

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14065 OF 2018

RAJASHREE RUKUBDAS KONDEKAR ...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS ...RESPONDENTS

Mr. S.G. Chapalgaonkar., Advocate for Petitioner
Mr. S.P. Tiwari, AGP for Respondent Nos. 1 to 3
Mr. M.D. Gite, Advocate holding for
Mr. B.S. Mundhe, Advocate for Respondent Nos. 4 to 6

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 9th OCTOBER, 2019

ORAL ORDER:

1. The petitioner assails the order denying the second Assured Career Progression Scheme (ACPS) benefit.

2. Mr. Chapalgaonkar, the learned Counsel for the petitioner submits that the reasons accorded for denying the second ACPS benefit to the petitioner are erroneous. The petitioner possess SSC qualification at the time of entering service. The respondents never provided any opportunity to the petitioner for training. It was the respondents, who are not possessing infrastructure for imparting training, as such cannot deny the benefits on the said ground.

3. Mr. Mundhe, the learned Counsel for respondent Nos. 4 to 6 submits that the petitioner did not avail the opportunity of training. As the petitioner did not avail the opportunity of the training for promotional post, the petitioner is not entitled for the benefits. On affidavit, the respondent has stated that the petitioner did not pass the training as per the Government Resolution dated 08.06.1999 and 27.02.2003.

4. It appears that the petitioner possess SSC qualification in the year 1972. The petitioner was appointed. The petitioner has also passed the examination of revised Auxiliary Nurse Midwifery (ANM) on 22.04.1987 and is registered as Multi-purpose Health Worker. The petitioner joined as Nurse with the respondent on 03.01.1987. The petitioner was granted the first benefit of time bound promotional pay scale on completion of 12 years of service w.e.f. 01.01.1999 under order dated 28.02.2006. The petitioner is entitled for the second ACPS benefit upon completion of 24 years. Of course, provided, the petitioner qualifies the conditions enumerated therein.

5. Under the impugned order, two grounds are suggested for denying the benefit to the petitioner. (i) The petitioner does not possess SSC qualification, and (ii) the petitioner did not pass the six months promotional training.

6. As absorbed above, the petitioner has passed SSC examination in March, 1972 in third Division. The petitioner possesses SSC qualification. The petitioner in the writ petition itself has specifically averred that though the petitioner was ready and willing to undergo training, she was never sent for such training by the respondents for want of sufficient infrastructure or arrangement for training of the employees like the petitioner. The respondent on the affidavit has contended that as the petitioner has not passed the training, the petitioner is not eligible for the second ACPS benefit.

7. Considering the rival contention, we asked the learned Counsel for the respondents to place on record any such letter or communication directing petitioner to avail the benefit of promotional training. The matter was adjourned at the request of the learned Counsel for the respondent Nos. 4 to 6. The learned Counsel for the respondent Nos. 4 to 6 on instructions submits that there is no such record to suggest that the petitioner was sent for training and petitioner did not avail the opportunity.

8. It is for the department now to show that the petitioner was given opportunity for training, more particularly, the petitioner has made specific statement in the writ petition to that effect.

9. As the respondents have not provided opportunity to the petitioner for training, the petitioner cannot be faulted

and could not have been denied the benefit for the fault of the respondents.

10. In the light of the above, the impugned order is quashed and set aside.

11. The respondents shall consider the petitioner for the second ACPS benefit considering that the petitioner has passed SSC qualification and that the petitioner was not at fault in not availing the benefit of training.

12. The writ petition is accordingly disposed of. No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

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