



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7266 OF 2022

- 1) Pushpa Pundlikrao Sarve,
Age 61 years, Occupation – Retired
Health Worker (Female),
R/o Futala, Near Corporation Library,
Amravati Road, District – Nagpur.
- 2) Smt. Shakeela Shakil Patel,
Age 62 years, Occupation – Retired
Lady Health Visitor, R/o Plot No.70,
Bagdadiya Layout, Near N.I.T. Garden,
Hanuman Mandir of Gayatri Nagar,
Koradi Road, District Nagpur – 30.
- 3) Pramila Tulsiram Nikhade,
Age 68 years, Occupation – Retired
Health Worker (Female), R/o Post -
Kandri, Taluka – Mohadi, District -
Bhandara.

.... **PETITIONERS**

VERSUS

- 1) Zilla Parishad Bhandara,
through the Chief Executive Officer,
Bhandara, District – Bhandara-441904.
- 2) District Health Officer,
Zilla Parishad Bhandara,
District Bhandara – 441904.

.... **RESPONDENTS**

Mr. D.V. Mahajan, Counsel for the petitioners,
Mr. R.S. Khobragade, Counsel for the respondents.

CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.

DATE : 09-05-2025

JUDGMENT : (Per : ABHAY J. MANTRI, J.)

Heard. **RULE.** Heard finally with the consent of the learned Counsel for the parties.

2. The petitioners seek direction against the respondents to implement the orders dated 30-03-2017 and 25-03-2017 and grant a pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- with effect from 09-01-2013 onwards instead of Rs.5200-20200/- with grade pay of Rs.3250/-.
3. During the pendency of the petition, the petitioners questioned the order dated 22-09-2023 passed by respondent No.1-Chief Executive Officer, which thereby refused to grant a pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- and cancelled the order dated 30.03.2017 to grant the same to respondent No.1.
4. The petitioners were appointed as Health Worker (Female/Arogya Sevika (Stree)/Assistant Nurse Midwife) on 12-03-1985, 21-03-1983 and 21-05-1986, respectively. Petitioner Nos.1 and 3 retired on 31-08-2012 and 31-05-2012, respectively, whereas Petitioner No.2 has taken voluntary retirement from 17-05-2012. It is contended that after completion of 12 years of service, they received the pay scale of 1st time-bound benefit equivalent to the pay scale of the promotional post of Health Assistant/Arogya Sahayika, then after completion of 24 years of service on

the said post, they were granted 2nd benefit under the ACP scheme in the same pay scale with revised grade pay of Rs.3250 (i.e. original G.P Rs.2800 + Rs.450 as increment in it = Rs.3250) only as no further promotional post was available to grant the pay scale of the said higher promotional post.

5. It is claimed that after implementation of the Government Resolution dated 29-03-2017, they are entitled to the benefit of pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- as vide Government Notification dated 05-12-2012 the new promotional post of Health Supervisor (Female)/Arogya Paryavekshak (Mahila) was created in pay band of Rs.9300-34800/- with grade pay of Rs.4200/- i.e. promotional post of Arogya Sahayika/Health Assistant (Female) and the said policy was implemented by the Zilla Parishad from 09-01-2013, therefore, they are entitled for the said pay scale w.e.f. 09.01.2013. However, the respondents refused to grant them the said pay scale. Also, respondent No.1-Chief Executive Officer, by the impugned order dated 22-09-2023, cancelled the order dated 30-03-2017 to the extent of Petitioner No.1 and held that the petitioners are not entitled to the second benefit after 24 years of service as claimed. Being aggrieved by the same, they have preferred this petition.

6. Mr. D.V. Mahajan, learned Counsel for the petitioners, strenuously argued that on 05-12-2012 the Government issued notification and

created new post of Arogya Paryavekshak (Stree), which is the promotional post of Arogya Sahayika and same was implemented by the Zilla Parishad w. e. f. 09-01-2013, therefore, the petitioners are entitled to get the pay scale of the said promotional post from 09-01-2013. The said fact was also clarified by the Government Resolution dated 29-03-2017 (G.R. dated 29-03-2017). Therefore, it is canvassed that the petitioners are entitled to the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/-. However, the respondent authorities have not considered the said Government Resolution and cancelled the pay scale granted to petitioner No.1 vide order dated 30-03-2017 contrary to the said Government Resolution, and, therefore, he urged for granting the pay scale in view of the G.R. dated 29-03-2017.

