

Before Hon'ble B. C. Verma and V. K. Jhanji, JJ.

SMT. KRISHNA GROVER & OTHERS,—Petitioners.

versus

STATE OF HARYANA & OTHERS,—Respondents.

Civil Writ Petition No. 18691 of 1991

March 27, 1992.

Constitution of India, 1950—Art. 226—Auxiliary Nurses Midwives given six months promotional training under multipurpose scheme—Lady Health Visitors a promotion post for ANMs—After training. ANMs adjusted and posted against posts of Lady Health Visitors in their own pay scale—Such Midwives continuing to serve on the higher post for 8 years cannot be treated as substantively appointed to these posts—Order adjusting them against higher post cannot be treated as promotion order—Stop-gap arrangement confers no right to post—Order posting them back as ANM is not a reversion order—Promotion has to be according to rule—However, claim for difference of salary for having worked on higher post upheld and arrears directed to be paid for three years and two months prior to the filing of petition.

So far as the grant of the pay of the posts against which the petitioners had been working upto the passing of the order, Annexure P. 3 is concerned, the same has been allowed under similar circumstances by this Court in Civil Writ Petition No. 12846 of 1991 (*Shyam Sunder Sharma v. State of Haryana*) decided on December 12, 1991 and Civil Writ petition No. 12344 of 1991 (*Deha Sharma v. The State of Haryana*), decided on September 20, 1991. In both these cases a direction has been issued by this Court to pay to similarly situated persons the scale of pay of the posts of the Lady Health Visitors and also to pay arrears of salary for three years and two months prior to the filing of those writ petitions. There does not appear to be any reasons why insofar as this aspect of the case is concerned the directions given in the aforesaid two writ petitions be not followed.

(Para 4)

Held, that the order indicates the Auxiliary Nurses Midwives who had undergone the promotional training under the multipurpose scheme were,—(i) adjusted; (ii) posted against the posts of Lady Health Visitors; and (iii) in their own pay scale. The order thus clearly does not intend to promote those Auxiliary Nurses Midwives who were sent for training as Lady Health Visitors. They were only adjusted. This only means that it was a stop-gap arrangement as presumably the posts from which they were sent for training were occupied by other persons. In its wisdom, the department did not think it proper to oust the persons working as Auxiliary Nurses Midwives. In order to accommodate them as also the petitioners, the petitioners were simply asked to work (adjusted) as Lady Health Visitors. The very fact that it was expressly stated that they were to draw salary in their own scale of pay is a strong pointer to the

fact that they were never intended to be promoted to the higher posts in the higher scales of pay. They were only required to discharge the duties of the posts of Lady Health Visitor for the time being. True it is that they were required so to work for a considerably long period. That, however, does not mean that they stood promoted to those posts. This is more so because persons working as Lady Health Visitors with similar qualifications and having completed promotional training and senior to the petitioners as Auxiliary Nurses Midwives have still not been promoted as Lady Health Visitors.

(Para 5)

Held, that we are clear that by the impugned order, Annexure P. 1, only a stop-gap arrangement was made. Those governed by that order continued to substantively hold the posts of Auxiliary Nurses Midwives in their own scales of pay. They were never promoted as Lady Health Visitors. Consequently, we reject the contention that by force of Annexure P. 1 the petitioners stood promoted or appointed as Lady Health Visitors and, therefore, could not be asked, by order, Annexure P. 3, to resume charge of their substantive posts of Auxiliary Nurses Midwives.

(Para 6)

Held, that the petitioners certainly must be considered for such promotion, but then that shall have to be done only in accordance with the existing rules.

(Para 7)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) *A writ in the nature of certiorari be issued, quashing the impugned order annexure P/3 reverting the petitioners to the post of Auxiliary Nurse Midwife from the post of Lady Health Visitors.*
- (ii) *Issue a writ of Mandamus directing the respondents to regularise/confirm the services of the petitioners.*
- (iii) *A writ of Mandamus may also be issued directing the respondents to pay the pay-scale of Lady Health visitors to the petitioners for the period the petitioners have worked as such.*
- (iv) *Filing of certified copies of annexures as well as the service of advance notices on the respondents be dispensed with.*
- (v) *Costs of the petition may also be awarded.*

It is further prayed that operation of the impugned order Annexure P/3 may kindly be stayed ad-interim.

S. K. Mittal, Advocate, for the Petitioners

Arun Nehra, Addl. A.G. Haryana, for the Respondents.

JUDGMENT

(1) This judgment will also dispose of Civil Writ Petition Nos. 17096, 18540, 18601, 18674, 18688, 18717, 18735, 18819 and 18830 of 1991, and 292, 349, 3085, 3440, 658 and 740 of 1992, as common questions of law and facts are involved in these writ petitions.

