

(2018) 09 J&K CK 0056

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1720 Of 2002

**Kali Dass And Others @APPELLANT@Hash State Of Jammu & Kashmir
And Others**

Date of Decision : 24-09-2018

Acts Referred:

Citation : (2018) 09 J&K CK 0056

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Veenu Gupta, H.A.Siddiqui

Final Decision : Dismissed

Judgement

1. Instant petition by the petitioners is for seeking writ of mandamus to the respondents to release the grade of Rs.4000-6000 in favour of the petitioners with effect from the date they were promoted as Para Medical Assistants along with other consequential benefits.

2. Briefly stated, the facts, as projected in the writ petition, are that the petitioners who were holding Class-IV posts in the Health Department were promoted as Para Medical Assistants in Leprosy organization of the Directorate of Health Services in the pay scale of Rs.800-1500 in district Udhampur. This was done by respondent No.2 vide its order dated 01.03.1991. As is apparent from a bare glance on the aforesaid order, the promotion granted to the petitioners, except petitioner No.6, to the post of Para Medical Assistants in the pay scale of Rs.800-1500 was, however, subject to the condition that they will undergo the requisite training prescribed for Para Medical Workers in leprosy within the period of three years and thereafter would be considered for their placement to the next grade of Rs.900-1830. Insofar as petitioner No.6 is concerned, he was also similarly promoted to the post of Para Medical Assistant (Leprosy) in the pay scale of Rs.950-1500(which appears to be the revised pay scale of Rs.800-1500). This was done by respondent No.2 vide its order dated 07.01.1998. It is stated that during the course of their service as Para medical Assistants (Leprosy) in the pay scale of Rs.800-1500, the petitioners successfully underwent para medical

workers training in leprosy. Accordingly, petitioner Nos. 1 to 5 were granted the pay scale attached to the post of para medical assistant. It is stated that at the time of their promotion, the prescribed pay scale of para medical assistant was Rs.900-1830 which was then revised to Rs.1200-2040 and then Rs.4000-6000 in the subsequent pay revision. It is further submitted that the petitioner No.6 has not been released the pay scale attached to the post of Medical Assistant even, though, he has long back acquired the requisite qualification of para medical training in leprosy and holding the post since his promotion.

3. The sole grievance projected by the petitioners in this petition is that the moment the petitioners were promoted by the respondent No.2 to the post of Para Medical Assistants (Leprosy), they became entitled to the salary to be paid as per the pay scale/grade attached to the post and the respondent No.2 had no legal authority to pay them the pay scale/grade, a step lower than the grade attached to the post against which the petitioners had been appointed. This, in short, is the grievance projected by the petitioners in this petition.

4. The respondents have filed reply affidavit in terms of order dated 08.10.2009 and have explained the reasons why the petitioners, though, promoted to the post of Para Medical Assistants were placed in the pay scale lower than the one attached to the post. They have also placed on record the minutes of the meeting of the Departmental Promotion Committee (DPC) which, inter alia, considered the cases of the petitioners for promotion on 23.11.1990 and 02.01.1991. The respondents have sought to explain that the petitioners, though, matriculate Class-IV employees were not entitled to be promoted to the post of Para Medical Assistant (Leprosy) for two reasons:- (i) they were not possessed of para medical assistant training in leprosy and (ii) they did not fall in the consideration zone being not the members of the feeding cadre for promotion to the post of Para Medical Assistant. It is, however, submitted that keeping in view the necessity to man the posts of Para Medical Assistants, the petitioner Nos. 1 to 5 and 7 were considered for giving them promotion to the post of Para Medical Assistants. It is submitted that during the relevant time i.e. in the year 1991 the field was occupied by the draft rules and as per the draft rules, the post of Junior Para Medical Assistant had been provided to be filled up by appointment 100% by promotion from multipurpose workers with five years experience in the department. The petitioner, at the time of their consideration for promotion, were not eligible as per the rules then in vogue, but their placement as para medical assistants (Leprosy) was thought necessary to fill up the vacant posts and to carry on the smooth work of the department. It is, thus, submitted that the matter was placed before the DPC which after threadbare discussion in its meetings held on 03.11.1990 and 02.01.1991 promoted the petitioners as Para Medical Assistants but in the lesser grade of Rs.800-1500, though, the post of Para Medical Assistant carried the grade of Rs.900-1830 (pre-revised). It has been explained by respondent No.2 that such a course was adopted to provide an opportunity to the petitioners to acquire eligibility and requisite training and also to avoid two step promotion which they would have got, had they been

placed in the pay scale of Rs.900-1830 (pre-revised), the grade attached to the post of Para Medical Assistant. It is further elaborated in the affidavit that the draft rules came to be replaced by statutory rules which were issued by the respondents vide SRO 20 of 1992 dated 24.02.1990 and the post of para Medical Assistant was once again provided to be filled up 100% by way of promotion from matriculate Multipurpose Health Workers with five years experience as such. It is, thus, submitted that as per the draft rules as also the statutory rules, the petitioners were not eligible for promotion to the post of Para Medical Assistants.

