

**04.04.2023**  
**DL-147**  
(PP)

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

**WPA 17637 of 2021**

**Smt. Monika Ghosh**  
**Vs.**  
**The State of West Bengal & Ors.**

Mr. Anil Kumar Chattopadhyaya  
....for the petitioner.

Mr. Tapan Kumar Mukherjee,  
Ms. Debdooti Dutta  
.....for the State.

By an order dated January 15, 2021, the Hon'ble Division Bench of this Court set aside the order dated April 16, 2013 issued by the Joint Secretary to the Government of West Bengal & Additional Mission Director, National Rural Health Mission and the order dated May 17, 2013. The appellants were directed to act pursuant to the order dated September 7, 2009 of the District Magistrate. By the impugned order dated April 16, 2013, the authority concerned recommended cancellation of the contractual engagement of the petitioner. By the impugned memo dated May 17, 2013, the Member Secretary, Amta-I Block, Helath and Family Welfare Samiti terminated the engagement of the petitioner pursuant to the letter of Joint Secretary dated April 16, 2013. The said impugned memos were set aside and/or quashed by the Hon'ble Division Bench.

The petitioner was selected as 2<sup>nd</sup> Auxiliary Nurse and Midwife (ANM) with effect from December 3, 2010. The petitioner worked from 2010 till May 17, 2013 when she was disengaged from service. The petitioner was paid remuneration up to May 2013. The petitioner in the present writ petition has prayed for disbursement of monthly salary from May 2013 till January 2021 since the said period was a period of “*forced unemployment*”.

Mr. Chattopadhyaya, learned counsel appears on behalf of the petitioner.

Mr. Mukherjee, learned Additional Government Pleader appears on behalf of the State respondents.

Considering the submissions of the parties and the materials placed on record, this Court finds that the period of “*forced unemployment*” from May 2013 till January 2021 was not due to any laches or any misconduct on the part of the petitioner. This Court finds that by the order dated January 15, 2021, the Hon’ble Division Bench has not given any direction with regard to the disbursal of back wages to the petitioner due to such “*forced unemployment*”.

This Court has recently held in a judgment dated March 27, 2023 passed in WPA 1788 of 2023 (**Laxmi Kanta Paul Vs. Union of India & Ors.**) that in the event an order and/or guideline is capable of

two interpretations then it must be interpreted in a way that is beneficial to the employee. Such view of this Court finds support in the Apex Court's judgment reported in **2022 Live Law (SC) 785 (State of Rajasthan & Ors. Vs. O.P. Gupta)** wherein it has been held that if any order/rule is capable of more than one interpretation Courts should lean in a direction that is beneficial to the employee.

In such view of the matter, this Court holds that the petitioner will be entitled to 50% back wages from May 2013 till January 2021 since the "*forced unemployment*" was not due to any act or omission on the part of the petitioner. The Hon'ble Division Bench has not debarred the petitioner from receiving the back wages. Therefore, this Court holds that the petitioner is entitled to the same. Such back wages should be disbursed to the petitioner within six months from the date of the order.

Since the petitioner was under "*forced unemployment*", the principle of "*no work no pay*" will not be applicable to her.

With the directions aforesaid, **WPA 17637 of 2021** is **disposed of**.

Since no affidavits have been called for in the writ petition, the allegations contained therein are deemed not to have been admitted by the parties.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

**(Lapita Banerji, J.)**