

ORISSA HIGH COURT: CUTTACK

WPC (OAC) NO. 1059 OF 2019

In the matter of an application under Articles 226 and 227
of the Constitution of India.

AFR Debika Mishra Petitioner

-Versus-

State of Odisha
and another Opp. Parties

For Petitioner : M/s. S. Swain, A. Mishra
and P. Patnaik, Advocates

For Opp. Parties : Mr. S. Nayak,
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

DECIDED ON : 15.11.2022

DR. B.R. SARANGI, J. The petitioner, by means of this writ
petition, seeks to quash the order dated 04.09.2018
under Annexure-6 issued by the State Government
treating the Study Leave period of the petitioner from

17.11.2015 to 16.11.2017 as Extra Ordinary Leave (E.O.L), and further to issue direction to the opposite parties to grant Study Leave for the aforesaid two years period with pay and DA, as admissible to her, since she has pursued and successfully completed M.Sc. Nursing course as an in-service candidate.

2. The factual matrix of the case, in precise, is that the petitioner was engaged as Contractual Staff Nurse, vide order dated 10.02.2009 issued by Superintendent, MKCG Medical College and Hospital, Berhampur, with consolidated salary of Rs.4,500/- and special allowance of Rs.1,500/- per month, pursuant to which she joined as a Contractual Staff Nurse on 19.02.2009. On 18.02.2015, she completed her six years of contractual service and in view of G.A. Deptt. Resolution dated 17.09.2013 published in Odisha Gazette dated 18.09.2013, recommendation was made by the Director of Nursing, Odisha, vide

letter dated 03.08.2015, to the State Government for regularization of her service.

2.1 The Superintendent of MKCG Medical College and Hospital, Berhampur, vide letters dated 08.06.2015 and 23.07.2015, requested opposite party no.2-Director of Nursing, Odisha, to move the State Government for approval of High Power Committee to regularize the services of 32 numbers of contractual Staff Nurses, including the petitioner, who had already completed six years of qualifying service. At this point of time, the petitioner submitted her application for prosecuting in-service 2 years M.Sc. Nursing Course for the year 2015-2017 and she was selected and her rank was at Sl. No.3 in the merit list published on 16.10.2015. Thereafter, she prosecuted her in-service M.Sc. Nursing Course for the year 2015-2017 and after completion, the Principal, Govt. College of Nursing, MKCG Medical College, Berhampur issued Course Completion Certificate dated 16.11.2017 in

her favour. Thereafter, opposite party no.2 issued order dated 16.11.2017 relieving the petitioner in order to enable her to join at her place of posting. Accordingly, the Superintendent of MKCG Medical College & Hospital, Berhampur, vide order dated 27.11.2017, allowed the petitioner to join as a regular Staff Nurse treating her as such w.e.f. 18.02.2015 (i.e. the date of completion of six years of contractual service) in PB-1 of Rs.5200-20,000/- with Grade Pay of Rs.2800/- with usual allowances as admissible thereon from time to time and, as such, she is continuing as a regular Sister Tutor in the College of Nursing, Berhampur.

2.2 Though her service was regularized w.e.f. 18.02.2015 and she prosecuted her two years M.Sc. Nursing Course during the period from 17.11.2015 to 16.11.2017, but she was neither granted study leave in her favour nor the State Government released her salary for the said period. It is contended that

similarly situated persons, who had gone for higher study, have been extended such benefit, but the claim of the petitioner has been rejected vide order dated 04.09.2018 under Annexure-6, by which she has been extended Extra Ordinary Leave for the period from 17.11.2015 to 16.11.2017. Hence, this writ petition.

3. Mr. S. Swain, learned counsel appearing for the petitioner contended that the petitioner, while continuing in contractual service, having chosen to go for higher study in M.Sc. Nursing, applied for study leave and was allowed to go for higher study. As a consequence thereof, she acquired higher qualification by prosecuting her study from 17.11.2015 to 16.11.2017. It is contended that instead of treating the said period as study leave, the opposite parties have considered the said period as Extra Ordinary Leave (E.O.L), vide order dated 04.09.2018, which is not permissible. It is also contended that similarly situated persons, who had gone for higher study, were

allowed to get pay and DA, but the petitioner has been discriminated. It is further contended that the Government of Odisha, Health & Family Welfare Department issued notification on 25.08.2020 under Annexure-12, wherein it is stated that the past service of the Staff Nurses, those who have already been regularized on completion of six years of contractual service, the contractual service period will be treated as Government service for the purpose of computation of five years of regular service under Rule 180 of OCS Rule for grant of Study Leave in their favour. But the opposite party-authority has denied to grant study leave for the aforesaid period ignoring such notification, which cannot be sustained in the eye of law.

4. Mr. S. Nayak, learned Additional Standing Counsel appearing for State-opposite parties contended that though the petitioner had gone for prosecuting higher study, but she was rendering

service on contractual basis. Therefore, the period of study leave has been treated as Extra Ordinary Leave. Thereby, the order dated 04.09.2018 under Annexure-6 passed by the opposite party authority is well justified.