5. Heard learned counsel for the parties and perused the record.

6. At the outset, it may be noted that so far as petitioner No.7 is concerned he has already got the relief and the order whereby the petitioner No.7 has been given the grade of Rs.900-1839 (pre-revised) on notional basis w.e.f. 01.03.1991 has been placed on record along with an application (IA No.1365/2007). The order bearing No.DHS-J/228-30 dated 08.05.2007 issued by respondent No.2 granting the pay scale of Rs.900-1830 (prerevised) to petitioner No.7 has been relied upon by the other petitioners to claim similar benefits. From the perusal of order dated 08.05.2007 (supra) it transpires that petitioner No.7 prior to the filing of instant petition had filed another petition i.e. SWP No.663/1986 which was disposed of by this Court on 06.11.1996 directing the respondents to release the grade attached to the post of para medical assistant on the principle of long officiation on the post. It is in this context, aforesaid order came to be implemented and the grade of Rs.900-1830 (pre-revised) appears to have been released in favour of petitioner No.7. The case of other petitioners is not similar to that of petitioner No.7 and, therefore, no parity can be sought on that score alone.

7. It may be noted that the petitioners were promoted as Para Medical Assistants (Leprosy) on 01.03.1991 with a clear stipulation that they would remain in the lesser pay scale of Rs.800-1500 and would be given regular pay scale of the post of Para Medical Assistant after three years during which they would undergo para medical workers training in leprosy. It is not in dispute that as per the draft rules which were then occupying the field as also the statutory rules which were promulgated in the year 1992, the petitioners were not eligible to be promoted to the post of Para Medical Assistant as they were matriculate Class-IV employees and not the multipurpose health workers who alone constitute the feeding cadre for promotion to the post of Para Medical Assistant. May be, as is apparent, they were promoted to man the vacant posts in the interest of health care, but the promotion was conditional. The petitioners were supposed to undergo training within a period of three years and thereafter they were to be placed in the regular pay scale attached to the post. The decision was taken by the departmental promotion committee which was translated into action by respondent No.2 vide its order dated 01.03.1991 in the case of petitioner No.1 to 5 and in the case of petitioner No.6 vide order dated 07.01.1998. The petitioners

accepted the aforesaid order, received the salary in the pay scale of Rs.800-1500 without any protest or demur. They even underwent the requisite training as indicated in the order of their promotion and were in terms of the stipulation contained in their promotion order, placed in the regular pay scale of Para Medical Assistant i.e. Rs.9001830(pre-revised) prospectively. The petitioners did not agitate their grievance before any forum till the year 2002 when a representation came to be filed by petitioner Nos. 6 and 7 only and thereafter the instant petition. There is, thus, delay of more than 11 years in approaching this Court and such unexplained delay in filing the instant petition is, therefore, fatal to the maintainability of this petition. Even otherwise, I do not find any case on merits.

8. Admittedly, the petitioners are beneficiaries of an illegal order of their promotion. Indisputably, the petitioners were not eligible to be promoted as Para Medical Assistants, as per the Rules then in vogue. They do not constitute feeding cadre for promotion to the post of Para Medical Assistant under the draft rules and even under the statutory rules framed in the year 1992. The petitioners got the benefit of the prevailing situation where number of post of Para Medical Assistants were lying vacant. The Departmental Promotion Committee took a holistic view of the matter and granted promotion to the petitioner as Para Medical Assistants but in the lower pay scale i.e. the pay scale existing between the pay scale of Class-IV and the pay scale of Para Medical Assistant. On the face of it, such a course of action may not look permissible but looking to the facts and circumstances, the decision taken by the DPC cannot said to be irrational or arbitrary.

9. In the ordinary course of things and going strictly by the rule position, the petitioner could not have been promoted as Para Medical Assistants as that would have amounted to two step promotion. Such course is also not envisaged under the service rules.

10. Be that as it may, a course of action was adopted which was beneficial to the petitioners. The petitioners after having accepted their promotion in the lower pay scale cannot be allowed to turn around and say that the respondents could not have promoted them as Para Medical Assistants by providing them the pay scale lower than the grade attached to the post. It is also not disputed by the petitioners, rather it is the case set up by them, that the moment they successfully completed the requisite training of Para Medical Workers in Leprosy, they were released the regular pay scale attached to the post. Obviously, the petitioners had no cause to raise any grievance and it is precisely for this reason they did not lodge any protest for almost nine years, what they did was only filing a representation. The doctrine of estoppel and acquiescence is clearly attracted in this case.

11. For the reasons stated above, the petition merits dismissal not only on the ground of inordinate delay and laches but also on merits. Accordingly, this writ petition is dismissed. No costs.