

GAHC030005802024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/96/2024

Dr. Lalzikpuii
D/o Liansailova,
R/o Tuikual North, Aizawl.

VERSUS

The Union of India r/b the Secretary to the Govt. of India and 3 Ors.
Ministry of Health and Family Welfare, 331-C, Nirman Bhawan, New Delhi.
2:The Under Secretary
Ministry of Health and Family Welfare
Govt. of India

3:The Director
IFD
Ministry of Health and Family Welfare
Govt. of India

4:The Director
Regional Institute of Para Medical and Nursing Sciences (RIPANS)

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Ms Zairemsangpuii, CGC for R1 - 3

**BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR
ORDER**

23.09.2025

Heard Mr. A.R. Malhotra, learned counsel appearing for the petitioner. Also heard Ms. Zairemsangpuii, learned CGC appearing for Nos. 1 to 3 and Mr. B. Lalramenga, learned counsel for the respondent No. 4.

2. The present petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by order dated 2.12.2021 by which the respondents have rejected her prayer to count her officiating period from 01.01.2001 as qualifying services for all purposes. The representation dated 15.03.2022 was rejected by the respondents on 02.06.2022 and the said order is also under challenge.

3. The petitioner had qualified the Degree of Bachelor of Pharmacy in the final examination held in the year 1999 from the Dibrugarh University. She had applied for the post of Lecturer for Pharmacy as advertised on 29.07.2000 by the Regional Paramedical and Nursing Training Institute, Aizawl. The proceedings of the Staff Selection Committee held on 29.11.2001 for selection to the post, to which the petitioner had applied, had observed that in view of the opinion of the Chairman, the Committee decided to keep her name in the waiting list for absorption as and when opportunity arises within the year.

4. By the order dated 12th of March, 2001, the Director of the Regional Paramedical and Nursing Training Institute (hereinafter referred to as the Institute for the sake of brevity) had offered the assignment of Lecturer in D pharmacy to the petitioner in the Institute on contract basis at a lump sum remuneration for a period of 6 months with effect from the day of joining. By another order dated 12th of October 2001, the Director of the Institute, on the recommendation of the Staff Selection Committee allowed the petitioner to officiate in the post of Lecturer in Diploma in Pharmacy with effect from the 1st of October 2001 for a period of 2 years or till the regular incumbent in the post resumes her duty after availing the study leave granted to the said incumbent. The order specified that the appointment was temporary on officiating basis against leave vacancy and would not be bestow any right on the appointee for future employment whatsoever.

5. The then regular incumbent in the post where the petitioner was officiating submitted her resignation from the post on 10.11.2005. The petitioner was thereafter allowed to continue to officiate in the post of Lecturer in diploma in pharmacy without any break and interruption till the year 2015.

6. In the meantime, by order dated 16th February 2006, one Smt. R.S.C. Rohmingliani was appointed as Accountant on contractual basis in the Institute

on terms similar to the terms made effective for the petitioner. The said employee was appointed as an Accountant on 26th September, 2014 and the period of her officiating in the Institute was regularized and counted for qualifying service for seniority and other purposes. Similarly, another employee, namely one Ms. F. Lalhlimpui who had been initially appointed as a LDC on contractual basis and then was allowed to officiate in the post of Assistant in charge examination with effect from 01.04.2003, was appointed on regular basis with effect from 1st of April, 2003 vide order dated 6th of March, 2004 and her past service in the officiating capacity was allowed to be counted for the purposes of seniority and other service benefits.

7. The respondent Institute thereafter issued an advertisement on 24th of November, 2015 inviting applications for the post of Assistant Professor (Pharmacy) in the Institute. The petitioner participated in the selection process and was duly selected. She was thereafter appointed to the said post of Assistant Professor in the Pharmacy section, with effect from the date of her joining the post.

8. The dispute arose when the respondents did not consider the petitioner for grant of benefits under the Modified Assured Career Progression Scheme as adopted by the Institute. The petitioner filed a representation on 25th of

November, 2021 to the Director of the Institute requesting him to hold a review DPC to consider her case for grant of benefits under the MACP Scheme. The representation was rejected by the order dated 2nd of December, 2021 by referring to the contents of Clause 9 of the Annexure–1 of the Office Memorandum Number 35034/2015-Estt(D) dated 22.10.2019 issued by the Department of Personnel and Training, which reads as follows:

“9. .Regular service for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on casual, adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in same/another Central Government Department in a post carrying same pay level in the Pay Matrix prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.”

9. The second representation preferred by the petitioner on 15th March, 2022 met the same fate, which was communicated to the petitioner by the letter dated 14th June, 2022 issued by the Director. The petitioner was also informed about the letter dated 02.06.2022 issued by the Ministry of Health and Family Welfare in context of the representation of the petitioner, where again a reference was drawn to the guidelines issued by the Department of Personnel

and Training on the issue of grant benefits under the MACP. The petitioner is before this Court praying for directions to the respondents to count her services rendered in the officiating capacity for the purposes of seniority, grant of benefits under the MACP scheme and other service benefits as has been given to other similarly situated employees of the Institute.

