

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

W.P.S.T. 1 of 2015

Smt. Rita Nandi

Versus

The State of West Bengal

For the petitioner : Mr. Ekramul Bari, Adv.
:Mr. Siddhartha Sankar Mandal, Adv.
: Sk. Imtiaz Uddin, Adv.

For the State : Md. T.M. Siddiqui, Ld. A.G.P.
: Mr. Tanoy Chakraborty, Adv.
: Mr. Saptak Sanyal, Adv.

Heard on : August 23, 2023

Judgement on : September 12, 2023

Md. Shabbar Rashidi, J.:

1. The instant writ application is directed against the judgment and order dated February 12, 2014 passed by

the West Bengal Administrative Tribunal in OA 1431 of 2012 negating the claim of the writ petitioner for promotional benefits to Grade- I (ii), Nurse.

2. The writ petitioner joined as staff nurse in Grade-I of WBNS on March 21, 1979 at Sadar Hospital, Medinipur and her services were confirmed with effect from March 21, 1982. Later on, she was selected for undergoing Diploma Course in Nursing Education and Administration at Lady Reading Health School, New Delhi, Government of India. Upon successful completion of her course, she was posted at the Nursing Training School (NTS) of Burdwan Medical College and Hospital (BMCH) by an order dated September 06, 1983. By an order dated July 30, 1985, the Director of Health Services issued an order granting Instructor's Allowance at the rate of Rs. **40/-** per month to 12 qualified and eligible nursing staff attached to Nursing Training Institutes including the writ petitioner.

3. It is the case of the writ petitioner that in the said order dated July 30, 1985, the writ petitioner was shown

as Instructor Grade-I(ii). It is further a case of the writ petitioner that although she had been discharging the duties of instructor Grade-I(ii) and she was shown to be holding the particular Grade in the departmental order dated July 30, 1985, she had been receiving the salary of Grade-II.

4. The writ petitioner made a representation in this regard. However, such representation was not considered by the authorities. She then filed an application before the Ld. Labour Court, West Bengal. By an order dated February 22, 1993, the Ld. Labour Court passed an award in favour of the writ petitioner for payment of Rs. 5,500/- (Five Thousand and Five Hundred Rupees Only) as the difference in wages for the period from November 1983 to March 1986.

5. The petitioner also contended that in the year 1993, she was transferred from Medinipur District Hospital to Bankura Sammilanee Medical College and Hospital (BSMCH) as Staff Nurse (Grade-II). Challenging the aforesaid order of transfer, the writ petitioner moved a

writ petition before this Court, being CO No. 7119(W) of 1993 claiming that she was already working as Instructor Grade-I (ii) at Medinipur District Hospital. The said writ application was disposed of by this Court by order dated April 30, 1993 directing the respondent to consider the representation of the writ petitioner against the order of transfer. It is claimed that the aforesaid order also directed that under no circumstances, the petitioner could be transferred by disturbing her rank. Following the order so passed by this Court in CO 7119 (W) of 1993, the transfer order was withdrawn. However, she was not allowed to join her parent posting at Medinipur District Hospital. Being aggrieved, the writ petitioner approached this Court again in CO No. 8630 (W) of 1993 which was disposed of by order dated August 30, 1993 directing the respondents to see that the petitioner could join at Medinipur without prejudice and subject to further orders of this Court.

- 6.** It was further contended that it was also directed with the aforesaid writ petition being CO No. 8630 (W) of

1993 that the writ petitioner would be entitled to receive salary in terms of the interim order dated July 12, 1993. The writ petitioner also moved this Court for violation of the orders dated July 12, 1993 and dated August 30, 1993 passed in CO No. 8630 (W) of 1993. The High Court directed the Deputy Director of Health Services (Nursing) to arrive at a settlement with regard to the payment of salaries and incremental benefits to the petitioner for the period from September, 1993 to March, 1998.

