

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.17163 OF 2019

ORDER:

This writ petition is disposed of at the stage of admission with the consent of both the parties.

This writ petition is filed seeking a writ of Mandamus declaring the action of the 2nd respondent in issuing circular memo dated 08.02.2019 directing the 4th respondent to pay only basic pay without D.A and H.R.A instead of 100% Gross Salary (Basic Pay + D.A + H.R.A) in the time scale attached to the post of MPHA (M) as per 2015 Revision of Pay Scales to the petitioners, without issuing notice to the petitioners and without reference to Government Orders as illegal, arbitrary, unconstitutional, violative of principles of natural justice, violative of Articles 14, 16 and 19 of the Constitution of India and also contrary to the orders issued in G.O.Rt.No.459 dated 22.05.2002, RC.No.NMEP/63/2003 dated 29.05.2003 of DM & HO, Nalgonda, and the proceedings dated 21.10.2013 of DM & HO, Nalgonda, and set aside the circular memo dated 08.02.2019 issued by the 2nd respondent and sought a consequential direction to direct the 4th respondent to pay 100% Gross Salary (Basic Pay + D.A + H.R.A) to the petitioners from the month the petitioners were stopped from paying D.A and H.R.A, along with arrears.

Heard Sri G.Satyanarayana Yadav, counsel for the petitioners, Government Pleader for Services-II appearing for the respondents.

It has been contended by the petitioners that they were fully eligible and qualified for the post of Multi Purpose Health Assistant (Male) and the respondents had issued notification during 2002 for the posts of MPHA (M) in Nalgonda District. The petitioners, after undergoing regular selection process before the District Selection Committee, were appointed as MPHA (M) in the year 2003. Counsel for the petitioners contended that the petitioners were appointed in pursuance of the orders issued by the State Government in G.O.Rt.No.459 dated 22.05.2002, whereby MPHA posts were sanctioned in Nalgonda District. Counsel for the petitioners further contended that though the respondents have appointed the petitioners after conducting regular selection process, the petitioners were appointed on contract basis initially for a period of one year and the same was extended from time to time. Counsel also submitted that some of the unsuccessful candidates have challenged the appointment of selected candidates as MPHA (M) on the ground that though minimum educational qualification for the post of MPHA (M) is Class X, the respondents have selected the candidates based on Intermediate marks, and the matter went up to the Honourable Supreme Court and the Honourable Supreme Court finally dismissed the SLP by upholding the judgment of this Court in W.P.No.15107 of 2002 & batch, dated 11.09.2003, wherein this Court directed to prepare the selection list of candidates who possess SSC and Diploma Certificate either from Government or private institutions, including College of Medical Technology, Ongole, in accordance with Rules. Consequent

upon the dismissal of the SLP, the services of the petitioners came to be terminated vide proceedings dated 20.04.2012. Thereafter, the State Government had constituted a Committee consisting of group of Ministers and that Committee had recommended that the persons who were appointed as MPHAs (M) in pursuance of G.O.Rt.No.459 dated 22.05.2002 be re-inducted into service and the State Government was pleased to accept the recommendations made by the Committee consisting of group of Ministers and issued G.O.Rt.No.1207 dated 09.10.2013, wherein the State Government has taken a decision as under:

“The Government, after careful examination of the matter hereby accept the above recommendations of the Group of Ministers and order to take necessary action for taking back all the Multi Purpose Health Assistants (Male) who were terminated in terms of G.O.Rt.No.273, HM&FW (J2) Department, dated 16.02.2012 on contract basis with effect from the date of their reporting back to duty, subject to the following conditions:

- (a) To follow the instructions/guidelines of the Government with reference to ‘contract’ scrupulously.
- (b) The contract should be with prospective effect only.
- (c) The tenure of the contract should be restricted on par with other contract / outsourcing posts.”

In pursuance of the decision taken by the State Government in G.O.Rt.No.1207 dated 09.10.2013, the services of the petitioners were taken back by the respondents by passing individual orders on 21.10.2013 and while passing individual orders, the respondents have

made it clear that the petitioners would be paid 100% Gross Salary in the pay of Rs.10,020/- and upon re-engagement of the petitioners in terms of G.O.Rt.No.1207 dated 09.10.2013, the petitioners are being paid basic pay, D.A and H.R.A.

Counsel for the petitioners also contended that the 2nd respondent had issued circular memo dated 08.02.2019, wherein the 2nd respondent has unilaterally taken a decision that the contract employees who are appointed/reappointed on or after 01.11.2008 are not entitled to draw H.R.A and D.A, and in pursuance of the said circular memo of the 2nd respondent, the 4th respondent is not paying H.R.A and D.A to the petitioners from February, 2019. Challenging the same, the present writ petition is filed.

