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C.A.No. 4511 OF 2002

ITEM No. 102

Court No.12

SECTION XV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No.4511 of 2002

State of Rajathan & Ors.

Appellant (s)

vs.

Joshna Jonadhan

Respondent (s)

(With prayer for interim relief and office report)

(CA Nos.4535/2002, 4335/2002, 4546/2002, 4297/2002, 4529/2002, 4616/2002, 4537/2002, 4527/2002, 4534/2002, 4610/2002, 4336/2002, 4525/2002, 4520/2002, 4544/2002, 4518/2002 4334/2002, 4536/2002, 4331/2002, 4605/2002, 4548/2002, 4338/2002, 4599/2002, 4624/2002, 4607/2002, 4601/2002, 4531/2002, 4301/2002, 4602/2002, 4300/2002, 4530/2002, 4532/2002, 4604/2002, 4524/2002, 4544/2002, 4333/2002, 4526/2002, 4542/2002, 4533/2002, 4547/2002, 4541/2002, 4598/2002, 4329/2002, 4330/2002, 4332/2002, 4608/2002, 4522/2002, 4523/2002, 4337/2002, 4513/2002, 4606/2002, 4609/2002, 4517/2002, 4612/2002, 4617/2002, 4519/2002, 4613/2002, 4540/2002, 4618/2002, 4528/2002, 4516/2002, 4543/2002, 4514/2002, 4515/2002, 4603/2002 and 4512/2002.)

Date :21/08/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)

Mr. Badri Das Sharma,Adv.

Mr. N. Vyas,Adv.

Mr. S.N. Tewari,Adv.

For Respondent (s)

Mr. Subramoniam Prasad,Adv.

Mr. Abhay Kumar,Adv.

Mr. Gopal Krishan,Adv.

Mr. R.Satish,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are allowed in terms of the signed order.

(Sarojbala)(Kanwal Singh)

PA to Addl.Registrar

Court Master(The signed order is placed o

n the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4511 OF 2002

WITH

(CA Nos.4535/2002, 4335/2002, 4546/2002, 4297/2002, 4529/2002, 4616/2002, 4537/2002, 4527/2002, 4534/2002, 4610/2002, 4336/2002, 4525/2002, 4520/2002, 4544/2002, 4518/2002 4334/2002, 4536/2002, 4331/2002, 4605/2002, 4548/2002, 4338/2002, 4599/2002, 4624/2002, 4607/2002, 4601/2002, 4531/2002, 4301/2002, 4602/2002, 4300/2002, 4530/2002, 4532/2002, 4604/2002, 4524/2002, 4544/2002, 4333/2002, 4526/2002, 4542/2002, 4533/2002, 4547/2002, 4541/2002, 4598/2002, 4329/2002, 4330/2002, 4332/2002, 4608/2002, 4522/2002, 4523/2002, 4337/2002, 4513/2002, 4606/2002, 4609/2002, 4517/2002, 4612/2002, 4617/2002, 4519/2002, 4613/2002, 4540/2002, 4618/2002, 4528/2002, 4516/2002, 4543/2002, 4514/2002, 4515/2002, 4603/2002 and 4512/2002.)

State of Rajasthan & Ors.

Appellant(s)

Vs.

Joshna Jonadhan

Respondent(s)

O R D E R

These appeals have been preferred by the State of Rajasthan against the judgment and order dated 5.12.1997 passed by a Division Bench of the Rajasthan High Court. The dispute relates to the nursing services of the State which are governed by Rajasthan Medical & Health Subordinate Service Rules, 1965,

including Auxiliary Nurse Midwife (ANM) and the respondents. In the year 1982, an amendment of Rule 4 in Part II was made pertaining to the cadre strength and its composition. As a consequence thereof cadre of Group A-1 (Health side) seems to have been constituted (combined male and female cadres). The designation ANM has been changed to the health worker (female). The auxiliary nurse midwife (ANM) were put under the said group on the health side. It further transpires that the medical side was made a separate group and it consisted of those who had done the nursing course qualification prescribed for the purpose. The association of ANMs challenged the 1982 Amendment to the Rules by which they were placed on the health side, by filing a writ petition. The said writ petition, however, was withdrawn some time in 1994. A liberty however was reserved for them to challenge it again if they so choose. Consequently, the second writ petition was filed in 1996 by the respondents and some others. All the writ petitions had been dismissed by the Learned Single Judge by judgment and order dated 18.2.1996. The amendment to the Rules, grouping health side of the nursing services was upheld including its all consequences.

The main grievance of the respondents seems to be that the chances of promotion are not equal and some of the respondents could have been promoted to the next higher post on

the medical side, had the selection been held in time and promotions were accordingly made but before that could happen amendment of 1982 was effected. Yet another difficulty which has been indicated by the learned counsel for the respondents is that health workers (female) are liable to be posted in different places in the State, including the villages. We do not think that any weight can be attached to such an objection. On behalf of respondents a decision of this Court in the case of Chairman, Railway Board and Others vs. C.R. Rangadhamaiah and Others 1997(6) SCC 623 has been referred. On this basis, it has been argued that accrued benefits could not be taken away or altered. The learned counsel for the appellant rightly submits that the aforesaid decision of this Court is not applicable to the facts of the present case. In the aforesaid decision, by means of amendment the pension of retired employee was being affected. The allowances was considered to be part of emoluments and was taken into account for calculation of the pension. It was held that by lowering the running allowance which could be taken into account for pension it could affect those who have retired prior to the change made and it would have the effect of reducing the amount of pension which was not permissible. We do not find any such situation involved in the present case in

hand. So far as the submission made on behalf of the respondent that had timely promotions been made before 1982 as due, the respondents may have had chances to be promoted on the medical side but besides this submission no facts have been placed before us to establish or demonstrate that the respondents would have been within the zone of consideration and had certain chances of being promoted. May be, on the higher levels, the chances of promotions may not be the same as on the medical side but the appellate court, taking into consideration the facts found that the ANM working at the time when 1982 amendment was made they were placed in the same scale with a changed designation of health worker (female) on the health side. Therefore, at that point of time they were not affected in any manner. As indicated earlier the appellate court has also upheld the amendment of 1982 which has not been challenged by the respondents by filing any appeal. Therefore, so far as the question of validity of amendment of 1982 is concerned it is a closed chapter. It cannot be re-opened at this stage in the appeal preferred by the State of Rajasthan.

The grievance of the appellant is that while upholding the validity and the amendment, the Division Bench has provided that the respondents should have a right to exercise option within specified time fixed by it and if such option was exercised, ANMs would be retained on the medical

side. The rules do not provide for any option which may be exercised by ANMs for being retained on the medical side. The auxiliary staff has been placed on the health side therefore, there was no occasion for any provision for option for ANMs to be retained on the medical si

de. It was also indicated that qualification for ANM and the nursing side, are also different. The Division Bench was not right in carving out a provision and conferring a right on the respondents to exercise their option by making choice as to whether they would like to be retained on the medical side or not. Such provision has been made without any legal sanction.

We, therefore, find that the 'option' provision made in the order passed by the Division Bench is not sustainable.

In the result, we allow the appeals and set aside that part of the impugned order which provides for options to be exercised by the respondents to be retained on the medical side. There would, however, be no order as to costs.

.....J.
(BRIJESH KUMAR)

.....J.
(ARUN KUMAR)

NEW DELHI
AUGUST 21, 2003.