

GAHC030002562020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/75/2020

H. Laldinliani and 2 Ors
Aizawl

VERSUS

State of Mizoram and 3 Ors.
Aizawl

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga

Advocate for the Respondent : Mr. C Zoramchhana (Addl. AG/GA, Mizoram)

Linked Case : WP(C)/73/2020

Lalhriatchhungi
Aizawl

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga
Advocate for the Respondent : Mr C Zoramchhana (Addl. AG/GA
Mizoram)

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing & judgment :**06.11.2023**

JUDGMENT & ORDER (Oral)

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Heard Ms. Valentina Laldinpuii, counsel for the petitioners in WP(C) No. 75/2020 and WP(C) No. 73/2020. Also heard Mr. P.C. Lalthangmawia, learned Government Advocate appearing for all the respondents.

2. As the subject matter in issue in both the cases are similar, the above two cases are being disposed of by this common judgment & order.

3. The petitioners, who are working as Staff Nurses in various Hospitals under the Government of Mizoram, are claiming additional increments in terms of FR 27(10)(1), FR 27(10)(2) and the OM dated 15.01.2010 issued by the Ministry of Health & Family Welfare (Department of Health), Government of India, which has been followed by the Government of Mizoram.

4. The learned counsel for the petitioners submits that in terms of FR 27(10)(1), FR 27(10)(2) and the OM dated 15.01.2010, Staff Nurses holding Diploma Certificates as provided in the OM dated 15.01.2010 and having qualifications prescribed therein, are eligible for grant of additional increments. She submits that Staff Nurses holding Diploma Certificate in (i) Nursing Education and Nursing Administration (ii) Psychiatric Nursing (iii) Pediatric Nurses (iv) Public Health Nursing or any other 10 months Diploma Course designated and approved by the Indian Nursing Council from time to time are to be granted one increment. Staff Nurses possessing the following qualifications, i.e., (i) B.Sc.

(Hons.) Nursing.B.Sc. Nursing/Post Basic/Post Certificate. B.Sc. Nursing (ii) Postgraduate Degree in Nursing, i.e., Master in Nursing (M.Sc Nursing) were to be granted two increments.

5. The petitioners' counsel submits that as the petitioners in WP(C) No. 73/2020 were having the qualifications provided in para 1 (b) of the OM dated 15.01.2010 at the time of their regular appointment to the posts, they were entitled to the grant of two increments. On the other hand, the petitioners in WP(C) No. 75/2020, who were having the Diploma Certificates provided in para 1 (a) of the OM dated 15.01.2010 at the time of their regular appointment, would have to be granted one increment. However, despite the above facts, the State respondents have rejected the claim of the petitioners for grant of increments, on a wrong understanding of the OM dated 15.01.2010, by stating that "incentives" are not admissible to those who already had the above qualifications at the time of recruitment and appointment. The grant of "incentives" would apply only to those who obtained the higher qualification, after entering into Government Service.

6. The learned counsel for the petitioners prays that a direction be issued to the State respondents to grant increments to the petitioners in terms of the OM dated 15.01.2010.

7. Mr. P.C. Lalthangmawia, learned Government Advocate, on the other hand submits that the additional increment to be provided to the Staff Nurses in terms of the OM dated 15.01.2010, would only be applicable to those obtaining the higher qualifications after their regular appointments as Staff Nurses. The said additional increments cannot be granted to the petitioners, inasmuch as,

they had already obtained the higher qualifications, prior to recruitment/appointment as Staff Nurses. He thus submits that additional increments cannot be granted on account of having higher qualification at the entry/initial stage of appointment. In this regard, he has relied upon the common judgment and order of this Court passed in WP(C) No. 79/2016, WP(C) No. 62/2016 & WP(C) No. 78/2016. He accordingly submits that the writ petition should be dismissed.