(2) The petitioners in all these writ petitions substantively hold the posts of Auxiliary Nurses Midwives or Block Extension Educators. All of them were sent for promotional training. In turn, they executed a bond in the sum of Rs. 20,000 agreeing to serve the State Government for a period of two years after training. All of them successfully completed the training. Thereafter, instead of putting them in charge of the posts from where they were sent for training, they were required to work as Lady Health Visitors. Since the controversy in these writ petitions centres around the terms of that order, it shall be useful to produce the same :

“The following Auxiliary Nurse Midwives who had undergone six months promotional training under multipurpose scheme are hereby adjusted and posted against the post of Lady Health Visitors in their own pay scale with immediate effect.

Sr. No.	Name	From	To	Remarks
**	***	***	**	**
**	***	***	**	**

(2) The posts of Auxiliary Nurses Midwives carry a scale of pay of Rs. 950—1,600. The Lady Health Visitors are placed on a higher scale of Rs. 1,400—2,600. Auxiliary Nurses Midwives are entitled to be promoted as Lady Health Visitors carrying a higher scale of pay. The petitioners,—vide Annexure P. 1, on completion of their promotional training were “adjusted” against the post of Lady Health Visitors/Multipurpose Health Supervisors (Female); and have served as such for a considerable period of about eight years. They have now been asked to work at their present places of postings as Auxiliary Nurses Midwives, as the order, Annexure P. 3, which is dated December 6, 1991, seeks withdraw with immediate effect the order, Annexure P. 1. The petitioners’ contention is that the effect of the order Annexure P.1 is to promote them as Lady Health Visitors. They were allowed to work as such for a number of years. They were unjustly and illegally denied the scale of pay of the post

against which they were working. The petitioners further contend that the action of the State Government under Annexure P. 3 purporting to withdraw the order, Annexure P. 1, is entirely arbitrary and since they are eligible to be promoted to that higher post against which they were made to work for a number of years, they should be allowed to continue to function as such and be treated as substantively appointed to those posts. In addition, they also claim that for the period for which they have worked on those higher posts, the pay of those posts should be directed to be paid to them.

(3) While opposing the writ petitions, the respondent State has come forward with a plea that the posts of Lady Health Visitors/Multipurpose Health Supervisors (Female) under the existing rules are to be filled in by direct recruitment. These rules have come into force with effect from 1984. It is also contended that the petitioners were never appointed/promoted as Lady Health Visitors/Multipurpose Health Supervisors. They were simply adjusted against those posts in their own pay scales as Lady Health Visitors, since they were not so promoted. The effect of the order, Annexure P. 3 is not to revert them. By Annexure P. 3, the order, Annexure P. 1, has only been withdrawn, the result of which is that the petitioners shall discontinue to hold charge of those higher posts. In the affidavit filed in this Court, after conclusion of the hearing, the respondents have stated that the Midwives who have subsequently undergone the promotional training and who are senior to the petitioners have still not been promoted as Lady Health Visitors/Multipurpose Health Supervisors (Female). Promotions can be made only to the posts of Multipurpose Health Supervisors (Female) and the persons senior to the petitioners are still awaiting such promotion. The petitioners, therefore, according to the respondents, are entitled to no relief.

(4) So far as the grant of the pay of the posts against which the petitioners had been working up to the passing of the order, Annexure P. 3, is concerned, the same has been allowed under similar circumstances by this Court in Civil Writ Petition No. 12846 of 1991 (*Shyam Sunder Sharma v. State of Haryana*), decided on December 12, 1991, and Civil Writ Petition No. 12344 of 1991 (*Deha Sharma v. The State of Haryana*), decided on September 20, 1991. In both these cases a direction has been issued by this Court to pay to similarly situated persons the scale of pay of the posts of the Lady Health Visitors and also to pay arrears of salary for three years and two months prior to the filing of those writ petitions. There does not appear to be any reason why insofar as this aspect of the case is concerned the directions given in the aforesaid two writ petitions be not followed.

