appropriate action against the erring Doctors under the Essential Services Maintenance Act, National Disaster Management Act and the Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

Shri Ashish Anand Barnard, learned Additional Advocate General submitted that this Court earlier on 25.07.2018 had already declared the strike by the Nurses of the State, illegal. In the present case, the State Government has issued a notification dated 28.06.2021 declaring the services rendered by the Doctors, Nurses and other health workers, as essential service by invoking Section 4(1) of the Essential Services Maintenance Act and therefore, the ongoing strike by the respondent should be declared illegal.

Shri Atul Choudhary, learned counsel appearing for the Joint Forum Nursing Association submits that despite long standing demands of the Nurses in State, the State Government has not taken any steps for redressal of their grievances, except, of course, in respect of changing nomenclature of their designation. Reference is made to the demand charter dated 24.06.2021 containing a total of 14 demands. It is submitted that the State authorities ought to engage in discussion with the representatives of the Joint Forum Nursing Association for accepting all their reasonable demands so as to enable them to call off the strike. If that is done, the respondent nos.4 and 5 shall call off the strike.

This Court hereby declares the strike by the nurses in the State as illegal and condemn their action especially because such a call has been given at a time when the country has still not been able to come out of the ill effects of the second wave of COVID-19.

In view of the assurance given by Shri Atul Choudhary, learned counsel appearing for the Joint Forum Nursing Association, however, we direct that the respondent Nursing Association shall immediately call off their strike and resume their duties by tomorrow itself. The respondent/State

Government shall soon thereafter notify constitution of a Committee headed by the Additional Chief Secretary, Health with the Principal Secretary, Finance Department and Director, Health Services as its members. The Committee shall invite the representatives of the Nursing Association for negotiations and submit its report to the State Government positively within a period of two months. The State Government shall on the basis of the recommendation of the Committee shall pass appropriate order within a month thereafter.

If the Association of Nurses despite assurance fails to resume their duties by tomorrow, it would be open to the State Government to take appropriate action against them in accordance with law.

At this stage, Shri Atul Choudhary, learned counsel for respondent no.4 and 5 submitted that the period of absence due to strike may not be treated as a break in service and the same may be regularised against the leave of any kind due in the account of respective nursing employees and no disciplinary action should be taken against them for that reason.

The Government shall sympathetically consider the demand for not taking any disciplinary action for the period of absence of the striking Nursing employees so as not to precipitate the matter and consider granting them leave of any kind that may be due in their account or otherwise, if no such leave is found due in the accounts of the respective nursing employees, grant such leave without pay, but shall not treat such period as break in service.

With the aforesaid directions, this petition is **disposed of**.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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