8. I have heard the learned counsels for the parties.

9. In WP(C) No. 62/2016, WP(C) No. 79/2016 & WP(C) No. 78/2016, which was disposed of by a common Judgment & Order dated 31.10.2016, the issue to be decided was with regard to whether Nursing Staff, who had obtained the educational qualifications after appointment to the services were to be granted additional increments, in terms of the OM dated 23.03.1988, which had been discontinued vide OM dated 30.04.2004, but was again continued in terms of the OM dated 15.01.2010.

10. This Court in the above common judgment, on considering the fact that the OM dated 30.04.2004, which had discontinued the grant of additional increments on attaining educational qualifications by Nursing Staff in terms of the OM dated 23.03.1988, but which was continued by the OM dated 15.01.2010, had observed that the OM dated 30.04.2004 issued by the Government of Mizoram, Finance Department had been set aside by this Court in WP(C) No. 125/2013. Accordingly, the State respondents were directed to apply the provisions of the OM dated 23.03.1988 and the OM dated 15.01.2010 to the petitioners therein, for grant of additional increments on attaining the

additional/fresh qualifications provided in OM's during their service period. This Court further held in WP(C) No. 62/2016, WP(C) No. 79/2016 & WP(C) No. 78/2016 that the grant of additional increments would have to be considered from the date of issuance of the OM dated 15.01.2010, in terms of an earlier Judgment & Order dated 21.09.2015 passed in WP(C) No. 100/2014(S).

11. The Judgments passed by this Court in WP(C) No. 62/2016, WP(C) No. 79/2016 & WP(C) No. 78/2016 were put to challenge before the Division Bench of this Court vide W.A. No. 24/2017, W.A. No. 25/2017 & W.A. No. 26/2017, which were all dismissed, vide Judgment & Orders dated 19.02.2019.

12. It is an admitted fact that the State Government has granted a number of Nursing Staff additional increments in terms of the OM dated 15.01.2010, the latest being in terms of letter No. A.11014/5/07-HFW/533 dated 16.06.2020, issued by the Under Secretary to the Government of Mizoram, Health & Family Welfare Department.

13. FR 27 (10) and the OM dated 15.01.2010 are reproduced below as follows:-

FR 27 (10)

“(10) Grant of additional increments (qualification pay) to Nursing Staff.---

The question of grant of additional increments to the Nursing Staff has been under consideration of Government. In supersession of Ministry of Finance (Department of Expenditure), O.M. No. F. 5 (11)/E. III (A)/75, dated the 8th May, 1975 (not printed), it has been decided to grant additional increment (non-absorbable) to the Nursing Staff working in the Central Government Hospitals/Institutions under the Ministry of Health and Family Welfare to the extent indicated below:

1. *One increment (non-absorbable) will be granted to the nursing personnel holding the following Post Certificate Diploma of 10 months' duration or any other 10 months' Diploma Course designed and approved by the Indian Nursing Council from time to time:-*

- (i) Diploma in Nursing Education and Nursing Administration.*
- (ii) Diploma in Psychiatric Nursing.*
- (iii) Diploma in Paediatric Nursing.*
- (iv) Diploma in Public Health Nursing.*

This will take effect from-

(a) 1-10-1986 to those Nursing Staff in service who possess any of these Diplomas;

(b) the date of appointment to those who possess the Diploma who are recruited after 1-10-1986; and

(c) the date of publication of results of the Post Certificate Diploma in Nursing for those in service who acquire the Post Certificate Diploma qualification after 1-10-1986.

2. Two increments (non-absorbable) will be granted to the Nursing Staff possessing the following qualifications:--

(i) B.Sc. (Hons.) Nursing.

B.Sc. Nursing/Post Basic / Post Certificate.

B.Sc. Nursing.

(ii) Postgraduate Degree in Nursing, i.e., Master in Nursing (M.Sc. Nursing).

This will take effect from-

(a) 1-10-1986 to those Nursing Staff in service who possess the Degree/ Postgraduate Degree in Nursing as on that date;

(b) the date of appointment to those who possess the Degree / Postgraduate Degree in Nursing qualification, who are recruited after 1-10-1986;

(c) the date of publication of result of the Degree / Postgraduate Degree in Nursing for those in service who acquire the Degree/Postgraduate Degree qualifications after 1-10-1986.

