

(2009) 08 J&K CK 0011
In the Jammu And Kashmir High Court

All Indegenious Medicines Organization and Others	APPELLANT
Vs	
State and Others	RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Citation : (2010) 1 JKJ 249

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hakim Imtiyaz Hussain, J.—Petitioners are Doctors in Indian System of Medicine (ISM) wing of Health, Family Welfare & Medical

Education Department. In the year 1992, they filed a petition [No. 485 of 1992] for grant of identical grade as was granted to the Assistant

Surgeons in Health Department. The petition was disposed of by this Court with a direction that since the writ petitioners were identically placed to

the Assistant Surgeons in Health Department, they may also be considered for grant of identical grade, non-practicing allowance and time bound

promotion. Vide Order No. 316-HME of 1998 the Government placed petitioners in the revised pay scale and granted other perks at par with

Allopathic Doctors of Health, Family Welfare & Medical Education Department.

2. The Petitioners were granted notional benefit from 1st of January 1996 to 19th of April 1998 and monetary benefit from 20th of April 1998.

The petitioners have, through their Chairman Dr. C.D. Thapa & others, filed the present petition seeking retrospective effect of the said

Government order. It is submitted that since the grade was granted under the directions of the Court on the ground that the petitioners were

similarly situated with Assistant Surgeons in the Health Department, they were entitled to the grade from the date the Assistant Surgeons got it.

3. Respondents have filed their reply. It is submitted that the case of the petitioners was duly considered by the competent authority and the

Doctors of ISM were placed in the revised pay scale with other perks at par with the Allopathic Doctors of Health and Medical Education vide

Cabinet decision 66/06 dated 14th of April 1998 issued vide Government Order No. 316-HME of 1998 dated 20th of April 1998 read with

Cabinet decision No. 129/14 dated 12th of August 1999 issued vide Government Order No. 393-HME of 1998 dated 5th of October 1999.

Thus the grievance of the petitioners was redressed. The benefit of the order was given retrospectively with effect from 1st January 1996 subject

to the condition that the benefit of order will accrue notionally w.e.f 1st of January 1996 and monetarily w.e.f 20th of April 1998.

Heard. I have considered the matter.

4. The Court while disposing of the Writ Petition of the petitioners directed as under:

Considering that the State-respondent had restored the party in the grades of Deputy Directors and Assistant Directors on the pattern followed by

the Govt., of India, it becomes easy to dispose of this petition and direct the respondents to consider the case of the petitioners for placing them in

the pay-scale of Rs. 2200-4000 which is given to the Asstt. Surgeons in the Health Department and for grant of non-practising allowance of Rs.

600/- to them on the lines granted by the Govt., of India and for grant of time bound promotion in light of Govt. Order No. 595-HME of 1988

dated 22.7.1988. The petitioners shall have a liberty to participate in the process of consideration and persuade the respondents to accord

appropriate consideration to their case. It is not possible to set a time frame for finalizing the consideration process but the respondents would do

well to take a decision in the matter after conducting the exercise as early as practicable. I order accordingly." Perusal of this order would show

that the Court has come to the conclusion that the petitioners were entitled to the same pay-scale as was given to the Assistant Surgeons in the

Health Department. They were also found entitled to non-practising allowance of Rs. 600/- on the lines granted by the Government of India and

for grant of time bound promotion in light of Government Order No. 595-HME of 1988 dated 22nd of July 1988. Once the Court found the

petitioners entitled to the same pay-scale as was given to Assistant Surgeons on the ground that both the classes of doctors were performing the

same duties, there was no reason to grant the monetary benefit of pay-scale with prospective effect. On the principle taken by the Court, they

were entitled to the benefit right from the date Assistant Surgeons of Health Department got the pay-scale. The reply of the respondents on this

count is not convincing one and cannot be accepted.

5. In withholding benefit of the pay scale granted to the petitioner from retrospective dated [i.e. from the date Assistant Surgeons of the Health

Department for the date] the respondents have acted arbitrarily and discriminately against the petitioners compared to another class.

6. In the circumstances, this petition is allowed and it is directed that the respondents shall give benefit of grant of pay-scale in favour of the

petitioners w.e.f 1st of January 1996 and pay them the arrears accordingly. Petition is allowed.