7. Mr. R.S. Khobragade, learned Counsel for the respondents, vehemently opposes the petition on the ground that before creation of the promotional post of Arogya Paryavekshika vide Government Notification dated 05-12-2012 and implementation of the same by the respondents from 09-01-2013 the petitioners were not in service and, therefore, they were not entitled to the pay scale as claimed as per the G.R. dated 29-03-2017. Thus, the respondents rightly refused the benefit to the petitioners, and no interference is required in it.

8. We have considered the rival submissions and perused the impugned orders and G.R. dated 29-03-2017.

9. The short but crucial question that arises before us is that -

“Are the petitioners entitled to a 2nd benefit under the ACP scheme in the pay band of Rs. 9300-34800/- with grade pay of Rs. 4200/- as per the G.R. dated 29-03-2017?”

10. Before dealing with the question in controversy, we would like to reproduce the undisputed facts of the case as follows:

(a) It is not in dispute that the petitioners were appointed to the post of Arogya Sevika (Stree) on 12-03-1985, 21-03-1983 and 21-05-1986, respectively. It is also not in dispute that petitioner Nos.1 and 3 retired from service on 31-08-2012 and 31-05-2012, respectively, and petitioner No.2 took voluntary retirement from 17-05-2012. The petitioners do not dispute that they were retired before creating the promotional post of ‘Arogya Paryavekshak/Health Supervisor (female)’ vide Government Notification dated 05-12-2012.

(b) It is further undisputed that after completing 12 years of service on the post of Arogya Sevika, the petitioners were granted the first benefit of the time-bound promotion scheme and their pay scale was fixed at Rs.5200-20200 with grade pay of Rs. 2800/-. Similarly, after completing their 24 years of service, they were eligible for the second benefit of Assured Career Progression Scheme (ACP Scheme) as on

12-03-2009, 21-03-2007 and 21-04-2010 respectively. It is undisputed that at the time of completion of 24 years of service, the higher pay scale of the second promotional post does not exist in the promotional cadre, and, therefore, the question of granting the pay scale of the higher promotional post does not arise for the petitioners. However, they were given the 2nd benefit of the ACP Scheme by increasing the grade pay of Rs. 2800/- to Rs. 3250/- with effect from 12-03-2009, 21-03-2007 and 21-04-2010, respectively. Accordingly, they were granted a pay scale of Rs. 5200-20200 with a grade pay of Rs. 3250/-.

(c) It further appears that after implementation of the Government Resolution dated 29-03-2017, respondent No.1-Chief Executive Officer granted the 1st and 2nd benefits of pay scale of the promotional post of Health Supervisor/Arogya Paryavekshika to the respective employees vide order dated 30-03-2017. In the said order, the petitioner No.1's name was shown at Sr.No.14 and in Column No.6, it was shown that from 09-01-2013, she was entitled to the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/-. However, the said order was never implemented, and the petitioner's pension was never revised in the said pay scale.

(d) On 12-09-2023, petitioner No.1 made a representation to respondent No.1 requesting to grant the revised pay scale and pension vide order dated 30-03-2017. Respondent No.1 vide communication dated

22-09-2023 informed her that she is not entitled for 2nd benefit as claimed in the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- as the petitioner was retired before 05-12-2012, and rejected her representation and cancelled the order dated 30-03-2017 to the extent of grant of revised pay scale to Petitioner No.1.

11. Thus, it is evident from the undisputed facts that before the issuance of the Government Notification dated 05-12-2012, whereby the post of Arogya Paryavekshika in the pay band of Rs.9300-34800/- with grade pay of Rs.4200/-, which is a promotional post of Arogya Sahayika, was created. The petitioners were retired and not in service at the time of issuance of the said Government Notification. Furthermore, the respondent Zilla Parishad implemented the Government Notification from 09-01-2013.

12. To determine whether petitioners are entitled to pay scale of the Arogya Paryavekshika after their retirement in service, it is necessary to reproduce clause Nos. 1 to 4 of the G.R. dated 29-03-2017.