Counsel for the petitioners had contended that the petitioners were appointed as MPHA (M) way back in 2002 in pursuance of the posts sanctioned by G.O.Rt.No.459, dated 22.05.2002, and since then, the petitioners have been continuously discharging their duties. However, consequent upon the judgment rendered by this Court and the Honourable Supreme Court, the services of the petitioners came to be terminated vide proceedings dated 20.04.2012 and later, the services of the petitioners were taken back by the State Government based upon the recommendations of the group of Ministers, *vide* G.O.Rt.No.1207 dated 09.10.2013, and no where in the said G.O.Rt.No.1207 dated 09.10.2013, the expression 'reappointment' was used and the petitioners were taken back as per the decision of the State Government based upon the recommendations of the group of

Ministers. Therefore, the action of the respondents in not paying H.R.A and D.A to the petitioners based upon the circular memo dated 08.02.2019 issued by the 2nd respondent, is arbitrary and without following the principles of natural justice, as the respondents have not issued any notice before altering the service conditions of the petitioners. The right to receive fair wages is one of the essential services conditions of the petitioners and the respondents, without following the principles of natural justice, have unilaterally altered the said service conditions by not paying D.A and H.R.A to the petitioners in pursuance of the circular memo dated 08.02.2019 issued by the 2nd respondent, though they were earlier extending D.A and H.R.A from the date of initial appointment of the petitioners. Therefore, the counsel for the petitioners contended that the impugned circular memo dated 08.02.2019 issued by the 2nd respondent is liable to be set aside and appropriate orders be passed directing the respondents to pay 100% gross salary to the petitioners with effect from February, 2019 with all consequential benefits.

Government Pleader appearing for the respondents had contended that though the petitioners were appointed way back in 2003, the services of the petitioners were terminated on 20.04.2012 and based upon the recommendations of the group of Ministers, the petitioners were re-appointed as MPHA (M) *vide* G.O.Rt.No.1207 dated 09.10.2013 and while re-appointing the petitioners, it was specifically made clear that the contract will be with prospective effect, which would mean that the petitioners were re-appointed as

MPHA (M), and in terms of the orders issued in G.O.Rt.No.4271 dated 01.11.2008, it was made clear that the persons who are appointed after 01.11.2008 are not entitled for gross salary and the persons who are appointed prior to 01.11.2008 alone are entitled for gross salary and they are entitled for D.A and H.R.A. Government Pleader has further relied upon para 4 of G.O.Rt.No.1207 dated 09.10.2013, which is extracted above, and contends that since clause (b) of the said para would make it clear that the contract should be with prospective effect only, which would mean that the petitioners are re-appointed as MPHA (M), and the petitioners were re-appointed after 01.11.2008, the petitioners are not entitled for D.A and H.R.A, therefore, contends that there are no merits and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of learned counsel for respective parties, is of the considered view that though the Government Pleader has contended that the petitioners are re-appointed as MPHA (M), the expression 're-appointment' is not used in G.O.Rt.No.1207, dated 09.10.2013, and even in para 2 of the circular memo dated 08.02.2019 issued by the 2nd respondent, the expression used is 'appointed/re-appointed'. In G.O.Rt.No.1207, dated 09.10.2013, no where it is stated that the petitioners are re-appointed. What all the State Government has done in the said G.O. is that the recommendations of the group of Ministers were accepted and the petitioners were taken back as MPHA (M) and the reliance placed on circular memo dated 08.02.2019 that the petitioners were re-

appointed after 01.11.2008, is totally incorrect and even while taking back the petitioners by individual proceedings dated 21.10.2003, it was made clear that the petitioners would be paid 100% gross salary. Therefore, denial of 100% gross salary and denying D.A and H.R.A to the petitioners based upon the circular memo dated 08.02.2019 issued by the 2nd respondent is an arbitrary exercise and the action of the respondents in not paying gross salary to the petitioners is also violative of principles of natural justice, as no opportunity is given to the petitioners before altering their remuneration which they have been drawing from the date of their initial appointment. Therefore, the action of the respondents in denying 100% gross salary to the petitioners and trying to alter the service conditions of the petitioners by refusing to pay D.A and H.R.A to the petitioners, that too without giving any opportunity to the petitioners, is contrary to law. Thus, the impugned circular dated 08.02.2019 issued by the 2nd respondent is liable to be set aside so far as the petitioners are concerned and the same is accordingly set aside.

Accordingly, the writ petition is allowed. The respondents are directed to pay 100% gross salary to the petitioners from February, 2019 onwards and continue to pay the petitioners in accordance with law. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J