- 7.** It is further contended on behalf of the writ petitioner that although the writ petitioner was performing the duties of Grade I (ii) Instructor since September 08, 1983, she was promoted from Grade II staff nurse to Grade I (ii) by an order dated August 17, 2012. According to the writ petitioner, such order dated August 17, 2012 was defective, misleading and erroneous. She accordingly prayed for quashing the said order dated August 17, 2012 as she has been serving in Grade I(ii) since November 08, 1983.

8. On the other hand, it has been contended on behalf of the State that after passing Diploma Examination as Grade II nurse, the writ petitioner along with others were selected to participate in ANM/ GNM Teaching Programme due to acute scarcity of teaching faculty. They were engaged for teaching programme by an order dated September 06, 1983. In the meantime, in 1993, the writ petitioner was transferred from NTS Medinipur to Bankura Sammilanee Medical College and Hospital (BSMCH) as staff nurse and was released on April 16, 1993. However, the writ petitioner refused to join her new place for posting instead, moved this Court challenging the order of transfer.

9. In pursuance of an order passed by this Court, the writ petitioner was allowed to join at Nursing Training School, Medinipur as Grade II nurse on March 02, 1998, with retrospective effect from April 16, 1993. She was also paid the arrears of salary and incremental benefits in pursuance of the order passed by the High Court. The writ petitioner was allowed to move to third highest scale

of pay in relation to the basic scale of Grade II nurse with effect from March 21, 2004 under the modified Carrier Advancement Scheme, 2001. Such scale of pay, after pay revision in terms of Revision of Pay and Allowance Rules, 2009 is equivalent to the pay scale of Grade I (ii). It was further contended on behalf of the State that a Grade II nurse was not entitled to promotion to Grade I nurse merely by acquiring DNEA qualification. It was also submitted that there was no order with regard to the promotion of the writ petitioner from Grade II nurse to Grade I (ii). The relevant rules provided that a Grade II nurse could only be promoted to Grade I (ii) either on the basis of seniority in the cadre or by acquiring basic BSC nurse qualification.

- 10.** Learned advocate for the State submitted that the writ petitioner did not possess either of the two qualifications on the date of issuance of the order under challenge dated November 08, 1983. The writ petitioner became eligible for promotion to Grade I(ii) by virtue of her seniority, and due order was passed by the

authorities in 2012. According to the learned advocate for the State respondent, the claim of the petitioner of holding Grade I (ii) post since November 08, 1983 is not at all tenable.

11. As noted above, the writ petitioner, upon successful passing of final General Nursing/midwifery examination, was appointed as staff nurse in terms of order passed by the Directorate of Health Services, Government of West Bengal on March 06, 1979.

12. The petitioner was recommended for undergoing post certificate courses in Teaching and Administration at New Delhi. After successfully undergoing such training, by an order dated September 06, 1983, the writ petitioner was transferred to A.N.M, N.T. C, Burdwan Medical College and Hospital to participate in the A.N.M/G.N.M training programme as Nurse Grade II.

13. Since the petitioner was working as teaching staff nurse under the order dated September 06, 1983, by an order of the Directorate of Health Services, Government of West dated July 30, 1985, the writ petitioner along

with others were granted the benefits of instructors allowance of Rs. 40/- per month with effect from November 08, 1983. In the said order, the petitioner was shown to be holding the post of Instructor Grade I (ii). On the basis of such order, issued by the authorities, the petitioner claimed that she has been holding Grade I (ii) since November 08, 1983.

- 14.** The State has come up with a case that the writ petitioner was invested with the responsibilities of teaching staff due to acute shortage of teaching faculties, though, the petitioner was never promoted to Grade I (ii). Mentioning the petitioner to be holding Grade I (ii) in the order, the order granting Instructors Allowance to the petitioner, has been wrongly construed by the petitioner as promotion. It has been contended that the extant rules for promotion provided the qualification of either possessing a B.Sc. degree in Nursing or by promotion of nurse who has completed at least five years' satisfactory service in Grade II and has passed the Departmental Examination for such promotion. The relevant