(5) The other question arising in this case as to the petitioners' continuance against the higher posts and their regularisation against the same depends upon the construction of the order, Annexure P. 1, the text of which we have quoted above. The order indicates that the Auxiliary Nurses Midwives who had undergone the promotional training under the multipurpose scheme were,—(i) adjusted; (ii) posted against the posts of Lady Health Visitors; and (iii) in their own pay scale. The order thus clearly does not intend to promote those Auxiliary Nurses Midwives who were sent for training as Lady Health Visitors. They were only adjusted. This only means that it was a stop-gap arrangement as presumably the posts from which they were sent for training were occupied by other persons. In its wisdom, the department did not think it proper to oust the persons working as Auxiliary Nurses Midwives. In order to accommodate them as also the petitioners, the petitioners were simply asked to work (adjusted) as Lady Health Visitors. The very fact that it was expressly stated that they were to draw salary in their own scale of pay is a strong pointer to the fact that they were never intended to be promoted to the higher posts in the higher scales of pay. They were only required to discharge the duties of the posts of Lady Health Visitors for the time being. True it is that they were required so to work for a considerably long period. That, however, does not mean that they stood promoted to those posts. This is more so because persons working as Lady Health Visitors with similar qualifications and having completed promotional training and senior to the petitioners as Auxiliary Nurses Midwives have still not been promoted as Lady Health Visitors.

(6) We may usefully refer to the decision of the Supreme Court in *Ramakant Shripad Sinai Advolpalkar v. Union of India* (1). In that case, the office order in the following terms came for consideration,—

“Shri Ramakant Sripada Sinai Advolpalkar, acting 3rd grade officer of the Caxia Economica de Goa will perform the duties of the Treasurer of Caxia Economica de Goa, vice Shri Antonio Xavier Furtado, who died this morning. Shri Advolpalkar should assume the function of the post from today.

Shri Advolpalkar will draw besides the monthly salary of his own post as acting 3rd grade officer an allowance of Rs. 100 p.m. which is payable to the post of treasurer under the existing rules.....”

This question was whether Shri Ramakant Sripada Sinai Advolpalkar stood promoted as a Treasurer. It was held that such an arrangement does not amount to promotion. In this context, the Supreme Court observed as follows :—

“Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only that in service parlance is called a “charge allowance.” Such situation are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.”

These observations lend support to the view we have taken of the order, in question. We are clear that by the impugned order, Annexure P.1, only a stop-gap arrangement was made. Those governed by that order continued to substantively hold the posts of Auxiliary Nurses Midwives in their own scales of pay. They were never promoted as Lady Health Visitors. Consequently, we reject the contention that by force of Annexure P.1, the petitioners stood promoted or appointed as Lady Health Visitors and, therefore, could not be asked, by order, Annexure P.3, to resume charge of their substantive posts of Auxiliary Nurses Midwives.

(7) The learned counsel for the petitioners, further contended that the petitioners could be considered for promotion to the higher post of Multipurpose Health Supervisors (Female), or even as Lady Health Visitors as permissible on the dates when they were asked to function as such.—*vide* Annexure P.1. This contention also cannot be accepted. The petitioners certainly must be considered for such promotion, but then that shall have to be done only in accordance with the existing rules. Counsel for the respondents stated at the bar that the promotions are being made in accordance with seniority and as and when the petitioners so became due in their turn, they shall be considered for promotion and promoted if found eligible. The result is that the writ petitions stand substantially dismissed. We, however, hold that the petitioners are entitled to be paid the regular scale of pay of the Lady Health Visitor/Block Extension Educators from the date of his/her appointment together with all increments in that scale during the period of service on that post. We further make a direction that the arrears of pay so calculated

for the last three years and two months prior to the filing of the writ petition shall be paid to the petitioners. This should be done within a period of four months. If the payment is not so made, the amount due shall carry interest at the rate of 12 per cent per annum till payment. No costs.

R.N.R.

Before : Hon'ble A. L. Bahri & V. K. Bali, JJ.

CONSTABLE RAJWINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4578 of 1992.

Constitution of India 1950—Art. 226—Punjab Police Rules 1934, Rule 13.7—Whether by framing standing order, the rules framed by State Government (Punjab Police Rules) can be amended—Held that a standing order does not have any overriding effect.

Held, that a standing order which is in the form of instructions cannot override the rule or provide contrary to the rule. Rule 13.7 as already stated above provides for eligibility of the persons at the time of selection and providing a cut off date of January 1st, in the standing order, the operation of the rule stands curtailed which is not permitted under the law.

(Para 5)

Civil Writ Petition under Article 226 of the Constitution of India praying that after calling for the records of the case and after perusing the same :—

- (a) *to issue a writ in the nature of certiorari quashing Part-III of the Standing Order Annexure P-1 so far it prescribes 1st January of that year and more than 3 years of service,—vide part (c) being without jurisdiction, against Rules 13.7 and 13.20 of the Punjab Police Rules. It may also be struck down as arbitrary and in violation of Articles 14 and 16 of the Constitution of India;*
- (b) *to issue a Writ in the nature of mandamus directing respondents to depute the petitioner to the Lower School Course commencing from 15th April, 1992 at Police Training College, Phillaur immediately subject to the decision of the Writ Petition.*
- (c) *to issue any other Writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;*