5. This Court heard Mr. S. Swain, learned counsel appearing for the petitioner and Mr. S. Nayak, learned Additional Standing Counsel learned Addl. Standing Counsel appearing for the State opposite parties by virtual mode, and perused the record. Since pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. Considering the contentions raised by learned counsel appearing for the parties and after going through the materials available on record, this Court finds that the petitioner was engaged as

Contractual Staff Nurse, vide order dated 10.02.2009 issued by the Superintendent, MKCG Medical College and Hospital, Berhampur, with consolidated salary of Rs.4,500/- and special allowance of Rs.1,500/- per month, pursuant to which she joined as a Contractual Staff Nurse on 19.02.2009. On 18.02.2015, she completed her six years of contractual service and in view of G.A. Deptt. Resolution dated 17.09.2013 published in Odisha Gazette dated 18.09.2013, her name was recommended by the Director of Nursing, Odisha, vide letter dated 03.08.2015, to the State Government for regularization of her service.

7. The Superintendent of MKCG Medical College and Hospital, Berhampur, vide letters dated 08.06.2015 and 23.07.2015, requested the Director of Nursing, Odisha to move the State Government for approval of High Power Committee to regularize the service of 32 numbers of contractual Staff Nurses, including the petitioner, who have already completed

six years of qualifying service. At this point of time, the petitioner submitted her application for prosecuting in-service 2 years M.Sc. Nursing Course for the period 2015-2017. She was selected and her rank was at sl. no.3 in the merit list published on 16.10.2015. Thereafter, she prosecuted her in-service M.Sc. Nursing Course 2015-17 and after completion of the course, the Principal, Govt. College of Nursing, MKCG Medical College, Berhampur, issued Course Completion Certificate on 16.11.2017 in her favour. Thereafter, opposite party no.2 issued order dated 16.11.2017 relieving the petitioner in order to enable her to join at her place of posting. The Superintendent of MKCG Medical College & Hospital, Berhampur, vide order dated 27.11.2017, allowed the petitioner to join as a regular Staff Nurse treating her as such w.e.f. 18.02.2015 (i.e. the date of completion of six years of contractual service) in the PB-1 of Rs.5200-20,000/- with Grade Pay of Rs.2800/- with usual allowances,

as admissible thereon from time to time and, as such, she is continuing as a regular Sister Tutor in the College of Nursing, Berhampur. Her service was regularized w.e.f. 18.02.2015 and she prosecuted her two years M.Sc. Nursing Course during the period from 17.11.2015 to 16.11.2017. She was neither granted study leave in her favour nor did the State Government release her salary for the said period. Similarly situated persons, who had gone for higher study, have been extended such benefit, but the claim of the petitioner has been rejected, vide order dated 04.09.2018 under Annexure-6, by which she has been extended Extra Ordinary Leave for the period from 17.11.2015 to 16.11.2017. Therefore, the order dated 04.09.2018 under Annexure-6 passed by opposite party no.1 is arbitrary, unreasonable and contrary to the provisions of law. The reason being, with the active knowledge of the opposite parties, the petitioner sought for study leave and was allowed to go for

higher study. As a consequence thereof, she prosecuted her higher study and also came out successful and in the meantime her service was regularized. Therefore, impugned action of opposite party no.2 treating the petitioner differently than other similarly situated persons is discriminatory and violative of Article 14 of the Constitution of India. In the facts and circumstances of the present case, treating the period during which the petitioner was prosecuting her higher study as Extra Ordinary Leave has no nexus, rather, the same should have been treated as study leave entitling the petitioner to get pay and allowance, as due and admissible to her, at par with regular employees of the establishment, particularly when such benefit has been extended to similarly situated persons.

8. Otherwise also, by virtue of notification dated 25.08.2020 under Annexure-12 issued by the Government of Odisha, Health & Family Welfare

Department, the contractual service period of the petitioner shall have to be treated as Government service for the purpose of computation of five years of regular service under Rule 180 of OCS Rules for grant of study leave in her favour. Therefore, even though the petitioner joined as Contractual Staff Nurse on 19.02.2009, on completion of her six years of contractual service on 18.02.2015, her service has been regularized. Applying the notification dated 25.08.2020 to the case of the petitioner, she should not have been denied the benefit of regular pay and allowances, as due and admissible to her, during the period she was prosecuting her higher study.

9. The rules may provide for the granting of study leave to a Government servant with due regard to the exigencies of public service to enable him to undergo, a special course of study consisting of higher studies or specialized training in a professional or technical subject having a direct and close connection

with the sphere of his study. A Government servant may be granted such leave for study of scientific, technical, or similar problems or special course of instruction on the terms and conditions prescribed by the Government. Study leave may also be granted for the purpose of studies connected with the framework or background of public administration or which are capable of widening the mind of the public servant in a manner likely to improve his abilities and equip him better to collaborate with those employed in other branches of public service.

10. In ***Union of India v. No.664950 IM Havildar/Clerk SC Bagari***, (1999) 3 SCC 709 : AIR 1999 SC1412, the apex Court held that the rules for study leave should have nexus with the performance of duties of the class of employees concerned. During study leave the public servant is normally allowed to draw leave salary equal to the pay drawn immediately before proceeding on such leave.

11. In view of such position, the order dated 04.09.2018 under Annexure-6 passed by opposite party-authority cannot be sustained in the eye of law and the same is liable to be quashed and is hereby quashed. The matter is remitted back to opposite party no.2 to look into the case of the petitioner and extend the benefit of study leave, during the period she was prosecuting her higher study as a regular employee, by granting regular pay and allowance as was granted to similarly situated persons, taking into consideration the notification dated 25.08.2020 under Annexure-12 issued by the Government of Odisha, Health and Family Welfare Department, as expeditiously as possible, preferably within a period of three months from the date of communication/production of this judgment.

12. With the above observation and direction, the writ petition stands disposed of. There shall be no order as to costs.

.....
DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 15th November, 2022, Alok

