

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WA.No. 2002 of 2010 ()

THE JUDGMENT IN WP(C).NO.31154/2004 DATED 23-12-2009.

.....

APPELLANTS/RESPONDENTS IN THE WP(C):

-
- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
H & FW DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**
 - 2. ACCOUNTANT GENERAL (A&E), AUDIT,
THIRUVANANTHAPURAM.**
 - 3. DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.**
 - 4. DISTRICT MEDICAL OFFICER OF HEALTH,
ERNAKULAM.**
 - 5. SUPERINTENDENT, GENERAL HOSPITAL,
ERNAKULAM.**

BY SPL. GOVT. PLEADER SMT.GIRIJA GOPAL.

RESPONDENTS/PETITIONER IN THE WP(C):

-
- 1. M. AMMINI, HEAD NURE (RETIRED),
VADAKKEMCHERIYIL HOUSE, P.O. MANJUMMEL, PIN-683 501.**
 - 2. M.D. PHILOMINA, HEAD NURSE (RETIRED),
KORAMANGALATH HOUSE, CHERIYAKADAVANTHRA,
COCHIN-682 020.**
 - 3. P.M. MAGTHALEETHA, HEAD NURSE (RETIRED),
MALOTH HOUSE, PERUMANOOR, THEVARA,
COCHIN-13.**

WA.No. 2002 of 2010

**4. C.M. ANNAMMA, HEAD NURSE (RETIRED),
MANGALATH HOUSE, SOUTH JANATHA ROAD,
PALARIVATTOM, COCHIN-25.**

**BY ADVS. SRI.M.V.BOSE,
SRI.VINOD MADHAVAN.**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18/02/2015,
THE COURT ON 08/04/2015 DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A1 COPY OF THE G.O.(P) NO.179/92/FIN. DATED 10/02/1992.
- ANNEXURE A2 COPY OF THE ORDER GRANTING THE SECOND AND
THIRD HIGHER GRADE TO THE 1ST RESPONDENT.
- ANNEXURE A3 COPY OF THE G.O.(MS) NO.296/93/FIN. DATED 28/04/1993.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.A.No.2002 of 2010

Dated this the day of April 2015

J U D G M E N T

Shaffique,J

This appeal is filed by the respondents in the writ petition challenging judgment dated 23/12/2009 in W.P.C.No.31154/2004, by which the writ petition filed by the respondents herein, who are hereinafter referred to as the petitioners, stand allowed and direction was issued to the appellant to refix the third time bound higher grade to the petitioners in the cadre of Nursing Superintendent Grade I with effect from 1990 and to give the consequential benefits.

2. The short facts involved in the writ petition discloses as under:

Petitioners got appointment as Auxiliary Nurse-Midwife (for short 'ANM') in 1965. They became Staff Nurse in March 1974 after undergoing the 2½ years General Nursing training. They continued as Staff Nurse. Thereafter they got

only one promotion to the post of Head Nurse and continued in that post till retirement. According to the petitioners, they were entitled to get the scale of pay of Rs.1640-2900 with effect from 01/03/1992 with monetary benefits from 01/04/1995, on the basis of Government order dated 02/11/1988, Ext.P2. Petitioners claimed that they were entitled to get the higher grade from the date on which they were engaged as Staff Nurse as per Government Order dated 10/02/1992. However, the District Medical Officer replied that the higher grades will be available in 10, 20 and 25 years taking into account the ANM service also and if the grade is to be fixed in the Staff Nurse cadre, the amount received on the basis of service in ANM will have to be refunded. It is submitted that the petitioners have given representation on 28/11/1999 expressing their willingness to refund the excess amount they have received. However, such a course of action was not adopted and all the petitioners retired from service. The 1st petitioner retired

