

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8046/2006

DALJIT KAUR WALIA Petitioner
Through Mr. S B S Vashishtha, Adv.

versus

M.C.D. Respondent
Through Mr. Nitin Mangla, Adv. for MCD

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
23.04.2008

1. The petitioner was appointed as ANM on 20.6.1971. She claims that she was promoted as A grade staff nurse on 30.6.1976 and on 19.4.1988 the petitioner was reverted back and posted as ANM. Another order dated 29.4.1988 was passed transferring the petitioner.
2. The petitioner raised an industrial dispute which resulted in an interim award dated 7.8.1991 whereby the respondent/MCD was directed to post the petitioner as A grade staff nurse. The petitioner was thereafter posted as A grade staff nurse on 14.8.1992.
3. The petitioner has claimed arrears of salary from the date of the interim award i.e. 7.8.1991 till 14.8.1992. I may note here that the tribunal passed the final award on 10.5.1996 in favour of the petitioner and the

transfer order was set aside as illegal and unjustified. It was also held by the learned tribunal that transfer was done malafidely. The respondent/MCD has filed a Civil Writ Petition no.1899/1997 challenging the final award dated 10.5.1996. The said writ petition is still pending before this court.

4. In the meanwhile departmental enquiries were also initiated against the petitioner for absenting herself from duty w.e.f. 8.6.1988 till 13.8.1992 and for not vacating government accommodation. These proceedings I am informed have been dropped.
5. The respondents in the counter affidavit have also stated that consequent upon retirement of the petitioner on 30th September, 2005 she has been paid leave encashment, salary for earned leave, gratuity including 40% commuted pension as well as other amount mentioned in paragraph 4 of the counter affidavit. It is further stated that arrears on account of pay fixation under Assured Career Pension Scheme have been submitted to the accounts department and will be released soon. Learned counsel for the respondent says that said amount has been paid but this is disputed by the petitioner. Respondents are directed to verify and if any amount is due and payable with the petitioner pursuant to Assured Career Pension Scheme, the same shall be paid within 6 weeks from today.

6. The respondents have pointed out that the question of pay fixation in pay scale of grade A staff nurse w.e.f. 27.6.1999 is pending before this court in writ petition no.2521/1998. Therefore, the petitioner cannot be granted any benefit till this writ petition is decided.
7. As far as payment for salary for the period between 7.8.1991 till 14.8.1992 is concerned i.e. the period when the interim award was passed and the date when petitioner joined her duty, the petitioner has not mentioned the date when the interim order was published. It is also not stated in the petition that the petitioner had approached the respondent/MCD seeking employment in terms of the interim award but she was not posted. No correspondence has been placed on record by the petitioner that she had ever approached MCD for employment. The final award passed on 10th May, 1996 itself is subject matter of writ petition no.1899/1997 which is still pending before this court. Copy of the said award has not been placed on record. What direction has been given with regard to the arrears and past period is not known. I do think that question of arrears for salary should be decided at this stage till writ petition no.1899/1997 is decided. I may note here that the respondents have treated the period between 7.8.1991 till 14.8.1992 as period during which the petitioner was on extraordinary leave.
8. In view of the above I do not think at this stage the petitioner is entitled

to any relief as claimed in the writ petition. In case, writ petition no.1899/1997 is dismissed, necessary consequences will flow and the petitioner may be entitled to receive payment for the period 7.8.1991 till 14.8.1992 and this question will be decided at that stage. It will be open to the petitioner to raise the said plea at the time of hearing of the writ petition 1899/1997.

9. In the additional affidavit filed by the petitioner, she has made a claim for reimbursement of Rs..1,21,002/- on account of medical expenditure incurred on medical treatment after her retirement. This is entirely a separate cause of action. The petitioner, if so, advised can file a separate writ petition in this regard.

With the above directions the writ petition is disposed of.

SANJIV KHANNA,J

APRIL 23, 2008
vld