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2024.PHHC.148253-DB



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

LPA-60-2020 (O&M)

Date of Decision: November 12, 2024

State of Punjab and others

..... Appellants

Versus

Harmandeep Kaur and others

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: Mr. Rohit Ahuja, DAG, Punjab.

**Mr. P.P.S. Brar, Advocate
for respondents Nos. 2 to 5, 8, 9, 12, 15, 18, 23, 25, 26, 30 & 53.**

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 13.11.2018 passed by learned Single Bench whereby CWP-19620-2014 filed by respondents (writ petitioners) has been allowed.

2. Respondent (writ petitioners) filed CWP-19620-2014 for setting aside order dated 25.10.2013 whereby it was directed that salary of Rs. 12,000/- for the month of September 2013 be released to Staff Nurses and Counsellors being contrary to the advertisement as well as terms and condition of their appointment letters, which provided salary of Rs. 18,000/- per month to Staff Nurse and Rs. 15,000/- per month to the Counsellor. Action of

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respondent in releasing salary of only Rs.12,000 per month to the writ petitioners since 2013 was challenged in the said writ petition. It is pleaded in the writ petition that writ petitioners were appointed as Staff Nurse and Counsellor in the year of 2012 and 2013, pursuant to advertisements/public notice attached as annexures P1 and P4 with the writ petition. Vide impugned order, their salary was reduced to Rs.12,000/- per month without any rhyme or reason.

3. Respondents contested the writ petition. NPCDCS program, it was stated, was run with the help of 75% grant sanctioned by Government of India and remaining 25% contributed by State Government. Petitioners were admittedly appointed as Staff Nurse and Counsellor on contract basis under the National Program for Prevention and Control of Cancer, Diabetes, Cardio Vascular Disease and Stroke (NPCDCS) on consolidated remuneration, as per public notices attached. Working of program was reviewed but was found to be inadequate, therefore, to motivate Staff Nurse and Counsellor to perform better, their pay was settled at Rs.12,000/- fixed monthly remuneration with Rs.6,000/- and Rs.3,000/- as variable to be released as a performance based incentive.

4. Learned Single Judge on considering the facts and circumstances of the case, found refixation of remuneration to be unjustified and illegal. It was also noted that it was only the remuneration of Staff Nurse and Counsellor alone which was decreased whereas rest of staff members continued to get the salary as earlier. Action of the respondents in reducing the salary was found to be arbitrary and discriminatory, therefore writ petition

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was allowed and order dated 13.11.2018 was set aside. Aggrieved therefrom, present appeal has been filed by the respondent.

5. Learned counsel for the State submits that as per terms and condition of appointment of respondents (writ petitioners) their salary could have been changed, therefore learned Single Bench has erred in allowing the writ petitions filed by writ petitioners. Reference was made to clause 12 of the appointment letter. It is submitted that Government of India expressed displeasure to the State regarding inadequate performance of NPCDCS program. Higher authorities visited Civil hospitals of identified District to review performance of the program and concluded that there was inadequate performance. It is due to this reason that Director, Health and Family Welfare, Punjab took a conscious decision in respect to pay of Staff Nurses and Counsellors. In order to provide performance based incentives, it was decided to fix remuneration at Rs.12,000/- per month with Rs.6,000/- to be paid as performance based incentives to the Staff Nurses and Rs.3000/- per month as a variable to Counsellors. It is, thus, prayed that this appeal be allowed and order dated 13.11.2018 be set aside.

6. Learned counsel for respondents has opposed the appeal while submitting that a well-reasoned order has been passed by learned Single Bench after considering the facts and circumstances. Dismissal of the appeal is sought.

7. We have heard learned counsel for parties and have gone through the file with their able assistance.

8. Appointment of respondents (writ petitioners) on the post of Staff Nurse and Counsellor pursuant to advertisement(s) issued by respondents is a

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matter of record. It is further an admitted fact that they were initially appointed at a consolidated remuneration of Rs.18,000/- to Staff Nurse and Rs.15,000/- to Counsellor. Vide order dated 25.10.2013, it was directed that for the month of September, Staff Nurses and Counsellors would be given Rs.12,000/- with pay of all other categories to remain the same. Such arrangement was continued. Justification extended by respondents, as detailed in the foregoing paras, is unacceptable and totally unjustified. Reliance on clause 12 of the appointment letter is of no avail to the appellants as it is provided therein that terms and conditions and salary are liable to change as per guidelines/directions issued by State Mission Director/State Health Society/State Government/Government of India from time to time and will be applicable accordingly. By no stretch of imagination, can it be held that there can be variation in the remuneration and particularly a reduction in an arbitrary fashion without any basis whatsoever.

9. Learned counsel for appellant is unable to point out any material on record to indicate that performance of respondent/writ petitioners in particular was found to be inadequate or not upto the mark. An omnibus statement that on inspection, performance of the program was found to be inadequate, cannot be the foundation of action taken by the authorities. Such action is unjustified, arbitrary and unsustainable, hence, rightly set aside by learned Single Bench.

10. Learned counsel for appellants is unable to point out any infirmity or irregularity in impugned order dated 13.11.2018 which calls for interference.

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11. It is brought to our notice at this stage, that in the absence of any interim order in this appeal, order dated 13.11.2018 has been complied with and all writ petitioners are continuing to serve under the NPCDCS program till date.

12. There is a delay of 345 days in filing of the appeal. Delay is attributed to the movement of the file between Department of Health and Family Welfare of the State and Director, National Health Mission besides the ground of financial implications.

13. In the given facts and circumstances, we do not find reasonable or sufficient cause for condonation of delay in filing of the appeal which is accordingly, dismissed on merits and being time barred as well.

14. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

November 12, 2024
Rts

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No