

Court No. 1
(266111)

WPA(P) 88 2024

06.02.2025

(AD 2)

(S. Banerjee/KS)

Nurses' Unity, represented by its Secretary Bhaswati
Mukherjee & Anr.

Vs.

State of West Bengal & Ors.

Mr. Jaydeep Kar, Sr. Advocate
Mr. Soumya Majumder, Sr. Advocate
Mr. Kartik Kumar Ray
Mr. Debasish Banerjee
Mr. Rakesh Jana

...for the petitioners

Mr. Sirsanya Bandyopadhyay
Mr. Ritesh Kumar Ganguly

...for the State

1. An organization namely, Nurses' Unity, represented by its Secretary, and the Secretary of the organization have filed this writ petition as a public interest litigation praying for a direction upon the respondents to redress the grievances which have been addressed by the organization on behalf of its members dated 27.06.2023. The grievance appears to be with regard to the pay and allowances payable to the members of the petitioner organization stating that they have been discriminated from the similarly placed persons who are serving in the other departments of the State government.

2. Pursuant to the direction issued earlier on 13.03.2023 in WPA(P) 307 of 2021, the Principal Secretary, Health and Family Welfare Department, Government of West Bengal passed a reasoned order, the operative part of which reads as follows:

“Now, after having heard the representatives of the respondent no. 10 and considering the whole gamut of the case, the undersigned is of the view that the revision of pay is a periodical exercise taken up by the Pay Commission duly appointed by the State Government. In the Pay Commission all the associations of the employees have liberty to submit their demands for consideration. In the 6th Pay Commission also the concerned association i.e., Nurses Unity also submitted their representation regarding their pay scale matters which the Pay Commission duly considered and fixed up the scale of pay applicable for the Staff Nurse, Grade-II. However, the grievances of the said association (Nurses Unity) regarding their demand for enhancement of the existing pay scale of the Staff Nurse, Grade-II has already been sent to the Finance Deptt. for appropriate action. The queries/clarifications

raised by the Finance Deptt. in this matter have also been duly cleared from this end.”

3. Pursuant to the above order a fresh representation has been made on 27.06.2023 which appears to be still pending for consideration before the Health and Family Welfare Department.
4. As could be seen from the above order dated 13.03.2023, the claim made by the petitioners has not been outrightly rejected rather, the matter had been referred to the Finance Department, Government of West Bengal and the order states that the queries/clarifications raised by the Finance Department in the matter have also been duly cleared by the Health and Family Welfare Department.
5. Mr. Bandyopadhyay, learned Senior Standing Counsel for the State, on instruction submits that the Finance Department has rejected the prayer made by the petitioners for granting equal pay as that of the Staff Nurses who are working in other departments of the State government. It is further submitted by the learned Senior Standing Counsel that the entire claim of the writ petitioners appears to be based

on the similar qualification possessed by the members of the first petitioner organization and that of the Staff Nurses employed in other departments of the State Government. It is the submission that qualification alone is not the sole criterion but there are several other factors which are to be reckoned to examine as to whether there is parity in employment, parity in recruitment, etc.

6. Time and again the Hon'ble Supreme Court has held that it is not for the High Courts in exercise of its powers under Article 226 of the Constitution of India to consider equation of two posts or consider equations of two qualifications or to compare the service conditions of two categories of employees and to come to a conclusion as to whether same pay and allowances has to be extended to both sets of people as this involves adjudication on facts which are not to be done in exercise of writ jurisdiction.

7. The stand taken by the Finance Department has not yet been made known to the petitioners as it appears that it is the file noting made by the Finance Department. In any event, a fresh representation is still pending consideration

before the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal dated 27.06.2023.

8. Therefore, we dispose of this writ petition by directing the Principal Secretary, Department of Health and Family Welfare to consider the representation dated 27.06.2023, take note of the observations made by the Finance Department and pass a speaking order on merits and in accordance with law and to communicate the same to the petitioners within a period of three weeks from the date of receipt of the server copy of this order.
9. The learned Senior Advocate representing the writ petitioners submitted that if the petitioners are made known about the stand taken by the Finance Department as to why the claim was not acceptable or, in other words, why the clarifications given by the Department of Health and Family Welfare is not acceptable, it will enable them to file an additional representation to make submissions on the said point.
10. Therefore, we direct the concerned authorities of the Finance Department to set out in brief the reasons why the Finance Department did not accept the clarifications to the queries

raised by the petitioners and if the gist of the same is communicated to the petitioners within a period of two weeks from the date of receipt of a server copy of this order, liberty is granted to the petitioners to file an additional representation to cover those issues as well. Thereafter, the Principal Secretary of the Department of Health and Family Welfare shall consider the representation dated 27.06.2023 as well as the additional representation that may be given and pass a reasoned order on merits and in accordance with law.

11. The above direction be complied with within a period of six weeks from the date on which the additional representation is submitted.

(T. S. Sivagnanam, C. J.)

(Hiranmay Bhattacharyya, J.)