Memorandum i.e. Government of West Bengal, Health Department, Medical Branch Memorandum No. Medl./8328/IN-2/57 dated September 17, 1957 regulating the rationalization of the cadre of nursing services are reproduced hereunder:

(3) Grades in the cadre- The west Bengal Nursing Service shall consist of the following grades:-

(a) Grade I-

(i) Nursing Superintendents, Deputy Assistant Directors of Health Services.(Nursing), Deputy Nursing Superintendents;

*(ii) Sisters, Sister-Tutors, Instructor, Assistant
.....*

The strength of personnel under this category will be 3 per cent for (i) and 7 per cent for (ii) of the ceiling number of nurses.

(b) Grade II.—Senior and Junior Trained Nurses to be designated as STAFF NURSESS. The strength of personnel under this grade should be calculated at the rate of 30 per cent, of the ceiling number of nurse.

(C) Grade III— Auxiliary Nurse-cum-Midwives who will be designated as ASSISTANT NURSES. The

strength of personnel under this grade should be calculated at the rate of (ii) per cent of the ceiling number of nurses.

((d) Grade II—In view of the present shortage of trained nurses it will not be possible for some time yet in fill up all the posts by trained personnel. To make up the ceiling number referred to above untrained nurses aid to be designated as “SEVIKAS” should be employed at the rate of three Sevikas for two Nurses as stop-gaps. The Sevikas will be the potential trainee. The existing untrained nurses (both female and male) will be included in this category but no new male nurses should be recruited. The existing male nurses redesignated as “SEVIKAS” will, however, continue as at present until they waste out, or are absorbed in equivalent appointments.

(4) Pay seals and recruitment—The pay scale, qualifications and methods of recruitment in respect of each of the above categories of staff shall be as follows:-

(a) Grade iv- Untrained Nurses or “Sevikas” and “Sevaks”-

Pay – Rs. 40-I-60(E.B. after 12thstage)

Qualification and method of recruitment.... Direct recruitment of untrained nurse aids or Seviaks.

(b) Grade III.

Pay... Rs. 55-3-118-4-130 (E.B. after 12th stage)

Qualification Registered Auxiliary Nurse cum Midwives.,

Methods of Recruitment .. Direct recruitment by selection or Sevikas after training

(C) Grade II.

Pay.. Rs. 100—4-180—5—200 (E.B. after 12th stage)

Qualification and method of recruitment::

(i) Direct recruitment by selection of registered Senior or Junior trained nurses.

(ii) Promotion of nurses who have completed at least five years' service in Grade III and have passed a Departmental examination for such promotion. The quota of vacancies to be filled up by promotion will be fixed by the Director of Health Services, West Bengal, from time to time.

(d) Grade I.

Pay: (i)Rs. 350 –10—450.

(ii) Rs. 150—5—240—10—300(E.B. after 12th stage)

Qualification and method of recruitment—
Posts in category (i) will be usually filled up promotion at least five years' service in category(ii) and have passed a Departmental examination for such promotion. Posts in category (ii) will be filled up either by direct recruitment of nurses possessing the B.Sc. degree in Nursing or by promotion of nurse who have completed at least five years' satisfactory service in Grade II and have passed the Departmental Examination for such promotion. The quota of vacancies in category (ii) to be filled up by promotion will be determined by the Director of Health Services, West Bengal, from time to time.

Direct recruitment to any of the categories (i) and (ii) of well qualified nurses can be made by the Director of Health Services, West Bengal. Direct recruits can also be given higher initial pay in the scales by

the Director of Health Services with the prior approval of Government.

