

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

L.P.A. No.1752 of 2017 in
Civil Writ Petition No.14825 of 2014
Reserved on : October 29, 2019
Date of decision: February 12, 2020

State of Haryana and others ...Appellants

Versus

Nishi Bala ...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Deepak Balyan, Additional Advocate General,
Haryana for the appellants.

Mr.V.D.Sharma, Advocate for the respondent.

HARINDER SINGH SIDHU, J.

1. The State of Haryana has filed this Letters Patent Appeal against the judgment dated 23.03.2017 in CWP No.14825 of 2014 titled 'Nishi Bala vs. State of Haryana and others' whereby, the writ petition filed by the respondent was allowed.

2. The respondent joined the Health Department as Staff Nurse on ad hoc basis on 05.08.1986. Her services were regularised on 30.09.1988. She had filed the writ petition challenging the order dated 27.09.2013 (P-18) whereby, her claim for grant of 1st and 2nd ACP from 01.10.1998 and 01.10.2008 had been rejected.

3. The claim of the respondent was rejected on the ground that

she did not possess the six months Midwifery Training which was an essential prerequisite for grant of ACP Scale under Rule 5(3) (b) of the Assured Career Progression Rules, 1998. She acquired the qualification on 27.09.2010, therefore, she was not entitled to 1st and 2nd ACP before 27.09.2010.

4. The State of Haryana has framed the Haryana Civil Services (Assured Career Progression) Rules, 1998 for grant of ACP Scales. Rule 5 deals with the eligibility for the grant of ACP Scales is reproduced below:

“5. Eligibility for grant of ACP Scales:-

1) Every Government Servant who after a regular satisfactory services for a minimum period of 10 years, if the minimum period is not otherwise prescribed to the different then 10 years either in these rules or by the Government for any class or categories of Government Servant from time to time has not got more than one financial upgradation in terms of grant of pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995 on which he was recruited as a direct recruited fresh entrant:-

a) Either as a consequence of his functional promotion in the hierarchy, or

b) As a consequence of the revision of pay scale for the same post, or

c) As a consequence of any other even through which the functional pay scale of the post has been upgraded with respect to the functional pay scale prescribed for the post as on 31.12.1995.

Shall for the purpose of drawl of pay, be eligible for placement into the 1st ACP Scale with reference to him;

2) Every Government servant who after a regular

satisfactory service for a minimum period of 20 years, if the minimum period is not otherwise prescribed to the different, then 20 years either in these rules or by the Government for any class or categories of Government servant from time to time, has not got more than one higher than the functional pay scale prescribed for the post as on 31.12.1995 on which he was recruited as a direct recruited fresh entrant:-

- a) Either as a consequence of his functional promotion in the hierarchy, or*
- b) As consequences of the revision of pay scale for the same post;*
- c) As a consequence of any other even through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawl of pay, be eligible for placement into the second ACP Scale with reference to him;*

Provided that grant of ACP Scale shall also be considered financial upgradation for the purpose of this rule.

3) For determining the eligibility of grant of ACP Scale, following conditions must also be fulfilled by the Government servant.

- a) After completing the respective prescribed period for eligibility for the grant of ACP scales the Government servant should be fit to be promoted the next higher post in the functional hierarchy to which he is eligible to be promoted;*
- b) If such promotion involves test of any departmental post or other test, such condition should also be fulfilled by such Government servant.”*

5. As per Rule 5(1) and Rule 5(2) a period of ten and twenty years regular satisfactory service is required for being eligible for grant of First and Second ACP Scale respectively. As per Rule 5(3)(a), the Government servant should be fit to be promoted to the next higher post. As per Rule 5(3)(b), if the promotion involves any test, that condition should also be fulfilled.

6. As per the Haryana Health Department Nursing Personnel and Lady House Keepers (Group-C) Service Rules, 1998 notified on 04.02.1998 the essential qualification and experience for promotion to the post of Nursing Sister are as under :

- “(i) B.Sc.(Hon.) Nursing Sister or B.Sc. (Post Basic) Nursing; or Diploma in General Nursing with midwife Training from a recognised Institute/University;*
- (ii) Five years experience as Staff Nurse;*
- (iii) A Division Nurse (with Midwife Training) registered with Haryana Nurses Registration Council;*
- (iv) Hindi upto Matric standard;”*

Thus one essential qualification prescribed is acquisition of Midwife Training from recognized Institute/University.

7. This Rule position has not been disputed by the parties.

8. The Ld. Single Judge opined that the acquisition of Midwife Training Course was beyond the control of the respondent. Unless and until the case of a candidate was sent by the concerned officials for Midwife Training Course, the candidate was not in a position to acquire such qualification. Ld. Single Judge held that it was undisputed that seniority of

Staff Nurses had not been prepared during the period from 04.02.1998 till 2010. From that, it was concluded that the officials resorted to a pick and choose method in sending candidates for the Midwifery Training Course, which resulted in the respondent not acquiring the qualification within time and consequently denial of the benefit of ACP to her. It was only on account of lapse of the officials that the respondent could not acquire the Midwife Training Course prior to 27.09.2010. It was thus held that the appellants could not insist on acquisition of Midwife Training Course for extending the benefit of ACP. Accordingly, the petition was allowed. The order Annexure P-18 was set aside. The appellants were directed to extend the benefit of ACP to the respondent on her completing 10 years of service.

