



**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWPOA No.1224 of 2020

Decided on: 01.09.2026

Leela Devi

.....Petitioner

Versus

State of Himachal Pradesh and others

....Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes.*

For the petitioner:

Mr. Lokesh Thakur, Advocate
vice Mr. G.R. Palsra, Advocate.

For the respondents:

Mr. Vishav Deep Sharma,
Additional Advocate General.

Ranjan Sharma, Judge

Petitioner-Leela Devi, filed an Original Application (M) No.444 of 2016, before Learned State Administrative Tribunal and after the abolition of Tribunal, the matter stood transferred to this Court as CWPOA No.1224 of 2020, seeking the following reliefs:-

- “7 (i) That the respondent may kindly be directed to modify Annexure A-4 dated 19.7.2K to the extent that the applicant was promoted to the post of A.N.M. instead of treating her as fresh direct appointee w.e.f. 25.07.2000.
- (ii) To quash and set-aside Annexure A-5 dated 13.08.2004 being illegal,

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

arbitrary and against the constitutional provisions of law, with all consequential benefits.

- (iii) That the respondents may further be directed to keep the seniority of the applicant intact from the initial date of her appointment as Dai/Midwife i.e. 07.11.1986 onwards, for all intents and purposes.
- (iv) That the respondents may kindly be directed to allow benefits of 4, 9 and 14 under ACPS and Grade Pay equal to FHW."

FACTUAL MATRIX:

2. Case as set up by Learned Counsel is that the petitioner was appointed as Dai/Midwife in the Respondent-Department on regular basis in the pay scale of Rs.325-495/- and she joined as such on 07.11.1986. It is further averred that while working as Dai, the petitioner applied to the Respondent-Department for granting her the study leave for pursuing the course of Auxiliary Nurse Midwife **[referred to as 'ANM']** and respondent No.2 issued 'No Objection Certificate' to the petitioner for undergoing the said training course on 17.04.1996, subject to the conditions that petitioner shall undergo ANM Training Course from an Institution recognized by Indian Nursing Council Act, 1947; and after undergone Training Course, the petitioner shall render five years' service in

Respondent-Department; *and* the petitioner shall not have any right to claim appointment on the higher post or for grant of higher pay scale in the Respondent-Department. It is further averred that based on 'No Objection Certificate', Principal Secretary [Ayurveda, now Ayush], approved the grant of study leave to the petitioner for undergoing Auxiliary Nurse Midwife Course for 01.10.1996 to 07.04.1998. It is further averred that after undergoing Auxiliary Nurse Midwife Training Course, the petitioner rejoined the Respondent-Department as a Dai and she was appointed on the post of Auxiliary Nurse Midwife, by direct recruitment as a fresh candidate on 19.07.2000 [Annexure A-4] in the pay scale of Rs.3120-5160/- on probation with the stipulation that in case the terms and conditions were acceptable, the petitioner may join the aforesaid post.

2(i). It is averred that though the Respondents have appointed the petitioner as an Auxiliary Nurse Midwife by direct recruitment on 19.07.2000 [Annexure A-4], as a fresh candidate and upon her appointment as Auxiliary Nurse Midwife on regular basis, the petitioner

was entitled for the benefit of increment under FR-22 (1) (a) (i) of the Fundamental Rules. It is averred that the claim of the petitioner for giving benefit of increment under FR as aforesaid was rejected by the Respondents on 13.04.2004 [Annexure A-5], on the ground, that once the petitioner was appointed as Auxiliary Nurse Midwife by direct recruitment as a fresh candidate and had joined as such, then, the increment under FR-22 (1) (a) (i) was not admissible to the petitioner. It is further averred that the petitioner submitted a representation dated 15.07.2016 [Annexure A-6] with the prayer that the past-service rendered by her as Dai may be counted towards the service rendered as an Auxiliary Nurse Midwife for granting Proficiency Step-Up under "Assured Career Progression Scheme" on completion of 4-9-14 years of service but this benefit was wrongly denied to the petitioner on 27.08.2015 [Annexure A-7].

In this backdrop, the petitioner has prayed for giving the benefit of increment under FR-22 (1) (a) (i) on her appointment as Auxiliary Nurse Midwife and for counting the past-service rendered by her on post

of Dai towards the service rendered on post of appointment as Auxiliary Nurse Midwife for giving the Proficiency Step-Up on completion of 4-9-14 years of service, with all consequential benefits.