10. Mr. A.R. Malhotra, learned Counsel appearing for the petitioner has submitted that there is no denial on the part of the respondents that the petitioner has been serving the Institute in officiating capacity in the post of Lecturer of Pharmacy on and from 1st of October, 2001 and it is an admitted fact that she has served the Institute without any break in service. The respondents have not denied that similarly placed employees have been allowed to draw benefits of the period spent on officiating capacity for the purposes of seniority and also allowed to draw other service benefits on being appointed on regular basis. He has submitted that the respondents have not even asserted that there is any attempt to even review the benefits being given to similarly situated colleagues of the petitioner. He has submitted that the petitioner has been subjected to apparent bias and discrimination when she has been denied the benefit of counting of past service in officiating capacity and she has been illegally denied the opportunity to be considered for the grant of benefits under

the MACP scheme and she has also been denied her seniority without any fault on her part. The learned counsel has relied upon the judgments rendered by the Apex Court in the cases of **Union of India -vs- Dharam Pal and others**, reported in **(2009) 4 SCC 170**, and the case of **Siraj Ahmed -vs- State of Uttar Pradesh and another**, reported in **(2020) 19 SCC 480** to buttress his arguments.

11. Mr. B. Lalramenga, learned counsel appearing for the respondent No. 4, Director of the Institute has contested the arguments made on behalf of the petitioner and has submitted that the contents of paragraph-9 of the OM dated 22.10.2019 are unambiguous and specific that service rendered on casual, adhoc or contractual basis before regular appointment on pre-appointment training shall not be taken into account for the purposes of counting regular service for the purposes of grant of benefits under the MACP Scheme. Therefore, he submits that the claim of the petitioner for counting her services on officiating basis has rightly been rejected. He has further submitted that the Selection Committee did not recommend the counting of her past service while recommending the appointment of the petitioner on regular basis in the year 2016 and therefore, the respondents are not in a position to give her the benefit sought for. On a specific query by the Court, he stated that the affidavit in opposition does not deny the assertion of the petitioner that similarly situated

employees have been granted the benefit prayed for by the petitioner.

12. Ms. Zairemsangpuii, learned CGC appearing for the respondents Nos. 1, 2 and 3 has adopted the arguments made by the learned counsel for the respondent No 4.

13. The submissions made by the learned counsels appearing on behalf of the contesting parties and the records made available have received due consideration.

14. There is no dispute that the petitioner was appointed on officiating basis with effect from 01.10.2001 and she has continuously served the Institute in the same capacity till date. It is also not in dispute that such appointment of the petitioner was on the basis of recommendations of a Selection Committee after the petitioner had participated and qualified a selection process. It is not in dispute that the formal and regular appointment of the petitioner to the same post came in the year 2016 after she had again qualified another selection process. It is not in dispute that employees who were similarly situated have been given the benefit of past service in officiating capacity for the purposes of MACP and other service benefits including seniority. Therefore, the only aspect of the matter which requires the attention of this Court is whether the provisions of Clause 9 of the office memorandum dated 22.10.2019 act as

impediment to the petitioner to enjoy the benefits being enjoyed by similarly placed employees.

15. In our considered view, the answer has to be in the negative. We have already quoted the contents of clause 9 of the Office Memorandum dated 22.10.2019 hereinabove. Firstly, we do not find that the same deals with the period spent on officiating basis by an employee prior to her being appointed on regular basis. The petitioner has not claimed for benefits for Service rendered on casual, adhoc/contract basis. The period spent by the petitioner when serving on officiating basis does not fall in the category of pre-appointment training. The respondents have not disputed, as they cannot, that the appointment of the petitioner on officiating basis was a result of a regular selection process and that she has continued her service till date in the same post after having been selected again in the year 2016 through a regular process. Save and except relying on the contents of Clause-9 of the office memorandum dated 22.11.2019, which we find to be not tenable in law, no other reasons have been put forth to deny the petitioner her legal right. This Court is of the considered opinion that past continuous regular service in same organization in a post carrying same pay level in the Pay Matrix prior to regular appointment in the same organization, without a break, is required to be counted towards qualifying regular service for the purposes of MACPS only,

though not for the regular promotions. This Court is of the view that the period of officiating service cannot be counted towards consideration for regular promotions as per the mandates of the Office memorandum in issue and therefore, the petitioner cannot claim for the said period to be counted for seniority. Moreover, the petitioner having been appointed on regular basis in the year 2016 and none of the other incumbents over whom the petitioner may seek seniority having not been made a party to this writ petition, the said prayer of the petitioner cannot be granted in the present petition.

16. Accordingly, the present writ petition is disposed of by setting aside the order dated 2nd of December 2021 and the communication dated 02.06.2022 impugned in the writ petition, insofar as they deny the claim of the petitioner to count the services rendered by her in officiating capacity in the post of Lecturer in Pharmacy (now designated as Assistant Professor in Pharmacy) in the Regional Institute of Pharmacy and Nursing Science, Aizwal. The respondent No.3 shall now consider the case of the petitioner for grant of benefits under the Modified Assured Career Progression Scheme as applicable to the employees of the Institute in accordance with law, if required by convening a Review DPC for the purpose, by taking into account the service rendered by the petitioner in officiating capacity in the post of Lecturer in Pharmacy and in case the petitioner

is found eligible for grant of benefits, the same shall be released to her expeditiously. The entire exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order.

17. The writ petition is allowed to the extent indicated herein above.

18. No costs.

JUDGE

Comparing Assistant