from service as Head Nurse on 31/03/2000, the 2nd and 3rd petitioners on 31/05/2000 and 4th petitioner on 31/08/1999. Petitioners submitted Ext.P3 representation dated 14/09/2000 stating that they were eligible to get pay scale of Rs.1640-2900 with effect from 01/03/1992 in terms of Government Order dated 02/11/1988. The other petitioners also submitted similar representations and since no action was taken in the matter, they filed O.P.No.27897/2000 which came to be disposed of as per judgment dated 03/10/2000 directing the representations to be considered within a specified time. Pursuant to the said judgment, since no action was taken, contempt case was filed wherein the learned Government Pleader on behalf of the State agreed to finalise the representations within six months. Still, according to the petitioners, timely action was not taken and another contempt case was moved as C.C.No.548/2002 wherein this Court observed that the petitioners could agitate the deficiencies pointed out by them. Pursuant to

the same, petitioners submitted Exts.P9 and P10 representations but since no action has been taken in the matter, the writ petition was filed seeking the following reliefs:

“(i) to call for the entire records leading upto Exhibit P13 and;

(ii) to issue a writ of mandamus compelling the respondents to permit the petitioners to avail the 3rd time bound Higher Grade and other allied benefits as indicated in Exhibit P13.

(iii) to issue a writ of mandamus compelling the respondents to grant the benefits sought for in Exhibit P14.”

3. It is inter alia contended that the petitioners were denied higher grade and pensionary dues in an arbitrary manner. It is pointed out that though they were having six years service as ANM and 29 years service as Staff Nurse, they have received only the scale of pay of Nursing Superintendent Grade II which is given to those having 23 years service. It is pointed out that the petitioners alone are persons who have lost their promotions due to change over

from ANM to staff nurse. Claim is based on Ext.P13 letter dated 06/12/1999 by which the Principal Secretary had issued a communication to the Director of Health Services to provide third time bound higher grade to Nurses after 01/03/1992 subject to the condition that they will not be eligible for further option as per Prathapan Commission Recommendations. The main contention that has been urged is regarding their entitlement to get higher grade by which they claimed the pay scale of Rs.2200-3500 meant for 25 years service with effect from 01/03/1992 after revising the third higher grade to Rs.1640-2990 in 1990.

4. Counter affidavit has been filed by the third respondent inter alia stating that petitioners were appointed as ANM in the Health Services Department in the year 1965. After continuing in service, they had undergone 2½ years General Nursing training for being appointed as Staff Nurse. At the time of training they availed eligible leave. They opted for cadre change with effect from 1974 and therefore

they are not eligible for the benefits for becoming public health nurses. Therefore, according to the respondents, the petitioners' continuance in the feeder category of Staff Nurse was beneficial to them. With reference to Exts.P1 and P2, it is stated that certain benefits are extended to the 1st petitioner with effect from 1992 as per the directions issued in the judgment in O.P.27897/2000. It is further submitted that as per the Service Rules, first higher grade is sanctioned in the pay scale of Staff Nurse Grade I, second higher grade is sanctioned in the scale of pay of Head Nurse and third higher grade is sanctioned in the scale of pay of Nursing Superintendent Grade II. It is stated that the scale of pay of Nursing Superintendent Grade I is applicable only to cadre promotion and not for grade promotion. The 1st petitioner did not get cadre promotion before retirement. Her claim was beyond the norms fixed by the Government. She was sanctioned third higher grade in the scale of pay of Nursing Superintendent Grade II as per order dated 27/02/2001.

Therefore, according to the Government, whatever was eligible to the petitioners have been paid as per Government Order dated 27/10/2001 and the arrears were drawn and disbursed on 27/01/2002. It is stated that the petitioners were entitled to get scale of pay of Rs.2000-3200 as per Ext.P1 with effect from 01/03/1992 and was not entitled to the pay scale of Rs.1640-2900 which was revised to Rs.2200-3500.