STAND OF STATE AUTHORITIES:

3. Pursuant to the issuance of notice, the State Authorities have filed Reply-Affidavit dated 04.10.2018.

3(i). Perusal of Reply-Affidavit indicates that though the petitioner was working as Dai in the Respondent-Department w.e.f. 07.11.1986, yet, during her incumbency as Dai, the petitioner applied for undergoing Training Course of Auxiliary Nurse Midwife for which the conditional 'No Objection Certificate' was issued by Respondent-Department on 17.04.1996 stipulating that the Auxiliary Nurse Midwife Training Course should be undergone from an Institute which was recognized under Indian Nursing Council Act; *and* after passing Auxiliary Nurse Midwife Training Course, the petitioner shall serve the Department for five years; *and* the Respondent-Department shall have no liability to appoint her on higher post or to give higher

pay scale after undergoing the said course.

3(ii). It is further averred that the Respondent-State decided to make fresh recruitment for the post of Auxiliary Nurse Midwife in the year 2000 and being eligible, the petitioner applied for the post and after due selection, she was appointed as Auxiliary Nurse Midwife on 19.07.2000 [Annexure A-4] by the Respondent-Department but the petitioner accepted her appointment and she joined as such on 25.07.2000 without any protest and the instant petition has been filed after a lapse of 18 years from the date of appointment/joining on 25.07.2000 and the claim for granting benefit under FR-22 (1) (a) (i) and for counting the past-service rendered on post of Dai towards service rendered on post of Auxiliary Nurse Midwife for granting Proficiency Step-Up on completion of 4-9-14 years' service by clubbing the unequal post(s) was not tenable. In this backdrop, the prayer was made to dismiss the writ petition.

REBUTTAL BY PETITIONER:

4. Petitioner had filed rejoinder reiterating the claim in the writ petition.

5. Heard, Mr. Lokesh Thakur, Advocate vice Mr. G.R. Palsra, Advocate, for the petitioner and Mr. Vishav Deep Sharma, Learned Additional Advocate General, for the Respondents.

ANALYSIS:

6. Taking into account the entirety of facts and circumstances, this Court is of the considered view, that the claim of the petitioner for granting the benefit of FR-22 (1) (a) (i) from the date of her appointment by treating aforesaid appointment as promotion from the date of appointment/joining as an Auxiliary Nurse Midwife w.e.f. 19.07.2000/ 25.07.2000 is not tenable; and the claim for counting the service rendered on the post of Dai with the service rendered on post of Auxiliary Nurse Midwife for granting benefit of Proficiency Step-Up on completion of 4-9-14 years' service, is not tenable, *for the following reasons:-*

CLAIM FOR INCREMENT UNDER FR-22 (1) (a) (i) IMPERMISSIBLE:

7. Indisputably, the petitioner joined service as regular Dai on 07.11.1986. During her incumbency as Dai, the petitioner was granted a conditional

'No Objection Certificate' on 17.04.1996 for undergoing the Training Course of Auxiliary Nurse, by the petitioner by granting her study leave as per order dated 17.04.1996/19.04.1996 [Annexure A-1] for the period from w.e.f. 01.01.1996 to 01.04.1998 and after completing the Auxiliary Nurse Midwife Training Course, the petitioner rejoined on post of Dai in the Respondent-Department. While serving as a Dai, the Respondent-Department decided to fill some posts of Auxiliary Nurse Midwife in the Respondent-Department and petitioner being eligible, applied for the post and was selected as Auxiliary Nurse Midwife, by way of direct recruitment, as a fresh candidate on 19.07.2000 [Annexure A-4] and she joined as such on 25.07.2000. Claim of the petitioner for granting the benefit of FR-22 (1) (a) (i) on appointment as Auxiliary Nurse Midwife w.e.f. 19.07.2000/25.07.2000 [Annexure A-4], is not tenable, *for the reason, firstly*, perusal of FR-22 (1) (a) (i) indicates that this incremental benefit is to be given in case, a person fulfills the eligibility conditions prescribed in the relevant Recruitment and Promotion Rules; *and secondly*, nothing has been

placed on record by the petitioner to establish that the Recruitment and Promotion Rules for the post of Auxiliary Nurse Midwife expressly conferred eligibility to incumbents who are working on post of Dai in Respondent-Department and had undergone Auxiliary Nurse Midwife Training Course upon completion of Course were to be promoted or appointed automatically, on post of Auxiliary Nurse Midwife” without undergoing the selection process for appointment or promotion alongwith other eligible candidates *and thirdly*, in the absence of any express mandate in the Recruitment and Promotion Rules conferring automatic eligibility that a Dai who had undergone Training Course of Auxiliary Nurse Midwife, shall be automatically appointed or promoted as Auxiliary Nurse Midwife and absence of any express mandate in the Rules, the claim of the petitioner for grant of increment under FR-22 (1) (a) (i); was not tenable *and thirdly*, even a perusal of ‘No Objection Certificate’ dated 17.04.1996 issued by Respondent-Department enabling the petitioner, to undergo Auxiliary Nurse Midwife Training Course