“1- आरोग्य सेवक (स्त्री) या पदावर कार्यरत कर्मचा-यांना आश्वासित प्रगती योजनेचा दुसरा लाभ देतांना आरोग्य पर्यवेक्षक पदाची वेतनश्रेणी / ग्रेड पे सह दे; ठरते. हा लाभ त्यांना दिनांक ५ डिसेंबर २०१२ रोजी आरोग्य पर्यवेक्षक पद अस्तित्वात आल्याने त्या तारखेपासून मंजूर करण्यात येत आहे.

2- आश्वासित प्रगती योजने अंतर्गत आरोग्य सहाय्यक (स्त्री) या पदावर कार्यरत कर्मचा-यांना 12 वर्षांचा प्रथम लाभ देतांना दिनांक ५ डिसेंबर २०१२ पासून आरोग्य पर्यवेक्षकाची वेतनश्रेणी / ग्रेड पे सह अनुज्ञेय ठरेल.

३. उपरोक्त लाभ दिनांक ५ डिसेंबर २०१२ पूर्वी आश्वासित प्रगती योजनेअंतर्गत पहिला अथवा दुसरा लाभ देय झालेल्या आरोग्य सेवक (स्त्री) व आरोग्य सहायक (स्त्री) या पदावरील कर्मचा-यां नाही दिनांक ५ डिसेंबर २०१२ पासून देय असेल.

4- उपरोक्त लाभ देतांना शासन निर्णय वित्त विभाग दिनांक 1-4-2010] 5-7-2010] 1-7-2011] 6-9-2014] 10-2-2015] 10-12-2015] 23-12-2015 rlsp fnukad 9-2-2016 मधील तरतूदींचा यथास्थिती (पदोन्नतीची साखळी असलेली/पदोन्नतीची साखळी नसलेली पदे विचारात घेवून) विचार करुन संबंधितांना त्यांच्या नियमित सेवेची १२ वर्षे / पहिल्या लाभ मंजूरी नंतरच्या १२ वर्षे सेवेनंतर, (संबंधितांना लाभ मंजूर अनुज्ञेय झाल्याच्या तारखेस) पदोन्नतीचे पद उपलब्ध होते / किंवा नव्हते याचा विचार करुन प्रकरणपरत्वे निर्णय घेण्यात यावा.”

13. On conjoint reading of the above clauses, it would indicate that the employees who were in service on the date of issuance of the Government Notification dated 05-12-2012 and have completed 12 or 24 years of service were entitled to get the 1st or 2nd benefits under the ACP Scheme as per the provisions of the Government Resolution. Undisputedly, the petitioners were not in service and therefore, in our view, the G.R. dated 29-03-2017 does not apply to the retired employees before 05-12-2012. Hence, the question of granting them the said benefit does not arise. Consequently, in our considered opinion, the petitioners who were retired prior to that date, i.e. 05-12-2012, are therefore not entitled to get a pay scale of Rs. 9300-34800/- with grade pay of Rs. 4200/-. Accordingly, we answer the question in the negative.

14. The next question arises that the name of petitioner No.1 was shown at Sr.No.14 in the order dated 30-03-2017. However, the said order was never implemented in her favour. However, her name appears to be inadvertently included in the said list. Therefore, the said order was not

implemented in her favour. The G.R. dated 29-03-2017 spells out that the employees who were in service and have completed 12 years and 24 years of service are entitled to the benefit under the 1st and 2nd ACP scheme as per the pay scale as per the Notification dated 05-12-2012. Consequently, vide communication dated 22-09-2023, the order dated 30-03-2017 to the extent of petitioner No.1 was cancelled. Therefore, we do not find substance in the contention of the learned Counsel for the petitioners in that regard.

15. The learned Counsel for the petitioners also argued that the Co-ordinate Bench of this Court at Aurangabad in Writ Petition No.4748/2016 granted the petitioners/employees the benefit under the G.R. dated 29-03-2017. On perusal of the order in W.P. No.4748/2016, passed by the Co-ordinate Bench of this Court, we do not find the substance in his contention, as this court had only given the directions to the respondents therein to take a decision regarding the issue raised by the petitioners therein and disposed of the petition; no benefits under the G.R. dated 29.03.2017 was granted to the petitioners therein/employees.

16. In light of the above discussion, it is evident that the petitioners failed to show that they are eligible for the 2nd benefit under the ACP Scheme as per the provisions of the G.R. dated 29-03-2017 under the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/-. Therefore, in our

view, the petitioners are not entitled to the reliefs as claimed. The petition, being bereft of merit, stands dismissed. No costs. Rule is discharged.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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