3. Only two additional non-absorbable increments will be admissible to a Nurse in a particular grade where possession of such qualifications are not required as per Recruitment Rules.

4. These increments will be granted, subject to the condition that the concerned Nursing Staff are not required to possess Diploma / Degree / Post-graduate

Degree in Nursing indicated at Paras. 1 and 2 above, as a condition of their employment and also that they had not been allowed a higher initial pay on account of their possessing these qualifications prior to on or after 1-10-1986.

5. These orders issue with the concurrence of Department of Personnel and Training and Ministry of Finance vide their Dy. No. 617/88-Pay-I, dated 7-3-1988 and 1162/E. III/88, dated 21-3-1988, respectively.

[GI., Min. of Health & F.W., O.M. No. Z. 28016/8/87-PMS, dated the 23rd March, 1988.]

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OM dated 15.01.2010

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“NirmanBhawan, New Delhi.

Dated the 15th Jan. 2010

OFFICE MEMORANDUM

Subject:- Qualification Pay to the Nursing Staff Regarding.

The undersigned is directed to say that vide this Ministry's O.M. No. Z.28016/8/1987-PMS, dated 23rd March. 1988, the Nursing Staff working in the Central Government Hospitals/Institution under the Ministry of Health and Family Welfare and other Ministries/Departments were sanctioned additional increments (non absorbable for attaining additional qualifications to the extent indicated below:

(a) One increment to the Nursing Staff holding the following Posts Certificate Diploma of 10 months duration or any other 10 months Diploma Course designed and approved by the Indian Nursing Council from time to time:

(i) Diploma in Nursing Education and Nursing Administration,

(ii) Diploma in Psychiatric Nursing;

(iii) Diploma in Pediatric Nursing;

(iv) Diploma in Public Health Nursing:

(b) Two increments to the Nursing Staff possessing the following qualifications:-

(i) B.Sc. (Hons.)/B.SC./Post Basic B.Sc./Post Certificate B.Sc. in Nursing:

(ii) Post Graduate Degree in Nursing .e.,M.Sc (Nursing):

2. The above benefit is effective from: -

(i) 01-10-1986 to those Nursing Staff who were already in service and possessed any of these qualifications,

(ii) The date of appointment to those who were recruited alter 01-10-1986 and possessed these qualifications at the time of appointment; and

(iii) The date of publication of results for those in service who acquired the relevant qualification after 01-10 1986.

3. *Only two additional non-absorbable increments are admissible to a Nurse in a particular grade where possession of such qualifications is not required as per Recruitment Rules.*

4. *The grant of the aforesaid increments is subject to the condition that the concerned Nursing Staff is not required to possess the qualification, for which the increment is claimed, as a condition of employment and that they have not been allowed a higher initial pay on account of the said qualifications prior to/ on/ or after 01-10-1988.*

5. *These orders were issued, in super-session of Ministry of Finance O.M. No. F.5(11)/E.III(A)/75, dated 8th May, 1975, and with the concurrence of Department of Personnel and Training vide their Diary No. 617/88-Pay-1, dated 07-03-1988 and Ministry of Finance vide their Diary No. 1162/E.III/88. dated 21st March, 1988.*

6. *The above scheme was reviewed by the Ministry of Health and Family Welfare in consultation with the Department of Personnel and Training in the light of the two OMs No. 1/2/89-Estt. (Pay-1), dated 31st January, 1995 and 9th April, 1999 and it was decided to continue the scheme.*

7. *The above scheme has been further reviewed after revision of pay scales of nurses on implementation of 6th Central Pay Commission order. It has been decided to continue the scheme in the present format with the slight change that*

the increment to be granted will be 3% of the basic pay of the nursing staff concerned.

