

GAHC030000872024



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

Case No. : WP(C)/3/2024

Smt. Lalremsangi Chawngthu
D/o C. Lalawmpuia
R/o Tuikual North, Aizawl, Mizoram
Ward Superintendent
Zoram Medical College
Falkawn, Aizawl District

VERSUS

State of Mizoram and 4 Ors.
R/b the Chief Secretary, Govt. of Mizoram, Aizawl 2:The Commissioner/ Secretary to
the Govt. of Mizoram
Health and Family Welfare Dept.

3:The Principal Director
Health and Family Welfare Dept
Govt. of Mizoram

4:The Director
Zoram Medical College

5:The Financial Commissioner
Finance Dept. (PRU)
Govt. of Mizora

Advocate for the Petitioner : Mr Lalfakawma

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 - 5

::: B E F O R E :::

THE HON'BLE MR. JUSTICE NELSON SAILO

JUDGMENT & O R D E R (Oral)

20.11.2024

Heard Mr. Lalfakawma, learned counsel for the petitioner and Ms. Lalnunhlui, learned Govt. Advocate appearing for all the respondents. Having regard to the nature of controversy projected by the petitioner, the writ petition is taken up for disposal at the admission stage.

[2.] It is the case of the petitioner that that she was initially appointed as Staff Nurse in the Police Department on 28.08.2008. Subsequently, she was appointed as Ward Superintendent by the Principal Director, Health & Family Welfare Department on 15.05.2018. Having been appointed as such, she was posted at the Zoram Medical College (ZMC) as Ward Superintendent where she continues till date. It is the further case of the petitioner that she is entitled to receive two (2) increments for having possessed the qualification of M.Sc (Nursing) which is more than the qualification required in order to be appointed as a Ward Superintendent. The benefit of being given two (2) increments has clearly been stipulated in the Office Memorandum dated 23.03.1988 and thereafter, vide Office Memorandum dated 15.01.2010. Therefore, the petitioner being clearly covered by the Office Memorandums, she should be given the increments entitled to her as was done in

the case of other similarly situated persons.

[3.] Mr. Lalfakawma, learned counsel submits that the petitioner before filing the instant writ petition approached the respondent authority concerned for grant of two (2) additional increments for having acquired higher qualification on 14.08.2019. However, the same was rejected vide Communication dated 13.09.2019 in terms with the clarification made by the Finance Department (PRU), Govt. of Mizoram vide I.D dated 05.07.2019. The learned counsel submits that the clarification given by the Finance Department cannot be sustained in view of the fact that this Court in WP(C) Nos. 75/2020 & 73/2020 which were disposed of vide a common Judgment & Order dated 06.11.2023 has held that there cannot be any distinction drawn regarding acquisition of qualification whether before entry into service or after entry into service. The said interpretation was made by this Court in view of the prescription of FR 27 (10)(1)(a)(b) and FR 27 (10)(2)(a)(b). He therefore submits that there is no basis for rejecting the representation of the petitioner and as such, the impugned Communication dated 13.09.2019 and the Clarification dated 05.07.2019 should be set aside and the petitioner should be granted the benefit of the increments as entitled to her in terms of the Office Memorandums referred to herein above.

[4.] Ms. Lalnunhlui, learned Govt. Advocate on the other hand by referring to the affidavit-in-opposition filed by the State respondents on 23.07.2024 submits that

the Office Memorandum dated 23.03.1988 and Office Memorandum dated 15.01.2010 are meant for Staff Nurse and therefore not applicable for Ward Superintendent working under the ZMC. She submits that ZMC is registered as a society under the Mizoram Societies Registration Act, 2005 and does not adopt the instructions issued by the Ministry of Health & Family Welfare (Nursing Section). Therefore, as the petitioner is working under ZMC, she cannot have a claim for being granted the increments as per the two (2) Office Memorandums. She further submits that the judgment relied upon by the petitioner are meant for the petitioners concerned in those cases and cannot be applied to the case of the petitioner in the instant case. She thus submits that the writ petition has not merit and the same should be dismissed.

[5.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. There is no dispute to the fact that the petitioner was appointed to the post of Ward Superintendent vide Appointment Letter dated 15.05.2018 issued by the Principal Director, Health & Family Welfare Department, Govt. of Mizoram in Pay Band II - Rs. 9,300 - 34,800 + 4,600 GP. It is the case of the petitioner that after being appointed as such, she has been posted in the ZMC and where she has been working till date. Statement to this effect has been made in paragraph No. 5 of the writ petition. The respondents have filed their counter affidavit and against paragraph No. 5, they

have offered no comments. Therefore, it is clear that they have admitted to the fact that the petitioner has been appointed by the Health & Family Welfare Department, Govt. of Mizoram and posted at ZMC. The applicability of grant of increments in terms of the Office Memorandum dated 23.03.1988 has been dealt with by this Court in a number of cases. The benefit of the said Office Memorandum stood extended with the subsequent Office Memorandum dated 15.01.2010.

[6.] For the purpose of the instant case i.e., whether the petitioner having acquired the qualification of M.Sc Nursing prior to her appointment as Ward Superintendent can therefore be entitled to two (2) increments can be easily clarified from the common Judgment & Order dated 06.11.2023 passed by a coordinate Bench of this Court in WP(C) Nos. 73/2020 & 75/2020. The three (3) petitioners in WP(C) No. 75/2020 were having a Diploma Certificates and claimed to be covered by paragraph No. 1(a) of the Office Memorandum dated 15.01.2010. The sole writ petitioner in WP(C) No. 73/2020 claimed the grant of two (2) increments in view of her qualification and in terms of paragraph No. 1(b) of the Office Memorandum dated 15.01.2010. By passing the common Judgment & Order, this Court had clarified that the increments being sought for cannot be understood as incentive in view of FR 27(10). It was therefore held that the State respondents have made a wrong interplay with words while considering the grant of 'additional

increment' with the grant of 'incentive'. For the sake of clarity and brevity, paragraph No. 17 of the said common Judgment & Order may be abstracted hereunder:-

“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.”

[7.] No material has been brought to the notice of this Court that the above cited common Judgment & Order has been interfered with by a larger forum and such being the position, there can be no doubt to the fact that the case of the instant petitioner is also squarely covered. It may also be stated herein that recently, this Court vide Order dated 01.11.2024 passed in WP(C) No. 109/2024 had directed the respondent authorities to consider the case of the petitioners therein for grant of the increments entitled to them in terms of the two (2) Office Memorandums and all the petitioners except the petitioner No. 1, who was initially appointed as Staff Nurse were all appointed and regularized as Ward Superintendent in ZMC.

[8.] Thus upon due consideration, this Court finds that the petitioner has made out a case for grant of additional increments in terms of the Office Memorandums as already stated herein above. The impugned Communication dated 13.09.2019 and the Clarification dated 05.07.2019 are hereby set aside. The respondents are

directed to consider the grant of increments entitled to the petitioner by following all the formalities that may be required within a period of three (3) months from the date of receipt of a certified copy of this Order. The Writ Petition accordingly stands disposed of as allowed. No cost.

JUDGE

Comparing Assistant