5. It is on these factual circumstances that the learned Single Judge had directed the respondents to refix the third time bound higher grade in the cadre of Nursing Superintendent Grade I with effect from 1990. Learned Single Judge proceeded on the basis that by virtue of the provisions contained in Government Order dated 28/04/1993 they were eligible for counting their entire service for reckoning their eligibility and in that event, they would become eligible for third time bound higher grade in the year 1990. The bifurcation in service leading to creation of

Staff Nurse Grade II was with effect from 11/05/1998 and therefore petitioners are entitled to have their grade fixed in the three existing grades.

6. Along with the writ appeal, an additional affidavit has been filed by the 1st appellant producing Annexures A1 to A3. Annexure A1 is the Government order dated 10/02/1992 clarifying the pay revision orders of 1988 and specifying that Staff Nurses who were appointed from the cadre of ANM would be granted time bound grade as admissible as if they had continued as ANM reckoning their entire service as ANM/Staff Nurse if their grades as Staff Nurse were not advantageous. It is therefore submitted that the petitioners were granted second higher grade on completion of 20 years by considering their entire service in ANM cadre also. Consequently they were granted third higher grade on completion of 25 years in the year 1990. Annexure A2 is the said Government order incorporating the said proceedings dated 19/03/1997, with reference to the 1st

petitioner. It is therefore submitted that the petitioners having already been granted the third higher grade reckoning their entire services including that as ANM, a further claim for granting the third higher grade in the cadre of staff nurse by fixing their scale of pay in the post of Nursing Superintendent Grade I is not permissible.

7. The crux of the argument raised by the learned Government Pleader is based on the fact that petitioners were already granted third higher grade taking into account their service in ANM as well, which was based on their claim that ANM service also should be taken into consideration for providing time bound higher grades. Once such an option has been exercised by the petitioners and having already availed the benefit of three higher grades, they cannot claim another higher grade in terms with Ext.P2 Government Order. Ext.P2 apparently was applicable if their service was considered as a Staff Nurse from 1974, in which event, they would have obtained the first higher grade in 1984, second

higher grade in 1994 and the third higher grade in 1999 in the cadre of Head Nurse. Therefore the argument that their claim for higher grade based on the pay scale of Nursing Superintendent grade I was absolutely baseless.

8. The learned Single Judge allowed the writ petition proceeding on the basis that the petitioners were entitled to get the benefit of Government Order dated 28/04/1993, and since the bifurcation in service leading to the creation of the post of Staff Nurse Grade II onwards was with effect from 11/05/1998, they ought to have been granted the third time bound higher grade in the grade of Nursing Superintendent Grade I.

9. It is not in dispute that as per Government Order dated 11/05/1998 which was revised as per Government order dated 02/11/1998, the line of posts has been fixed with effect from 01/03/1992. Prior to 01/03/1992, the line of posts was Staff Nurse, Head Nurse, Nursing Superintendent Grade II and Nursing Superintendent Grade I. But, as far as

the petitioners were concerned, Annexure A1 order dated 10/02/1992 was made applicable as per the recommendation of the 5th pay commission. In regard to the health service, it was mentioned in paragraph 5 of Annexure A1 that Staff Nurses appointed from the cadre of ANM (Junior PH Nurses) will be granted time bound grade admissible and they will continue as ANM reckoning their entire service as ANM/Staff Nurse, if their grades as Staff Nurses on or after 01/07/1988 are not advantageous. It was also mentioned that their period of training will also be reckoned as qualifying service provided they have drawn full salary and earned increment for that period. It is based on the said Government Order with reference to the first petitioner, Annexure A2 order dated 19/03/1997 was passed wherein it is stated that higher grade for 20 years sanctioned to her in the cadre of Staff Nurse was not advantageous and she had requested to cancel the benefit and allowed her to continue in the grade sanctioning the 25 years grade reckoning her

entire service as ANM and Staff Nurse. Hence, the higher grade sanctioned to her in the cadre of Staff Nurse for 20 years was cancelled and her scale of pay was revised treating her ANM service also. Hence a higher grade for 20 years was granted with effect from 16/09/1985 and 25 years on 27/08/1990. In Annexure A2 it was indicated that the benefit of higher grade for 20 years, 25 years and 1992 pay revision have already been drawn and disbursed to the incumbent. Annexure A3 is the Government Order dated 28/04/1993 relied upon by the learned Single Judge which reads as under:

"In the G.O. read above, orders were issued for the grant of higher grade to Staff Nurses appointed from the cadre of Auxiliary Nurse Midwives reckoning their entire service as Auxiliary Nurse Midwives/Staff Nurse if their grades as Staff Nurse on or after 1-7-1988 were not advantageous and that their period of training will also be reckoned as qualifying service provided they had drawn full salary and earned increment for that period.

Some of the Staff Nurses appointed from the cadre of Auxiliary Nurse Midwives have represented

that the above condition regarding drawal of full salary may be waived, in order to get the benefit of grade promotions counting training period also.

*Government have examined the request in consultation with the Director of Health Services and are pleased to delete the words "drawn full salary and" appearing in para (iii) 5(i) of G.O.read above, on account of the fact that Government have already made clear **vide G.O.(Ms) 100/81/HD.dated 24-3-1981 that the period of Leave Without Allowance taken by Auxiliary Nurse Midwives for undergoing General Nursing Course will be reckoned for the purpose of increment in relaxation of Rule 33(b) (2), Part I, KSR.**"*

10. Therefore, the Government Order dated 28/04/1993 relied upon by the learned Single Judge is only a clarification to the Government Order dated 10/02/1992 produced as Annexure A1. By the Government Order dated 28/04/1993, only the words "drawn full salary and" in paragraph (iii) (5) (i) of G.O dated 10/02/1992 has been deleted. The said Government Order does not create any specific rights as far as the petitioners are concerned. The right has been created as per clause 5(1) of Government

order dated 10/02/1992 which reads as under:

“(5) Health Service - Staff Nurses appointed from the cadre of ANM (Junior P.H.Nurses):

*(i) They will be granted time bound grades admissible had they been continued as ANM, reckoning their entire service as A.N.M./Staff Nurse if their grades as Staff Nurses on or after 1-7-1988 were not advantageous (ii) their **period of training as Staff Nurse will also be reckoned as qualifying service provided they had [drawn full salary and] earned increment for that period.**”*

11. Therefore, the petitioners were given right to reckon their entire service as ANM/Staff Nurse for the purpose of granting the admissible time bound grades.

12. In other words, ANM grade shall also be treated as a cadre for the purpose of giving time bound higher grade. Viewed in that manner, they were entitled for three higher grades from 1965 that is in 1975, 1985 and 1990. The petitioners do not claim any benefit on the basis of Prathapan Commission Recommendations and it is not granted by the learned Single Judge as well. What has been

granted is the benefit arising out of Government Order dated 10/02/1992. If the pre-existing grades are concerned, they will be entitled to fixation in the grade of Nursing Superintendent Grade II alone and not Nursing Superintendent Grade I.

13. Therefore, the learned Single Judge was not justified in arriving at a conclusion that the petitioners were entitled for fixation of scale of pay and the third time bound higher grade in the grade of Nursing Superintendent Grade I. This finding is not correct since, in 1990, petitioners were entitled for the third time bound higher grade equivalent to that of Nursing Superintendent grade II with effect from 1990.

14. Even according to the petitioners, they completed 25 years service prior to the Prathapan Commission Recommendations. Their claim is based on Annexure A1. If ANM service is taken for higher grade, then at the time when the petitioners achieved 25 years service, the third higher

grade would be that of Nursing Superintendent Grade II and not Nursing Superintendent Grade I.

15. Under such circumstances, we do not think that the petitioners were eligible for the third higher grade in the scale of pay of Nursing Superintendent Grade I whereas their entitlement is only for getting the higher grade in the scale of pay of Nursing Superintendent Grade II.

In the result, we allow the appeal, setting aside the judgment impugned and the writ petition stands dismissed.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