9. Ld. Counsel appearing on behalf of State of Haryana has contended that the Ld. Single Judge has wrongly concluded that there was pick and choose method in sending candidates for the Midwifery Training Course and that the appellants were responsible for not deputing the respondent for the Course within time.

10. He contends that the fault of not applying for the Midwifery course was of the respondent. He stated that almost every year circulars were sent from the Office of Director General Health Services for sending the names of eligible staff nurses for the Midwifery course. During the pendency of the writ petition, the appellants had placed on record a circular dated 09.12.1994 from the office of Director General Health Services, Haryana addressed to all Civil Surgeons, Principal Medical Officers, Civil Hospitals at Ambala, Karnal, Bhiwani, Hisar and B.K.Hospital, Faridabad;

all Medical Superintendents of Haryana State, E.S.I. Hospital, Faridabad, Panipat and Jagadhri; All Medical Superintendent/ Senior Medical Officers of General Hospitals of Haryana State and all Medical Officers I/C / Medical Officers of all Community Health Centres/ Primary Health Centres of Haryana State requiring the addressees to bring the circular to the notice of all the senior and eligible Staff Nurses working under their control for sending their applications for the Midwifery Course from March, 1995. A proforma of the application was also enclosed with the circular. It was also specified that application received after due date i.e. 30.09.1994 would not be considered and incomplete applications would be cancelled. During the pendency of this LPA, the appellants have placed on record similar circulars dated 13.06.1996 (A-1), 26.05.1998(A-2), 14.12.1998 (A-3), 09.02.2000 (A-4), 13.02.2001 (A-5), 07.03.2002 (A-6), 03.10.2002 (A-7), 15.09.2003 (A-8), 27.10.2005 (A-9) 18.9.2006 (A-10), 16.4.2007 (A-11) 5.10.2007 (A-12) 29.05.2008 (A-13), all inviting applications for sending Staff Nurses for Midwifery Course.

11. Before the Ld. Single Judge, an affidavit dated 23.03.2017 had been filed, in which it had been stated that the respondent had submitted an application dated 06.01.1995 to Senior Medical Officer, General Hospital Narwana for sending her name for the Course. However, her name was not recommended as it had been submitted after the cut off date i.e. 30.12.1994. There was no record available in the office, as per which the respondent had requested or applied for Midwifery Training between 1996 to 2008. She had applied for Midwifery training on 09.06.2008, but in October, 2008 and

March, 2009 no batch was sent for training due to lack of sufficient eligible staff Nurses. In September, 2009, there were only 07 applicants for training, which included the name of the respondent. She was declared pass with distinction in June, 2010. Thereafter, in March, 2010 and September, 2010 no batch was sent for training.

12. It is not the case of the respondent that no applications were invited between the period from 1994 to 2010 for sending Staff Nurses for Midwifery Course or that the Circulars inviting applications were not brought to the notice of the Staff Nurses in the Hospital or that they were not in her knowledge. No such grievance was also raised by her in her earlier petition bearing CWP No.20894 of 2009 that she had been ignored or not sent for the Midwifery Training Course despite applying for the same. In that writ petition, she had challenged the order dated 20.10.2009 whereby, her claim for grant of 1st and 2nd ACP scale after completion of 10 and 20 years was declined. That writ petition was disposed on 25.7.2011 as infructuous as meanwhile order dated 20.01.2011 had been passed allowing her 1st and 2nd ACP w.e.f. 01.10.2010. She was given liberty to make a representation to the Department if some grievance subsisted.

13. In CWP No.14825 of 2014 out of which this appeal arises, her positive case in paragraph 4 was that on many occasions she had submitted applications for sending her to training course, but her request had not been acceded. However, the only application she annexed was dated 06.01.1995. The appellants have explained that the said application was received late and hence, could not be considered.

14. A perusal of the pleadings of the respondent in the writ petition reveals that her entire effort was directed at pleading that a number of similarly situated staff nurses, who had not undergone the Midwifery Course had been granted 1st and 2nd ACP Scales and that the Department had been adopting a pick and choose policy while granting 1st and 2nd ACP scales by giving relaxation to similarly situated Staff Nurses and Multi-Purpose Health Workers.

15. In view thereof, the finding of the Ld. Single Judge that the appellants adopted a policy of pick and choose in deputing Staff Nurses for Midwifery Training Course does not appear to be borne out from the record. It appears that the appellants regularly issued circulars inviting applications from eligible staff nurses for being deputed for the Midwifery Course. The respondent did not apply in response thereto. She applied only on 09.06.2008 and her name was included in the 1st batch sent thereafter in September, 2009.

16. Accordingly, this appeal is allowed. The judgment of the Ld. Single Judge is set aside. The writ petition is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 12, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No