8. *This issues with the concurrence of the Integrated Finance Division of Ministry of Health and Family Welfare vide Dy. No. 3816/AS&FA, dated 15-10-2009."*

14. As can be seen from the facts stated above, there is no dispute with regard to the facts that the OM dated 15.01.2010 is being applied by the State Government, for granting additional increments to Staff Nurses who have acquired the higher qualifications provided in para 1 (a) and (b) of the OM dated 15.01.2010, after their appointment into the service. The question now arises as to whether Staff Nurses who already had acquired the qualifications prescribed in para 1 (a) and (b) of the OM dated 15.01.2010, at the time of their regular appointment to the post of Staff Nurse, can also be granted additional increments in terms of the OM dated 15.01.2010. The letter dated 16.06.2020 issued by the Under Secretary to the Government of Mizoram, Health & Family Welfare Department, granting two additional increments to 6 Nursing Staff who acquired higher qualifications, after induction into the service as Staff Nurse has, however rejected the case of the petitioners on the ground that "incentives" are not admissible to Staff Nurse, who had already acquired the higher qualifications at the time of recruitment/appointment into the service.

15. A perusal of FR 27(10) and the OM dated 15.01.2010 does not speak of grant of "incentive", but grant of additional increments for possessing certain qualifications and Diploma Certificates. Thus, it appears that the State respondents have made a wrong inter-play with words while considering the grant of "additional increments" with the grant of "incentive".

16. The above being said, the common judgment passed by this Court in WP(C) Nos. 100/2014, 62/2016, 79/2016 and 78/2016 has not decided the issue as to whether Nursing Staff, who had already acquired the higher qualifications and Diploma Certificates provided in para 1 of the OM dated 15.01.2010 at the time of their appointments, can be denied the grant of the additional increments in terms of the OM dated 15.01.2010. The issue therein was only with regard to the prayer of the petitioners therein who had acquired the higher qualifications and Diploma Certificates after their regular appointments as Staff Nurse. The case in hand is different. As such, the decision made in the above disposed of cases cannot be said to be a precedent for deciding the present case. It is settled law that a decision is only an authority for what it decides and not for what logically follows from it. A little difference in fact changes the precedential value of a decision. As the facts in this case and the facts in the above disposed of cases are different, the decision made in the above cases cannot be a bar for deciding the issue raised by the petitioners in this case.

17. A perusal of FR 27 (10) (1) (a) (b) and 27 (10) (2) (a) (b) clearly shows that the grant of additional increments to Nursing Staff, would also be applicable to those who possess the required Diploma and higher educational qualifications at the time of their regular appointments, provided they were recruited after 01.10.1986. Similarly, a reading of para 1 with para 2 (i) & (ii) of the OM dated 15.01.2010 clearly provides that Nursing Staff who hold the required Diploma Certificates and the educational qualifications at the time of their appointments and who were recruited after 01.10.1986, would have to be granted additional increments. In the present case, some of the petitioners were initially appointed on contract basis as Nursing Staff and thereafter regularized. On the other hand, some of the petitioners herein were directly appointed as Nursing Staff.

They were however all regularly appointed between the year 2010 and 2019. As such, if the petitioners have Diploma Certificates in terms of para 1 (a) and the qualification in terms of para 1 (b) of the OM dated 15.01.2010, at the time of their regular appointments as Nursing Staff, they would have to be granted additional increments as provided in the said OM. They cannot be denied the said benefit, just because they did not attain the said qualification after their regular appointment or regularization to the post of Staff Nurse. Consequently, the State respondents are directed to apply the provisions of OM dated 15.01.2010, for grant of additional increments to the petitioners, from the date of their regular appointments, provided that they have obtained the Diploma Certificates and qualifications provided in para 1 of the OM dated 15.01.2010. The grant of the additional increments will have to be with effect from the date of their regular appointments or w.e.f. 15.01.2010, whichever, is later.

18. The entire exercise for verifying whether the petitioners have obtained the required Diplomas or qualifications and the grant of the monetary benefits, should be completed within a period of three months, from the date of receipt of a copy of this order.

19. The writ petitions are accordingly allowed and disposed of.

JUDGE

Comparing Assistant