was conditional with the specific stipulation that after undergoing the Training Course of Auxiliary Nurse Midwife, the petitioner shall have no claim whatsoever for appointment on higher post or for grant of higher pay scale by Respondent-Department; *and fourthly*, the conditions in 'No Objection Certificate' dated 17.04.1996 have not been questioned by the petitioner; *and fifthly*, even the petitioner has accepted and acted upon the conditional 'No Objection Certificate' then, the petitioner cannot turn around and seek automatic appointment or promotion as an Auxiliary Nurse Midwife contrary to condition No.(iii) of said 'No Objection Certificate' *and sixthly*, it is not the case of the petitioner that other incumbent(s) who were working a regular Dai in the Respondent-Department and were sent for Auxiliary Nurse Midwife Training Course, after completing the said Training Course were automatically be promoted or appointed as Auxiliary Nurse Midwife; *and seventhly*, nothing has been placed on record by the petitioner to establish that any similarly placed or junior incumbent, who was appointed on the post of a Dai and was granted 'No Objection Certificate' for

undergoing Auxiliary Nurse Midwife Training Course by Respondent-Department, upon completion of Training Course, was automatically or promoted as Auxiliary Nurse Midwife and/or were granted the incremental benefit under FR-22 (1) (a) (i); *and eighthly*, the service rendered on post of Dai cannot be counted towards the service rendered on post of an Auxiliary Nurse Midwife unless the Recruitment and Promotion Rules for post of an Auxiliary Nurse Midwife expressly provided for counting post-service for service benefits and the petitioner has failed to make out a case under the Statutory Rules; *and ninthly*, in absence of any material particulars, this Court cannot accede to the prayer of the petitioner for granting benefit of increment under the aforesaid Fundamental Rules and, therefore, the rejection order dated 20.10.2004 [Annexure A-5], does not suffer from any infirmity; *and lastly*, the Respondent-Department had initiated process for filling the posts of Auxiliary Nurse Midwife, by way of direct recruitment in the year 2000 and the petitioner being eligible was selected and appointed as Auxiliary Nurse Midwife by way of direct recruitment as a fresh

candidate, on the basis of orders dated 19.07.2000 [Annexure A-4] and she joined as such on 25.07.2000, without any protest or demur. The petitioner having accepted the terms and conditions of offer of appointment as an Auxiliary Nurse Midwife, by direct recruitment, as a fresh candidate, cannot turn around and claim a different status and such a claim is not tenable in view of the principle of acquiescence and the broader principle of law mandated by Three Judges of the Hon'ble Supreme Court in **(2017) 9 SCC 322**, titled as **State of Uttar Pradesh through its Secretary and others v. Meraj Ahmad** that after accepting fresh appointment, the claim for counting past service for granting service benefits is impermissible. Resultantly, the claim of the petitioner is not tenable and is accordingly turned down.

CLAIM FOR PROFICIENCY STEP-UP AFTER 4-9-14 YEARS BY CLUBBING SERVICE RENDERED AS DAI AND AUXILIARY NURSE MIDWIFE:

8. Claim of the petitioner for granting the Proficiency Step-Up on completion of 4-9-14 years of service as an Auxiliary Nurse Midwife by clubbing the service rendered on post of Dai w.e.f. 07.11.1986 followed by regular service rendered on post of an

Auxiliary Nurse Midwife from 19.07.2000, is not tenable, *for the reason, firstly*, nothing has been placed on record by the petitioner to establish that the service rendered on lower post [as Dai] and the service rendered on post of an Auxiliary Nurse Midwife [higher post] is countable for granting the step-up benefit under the “Assured Career Progression Scheme” notified on 15.12.1998; *and secondly*, in terms of the “Assured Career Progression Scheme” dated 15.12.1998, it is only the “same post or posts in the same cadre” is countable for grant of Proficiency Step-Up; *and thirdly*, the claim of the petitioner for clubbing the service rendered on post of Dai with the service rendered on post of an Auxiliary Nurse Midwife for grant of Proficiency Step-Up cannot be granted de hors the “Assured Career Progression Scheme” notified by the State Authorities; *and fourthly*, nothing has been placed on record by the petitioner to establish that the service rendered on two different posts [Dai vis-à-vis Auxiliary Nurse Midwife] was countable for grant of Proficiency Step-Up under “Assured Career Progression Scheme” notified by the Government on 15.12.1998; *and*

lastly, in terms of Para 5 (h) of the Reply-Affidavit, the State Authorities have granted the “Assured Career Progression Scheme” benefits on completion of 8 years’ service as Dai in the year 1994 and she has been granted “Assured Career Progression Scheme” benefits for service rendered on post and in cadre of an Auxiliary Nurse Midwife in the year 2008 [after counting 8 years’ service as an Auxiliary Nurse Midwife from 25.07.2000 under “Assured Career Progression Scheme” dated 15.12.1998 and she has been granted Assured Career Progression Scheme benefit on completion of 9 years’ service in terms of the “New Assured Career Progression Scheme” dated 09.08.2012 [after adjusting earlier benefits] w.e.f. 2009 and once the petitioner has been granted three benefits under “Assured Career Progression Scheme”, therefore, the claim for granting additional benefits de hors the Assured Career Progression Scheme is impermissible. In this backdrop, the claim for additional Proficiency Step-Up benefits, being devoid of any merit, is turned down.

