

02.01.2025
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(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 28150 of 2024

Subhra Srimani
Vs.
The Union of India & Ors.

Mr. Pradip Kumar Tarafder, Sr. Adv.,
Mr. Asish Kumar Bandyopadhyay
....for the petitioner.

Mr. Subrata Roy,
Mr. Tirtha Pati Acharyya
....for Union of India.

Pursuant to an advertisement dated 13th December, 2006, the petitioner applied to the National Institute for the Orthopaedically Handicapped, presently known as National Institute For Locomotor Disabilities (in short, NILD) for the post of Nursing Supervisor. The petitioner on being successful in the selection process was appointed as Nursing Supervisor with effect from 19th July, 2007. The basic pay at the time when the petitioner joined as a Nursing Supervisor on 19th July, 2007 was Rs.6,700/-. The petitioner was entitled to other allowances and benefits as admissible. The post of Nursing Supervisor was subsequently re-designated as Nursing Supervisor-cum-Tutor vide office order dated 21st May, 2008. The petitioner was permanently absorbed in the re-designated post of Nursing Supervisor-cum-Tutor vide office order dated

29th July, 2010 and was placed in the revised Pay Band Rs.9,300-34,800/-.

The petitioner in or around the time of joining NILD came across an advertisement published by NILD. The said advertisement was published in the Employment News 7-13 July, 2007 which is at page 27 of the writ petition, being Annexure – ‘P-4’ thereof. The advertisement clearly stated that the appointment will be made on contractual basis initially for 4/2 years, i.e., for two academic course duration. The petitioner after complying with the necessary formalities through proper channel had applied for such appointment as Lecturer (Nursing). The petitioner was selected and was offered the appointment to the post of Lecturer (Nursing) on contract and lien basis on November, 2010. The petitioner accepted the said offer and started her journey as a Lecturer (Nursing). The petitioner’s engagement as Lecturer (Nursing) was extended from time to time and she continued till January, 2021. In the meantime, since the petitioner’s engagement as Lecturer (Nursing) was not made permanent or was not regularized, the petitioner prayed for either regularization of her services as Lecturer (Nursing) or to be reverted back to her original parent post with all connected benefits.

By an office order dated 8th January, 2021, the petitioner along with three others were reverted back to their original post with effect from 8th January, 2021 in partial modification of the office order dated 8th January, 2021. However, in the office order dated 8th January, 2021, which appears at page 46 of the writ petition as Annexure - 'P-14' thereof, it was clearly stated "The period of service rendered by the petitioner as mentioned at column no.(C) is being treated as purely on contractual basis and will not be counted for any retirement benefits. Excess pay, allowances and other benefits already released will be recovered from the respective employees accordingly."

The petitioner says that the petitioner was engaged as Lecturer (Nursing) in the same organization pursuant to a public advertisement and through a proper selection process. The petitioner had also complied with all the formalities and had applied through proper channel. It is, therefore, unlawful in not giving the benefit of the service tenure spent by the petitioner as Lecturer (Nursing) while the petitioner was reverted back to her original post. The petitioner says that the petitioner should be given the benefit of 11 years' service which the petitioner had rendered as Lecturer (Nursing) on contractual basis, particularly when the appointment though on contract but was on lien basis.

On behalf of the respondents, it is submitted that the order of reverting back the petitioner to her principal post dated 8th January, 2021 clearly provided that the benefits of the tenure of services as Lecturer (Nursing) will not be given for computing retiral benefits. It was also clearly mentioned that any excess amount paid will also be recovered. The petitioner accepted such order and had got herself reverted back to the original post. By doing so, the petitioner has waived her right and/or is estopped from claiming the benefit of the service period when the petitioner served as Lecturer (Nursing) on contract basis.

After hearing the parties and considering the materials on record, I find that the petitioner has an arguable case though there may be a stipulation in the office order dated 8th January, 2021 for not giving the service benefit for the tenure when the petitioner worked as Lecturer (Nursing). The matter requires further scrutiny which can only be possible after affording the respondents an opportunity to disclose their stand on affidavit.

Since the facts are within a narrow compass and the interpretation of the office order dated 8th January, 2021 read with the appointment letter is the moot issue, the respondents are directed to file a report in the form of an affidavit dealing with the

principal grievances of the petitioner, disclosing relevant facts and the necessary documents for adjudication of the issues raised instead of filing a full-fledged affidavit-in-opposition.

Let such report in the form of an affidavit be filed by 31st January, 2025.

Exception, if any, by 18th February, 2025.

Let this matter appear in the combined monthly list of March, 2025.

It is made clear that no further recovery of any excess amount shall be made from the petitioner henceforth. Recovery of excess amount, if any already made, shall abide by the result of the writ petition.

(Arindam Mukherjee, J.)