- 15.** The writ petitioner was not possessing either of the qualifications i.e. a B. Sc. Degree or the five years of satisfactory service as Grade II nurse, at the relevant time, entitling her promotion to Grade I (ii) Nurse. As such, she was not entitled for the promotion.
- 16.** The impugned order, upon sufficient discussions, has noted that the writ petitioner failed to produce formal order of promotion issued by the authorities in her favour despite being provided with ample opportunities. It also noted that the petitioner was even not eligible for promotion at the relevant time, in terms of the extant rules/notifications. No such order has been brought on record by the writ petitioner, in course of hearing of the instant writ petition as well.
- 17.** As discussed, the petitioner was inducted in service as staff nurse and was confirmed in service with effect from March 21, 1982. Later, she received Diploma course in Nursing Education and Administration from Lady

Reading Health School, New Delhi. Upon successful completion of the course, she was re-appointed at Nursing Training School, Burdwan Medical College & Hospital in 1983. Later, she was transferred to Nursing Training School, Medinipur Medical College & Hospital.

18. The writ petitioner, by a Memo dated July 30, 1985, was awarded with the benefits of Instructor's allowance with effect from November 08, 1983. In the said Memo, the petitioner was shown to be holding the rank of Nurse Grade I (ii). The writ petitioner has staked her claim that since she was shown to be holding the rank of Nurse Grade I (ii) in the aforesaid Memo, she will deem to have been promoted to such Grade. Incidentally, she was working as Instructor and Instructor's allowance was awarded to her.

19. The writ petitioner was allowed Instructor's allowance which according to the aforementioned Memo was admissible to a nurse who is found to possess an aptitude to be a Sister-Tutor and in addition successfully has undergone a special departmental course or

possesses training in nursing administration and teaching at a recognised institution approved by the Director of Health Services or holds a B.Sc. (Nursing) degree. The petitioner was not having a B.Sc. (Nursing) degree but she underwent Diploma Course in Nursing Education and Administration at Lady Reading Health School, New Delhi.

20. The case of the State respondents is that the writ petitioner was invested with additional charge of instructor due to acute shortage of teaching staff. But she was never promoted to such post. In fact, the petitioner lacked the necessary qualification for promotion at that time. Subsequently, she acquired the requisite qualification and was promoted by an order passed in the year 2012.

21. The petitioner has claimed that her position as Nurse Grade I (ii) was accepted by the Labour Court and her petition was allowed therein. With due respect, upon perusal of the copy of the order passed by the 1st Labour Court, placed before us by the petitioner, the issue

therein was the entitlement of the petitioner for arrears of wages on account of fitment in the revised scale of pay as per ROPA Rules, 1981 on the basis of the principles of 'equal pay for equal work'. The said Court never dealt with the issue of promotion.

22. The writ petitioner also approached this Court challenging her transfer order showing her as Grade II nurse being CO No. 7119 (W) of 1993. The said revisional application was disposed of with a direction upon the authorities to dispose of the representation of the petitioner within a specified time frame. The said case also did never dealt with the issue of promotion.

23. Again, CO 8630 (W) of 1993 dealt with the issue with regard to disturbances in the joining of the petitioner when she was transferred to Medinipur Medical College & Hospital. The court never took into account the issue of promotion or her entitlement in this regard. A contempt application in this regard, was also preferred by the writ petitioner which dealt with the issues of disturbances in her joining at Medinipur

Medical College & Hospital coupled with the issue of payment of salaries and withholding of incremental benefit.

24. The issue of promotion or entitlement of the writ petitioner for a promotion was not an issue in any of the litigation referred to by the petitioner. The representation put in with regard to the grievances of the petitioner subsequent to the issuance of transfer order was directed to be disposed by the authorities. Therefore, the contention of the petitioner that her entitlement for promotion was acknowledged and upheld by this Court or the Labour Court is not justified.

25. In the light of discussion made hereinbefore, we find no reason to interfere with the impugned order. The impugned order dated February 12, 2014 passed by the West Bengal Administrative Tribunal in OA 1431 of 2012 is hereby affirmed.

26. Accordingly, WPST 1 of 2015 is dismissed without any order as to costs.

27. In view of the disposal of the main appeal, interim applications, if any, shall stand disposed of.

28. Urgent photostat certified copy of this order, if applied for, be given to the parties upon priority basis on compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

29. I agree.

[DEBANGSU BASAK, J.]