DELAY AND LACHES:

9. Petitioner joined the service as Dai [Class-IV]

on 07.11.1986. While working as Dai, the petitioner applied for direct recruitment and she was appointed as an Auxiliary Nurse Midwife as a fresh candidate on regular basis on 19.07.2000 [Annexure A-4] and after accepting the terms and conditions, she joined as such on 25.07.2000 without any protest or demur. Moreover, the petitioner slept over her rights and remedies for 18 years, since her appointment-joining in the year 2000 till filing of the instant petition on 08.11.2016. The petitioner having slept over her rights and remedies for 18 years, is in itself a ground for refraining from showing any indulgence to the petitioner in view of the principle of law mandated by the Hon'ble Supreme Court in ***State of Madhya Pradesh versus Ramkumar Choudhary, 2024 SCC OnLine SC 3612; Chief Executive Officer and others versus S. Lalitha and others, 2025 SCC OnLine SC 916***; and ***H. Guruswamy & Ors. Versus A. Krishnaiah since deceased by LRs, 2025 SCC OnLine SC 54***, mandating that once a claim manifestly suffers from delay and laches and no cogent and convincing explanation has been spelt out for the belated claim,

therefore, the petitioner cannot be permitted to re-open and re-invoke her remedy belatedly and that when, the claims de hors the Fundamental Rules and the “Assured Career Progression Scheme”, is not tenable.

RELIANCE ON JUDGMENTS-MISPLACED:

10. To buttress her claim, the petitioner has placed reliance on the judgments ***Hem Chand Versus State of H.P. & others, 2014 (3) Him L.R. 1962*** and ***Sanjay Dhar Versus J&K Public Service Commission and another, (2000) 8 SCC 182*** that once the benefits have been wrongly denied to the petitioner, therefore, this Court may show indulgence.

The principle of law, outlined in aforesaid judgments, cannot come to the assistance of the petitioner, *for the reason*, that in the instant case, the petitioner has failed to establish that she was wrongly appointed as an Auxiliary Nurse Midwife on 19.07.2000 but upon completion of Training Course as an Auxiliary Nurse Midwife, she had an automatic right for being promoted as Auxiliary Nurse Midwife under the Recruitment and Promotion Rules. In the absence of any disclosure in writ petition or rejoinder,

carving out a right on the basis of Statutory Rules for automatic appointment or promotion as an Auxiliary Nurse Midwife, without facing the selection process mandated in the Rules [non-selection post], therefore, accepting the claim of the petitioner, shall defeat the very constitutional ethos of public employment embedded in Articles 14 and 16 of the Constitution of India. Moreover, the aforesaid judgments are distinguishable and are not applicable to the fact-situation of instant case. Resultantly, the reliance placed on the aforesaid judgments is misplaced.

11. No other points were raised or argued.

CONCLUSION AND DIRECTION:

12. In view of above discussion and for the reasons recorded hereinabove, the instant petition is ***dismissed***, in the following terms:-

- (i) Instant writ petition i.e. CWPOA No.1224 of 2020, tilted as *Leela Devi v. State of Himachal Pradesh and others* is dismissed;
- (ii) Impugned order dated 20.10.2004 [Annexure A-5] is upheld;
- (iii) Claim of petitioner for granting Increment under FR-22 (1) (a) (i) by treating her appointment as an Auxiliary Nurse Midwife as promotion automatically; in absence of

any provision in Recruitment and Promotion Rules, without facing the selection process, cannot be acceded to and is accordingly turned down ;

- (iv) Claim of petitioner Proficiency Step-Up by clubbing unequal post(s) of Dai vis-à-vis Auxiliary Nurse Midwife dehors the “Assured Career Progression Scheme” in terms of the “New Assured Career Progression Scheme(s)” is untenable and is disallowed;
- (v) Claim for additional “Assured Career Progression Scheme” benefits, when, three benefits already stand granted is turned down, and
- (v) Parties to bear their own costs.

In aforesaid terms, instant petition stands dismissed alongwith all pending miscellaneous application(s), if any.

(Ranjan Sharma)
Judge

September 01, 2026
[Bhardwaj]