

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 14057 OF 2018

Rajani Abraham Pawar

...Petitioner

VERSUS

The State of Maharashtra and others

...Respondents

Mr. S.G. Chapalgaonkar, Advocate for petitioner

Mr. S.P. Tiwari, Asstt. Govt. Pleader for respondents No.1 to 3

Mr. B.S. Munde, Advocate for respondents No. 4 to 6

CORAM : S.V. GANGAPURWALA

AND

AVINASH G. GHAROTE, JJ.

DATE : 27th November, 2019

PER COURT :

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

2. Mr. Chapalgaonkar, learned Counsel for the petitioner submits that the reasons accorded for denying the second ACPS benefit to the petitioner are erroneous. The petitioner possessed S.S.C. 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. Munde, 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 27th February, 2003.

4. It appears that the petitioner was possessing S.S.C. qualification in the year 1972 i.e. in the year the petitioner was appointed. The petitioner has also passed the examination of revised Auxiliary Nurse Midwifery (ANM) on 22nd April 1987 and is registered as Multi-purpose Health Worker. The petitioner joined as Nurse with the respondents on 3rd January, 1987. The petitioner was granted the first benefit of time bound promotional pay scale on completion of 12 years of service w.e.f. 3rd January, 1999 under order dated 26th September, 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 observed above, the petitioner has passed S.S.C. examination in March, 1971 in Second Division. The petitioner possesses S.S.C. qualification. The petitioner in the writ petition itself has specifically averred that though the petitioner was ready and willing to undergo the training, she was never sent for such training by the respondents for want of sufficient infrastructure or lack of 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 the petitioner to avail the benefit of the promotional training. The matter was adjourned at the request of the learned Counsel for the respondents No. 4 to 6. The learned Counsel for respondents No. 4 to 6, on instructions, submits that there is no such record to suggest that the petitioner was sent for

the training and the petitioner did not avail the opportunity.

8. It is for the department now to show that the petitioner was given opportunity for the training, more particularly as 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 the training, the petitioner cannot be faulted with 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 S.S.C. qualification and that the petitioner was not at fault in not availing the benefit of the training.

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

(AVINASH G. GHAROTE)
JUDGE

Madkar

(S.V. GANGAPURWALA)
JUDGE