
(1999) 03 DEL CK 0034
In the Delhi High Court
Case No : Civil Writ No. 849/99

Arun Kaushal Advocate and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Citation : (1999) 3 AD 107

Hon'ble Judges : Devinder Gupta, Acting C.J.; Mukul Mudgal, J

Bench : Division Bench

Advocate : Mr. Modh. Sajid, for the Appellant; Mr. Rakesh Tikku, Mr. Mukul Gupta and Ms. Rekha Palli, for the Respondent

Judgement

Devinder Gupta, A.C.J.

1. The All India Institute of Medical Sciences (hereinafter referred to as the "AIIMS") is a premier medical institution of the country and a center of excellence for learning. It was established by the All India Institute of Medical Sciences Act, 1956 (Central Act No. 25 of 1956). The Statement of Objects & Reasons states as follows:-

"For improving professional competence among medical practitioners, it is necessary to place a high standard of medical education, both post graduate and under graduate, before all medical colleges and other allied institutions in the country. Similarly, for the promotion of medical research it is necessary that the country should attain self sufficiency in post graduate medical education. These objectives are hardly capable of realisation unless facilities of a very high order for both under graduate and post graduate medical education and research are provided by a central authority in one place. The Bill seeks to achieve these ends by the establishment in New Delhi of an institution under the name of the All India Institute of Medical Sciences. The Institute will develop patterns of teaching in under graduate and post graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and

other allied institutions, will provide facilities of a high order for training of personnel in all important branches of health activities and also for medical research in its various aspects. The Institute will have the power to grant medical degrees, diplomas and other academic distinctions which would be recognised medical degrees for the purpose of the Indian Medical Council Act, 1933."

2. Being an Institution of National Importance, the AIIMS has enjoyed a premier status in the country. While there is an All India Entrance Examination for the other medical colleges in rest of the country, insofar as admissions to AIIMS are concerned, the same are governed by a separate entrance examination. Cream of students undergoing medical education seek admission to this Institution. The Institute amongst others performs such functions, which are not performed by other medical institutions, namely, to:

"(a) Provide for under graduate and post graduate teaching in the science of modern medicine and other allied sciences, including physical and biological sciences.

(b) Provide facilities for research in the various branches of such sciences.

(c) Provide for the teaching of humanities in the under graduate courses.

(d) Conduct experiments in new methods of medical education, both under graduate and post graduate, in order to arrive at satisfactory standards of such education.

(e) Prescribe courses and curricula for both under graduate and post graduate studies.

(f) Notwithstanding anything contained in any other law for the time being in force, establish and maintain.....

(g) Train teachers for the different medical colleges in India.

(h) Hold examinations and grant such degrees....."

3. It is unfortunate that such an Institute of Public importance and utility had to suffer because of strike by the members of the Faculty Association. Undue prolonged strike led to filing of this petition by two public spirited citizens to issue appropriate direction to the respondents to impose ban on such strikes. On 17.2.1999 while noticing the stand taken in the petition and as was orally stated on behalf of the AIIMS, Faculty Association was added as respondent No. 9 and notice was issued to the others. Respondents 1 to 3 were directed to file affidavit to state the measures taken to bring an end to the strike. The order reads:-

"By this petition two individuals have highlighted the inconvenience being caused to the public at large due to the ongoing strike by the members of the Faculty Association, namely, Professors, Additional Professors, Associate Professors and Assistant Professors in the All India Institute of Medical Sciences (for short "AIIMS"). It has been pointed out that because of the ongoing strike, the

admitted patients are suffering and resultantly there is a pressure on other hospitals, one of which is Safdarjung Hospital and the others which are under the Delhi Government. Because of the ongoing strike some of the employees of other hospitals intend to go on strike in support of the strike by the Faculty Association of AIIMS.

Mr. Mukul Gupta, learned counsel appearing for AIIMS, has pointed out that the cause for the Faculty Association to go on strike is in non-settlement of their grievances with respect to the payscales recommended in the report of Dr. Bakshi Committee, which is still under consideration of the Government. It is stated that insofar as other employees of the AIIMS are concerned, the pay scales applicable to the corresponding posts in the Government are applicable. After the Fifth Pay Commission a committee known as "Dr. Bakshi Committee" was constituted to go into the question of pay and other emoluments to the Faculty members. The said Committee submitted its report but decision thereon is yet to be taken by the Central Government.

In view of the stand taken on behalf of AIIMS orally, it will be for respondent No. 1 to state that what action, if any, has been taken to redress the grievances of the Faculty Association, which appears prima facie to be the root cause of strike. While calling upon respondents 1 and 3 to state the necessary steps, if any, taken to overcome the situation which has arisen resulting in strike, we must highlight the observations of Supreme Court made in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, on the rights of citizens and obligations of the State to secure health to its citizens:

".....the right of a citizen to live under Article 21 casts obligation of the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance, cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also being in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority....."

We must also emphasize that cessation or stoppage of work whether by Doctors, Teachers or alike is detrimental to the well being of the society and must not be frequently resorted to particularly in hospitals and such like public utility sectors. Faculty Members also owe a duty and responsibility to citizens.

Affidavits will be filed by respondents 1 and 3 stating the measures taken to bring strike to an end. In the meanwhile measures as are possible in law will be taken positively before the next date so that the strike comes to an end.

In order to make effective orders in this petition, we direct impleadment of the Faculty Association of AIIMS as respondent No. 9. The petitioner will take steps to effect service on respondent No. 9 for the next date by taking notice dasti."

4. On 23.3.1999 the Faculty Association of AIIMS put in appearance and highlighted the events leading to its members resorting to go on strike for redressal of their grievances. The case was adjourned to 24.2.1999. We gave patient hearing to all the parties appearing in the case. Feeling assured of time bound direction being issued for taking decision on their grievances, the members of Faculty conveyed its resolve to end the strike with effect from 25.2.1999. The order dated 24.2.1999 reads:-

"We appreciate the gesture of the Faculty Association of AIIMS-respondent No. 9 in having voluntarily come forward making a statement in deference to what transpired in Court proceedings yesterday that without any reservation the Members of the Faculty will resume work from tomorrow.

In view of the fact that members of respondent No. 9 have shown grace, we propose to hear respondent No. 2 on the question of issuing preemptory directions needed in this matter so that prompt action is taken by respondent No. 1."

5. On 25.2.1999 it was reported that Members of the Faculty of AIIMS had resumed their duties. One of the aspects on which we had heard learned counsel for the parties was about some interim directions as regards pay and allowances, till decision is taken by the Government.

6. AIIMS is an autonomous body and is governed by the Act and Rules and Regulations framed thereunder. Rule 7 of the AIIMS Rules provide that the pay scales of employees, other than faculty members; are at par with other posts under Central Government. After recommendations of the Pay Commissions are implemented, the same are also notified for the employees of AIIMS. The pay scales of the members of Faculty of AIIMS are not at par with other employees of the Central Government and, Therefore, after the recommendation of the Pay Commissions are approved a committee, usually under the chairmanship of the Secretary Health is appointed. The said Committee, considers at length the proposals received from the two faculty Association (AIIMS and PGI Chandigarh), and other aspects, and after going through the same, the Committee frames its recommendations, and the said recommendations are thereafter placed before the Government and are then approved by the Central Government, with or without modifications.

7. After the recommendations of the Vth Pay Commission's were implemented by the Central Government, a Committee under the Chairmanship of Secretary

(Health) was constituted by the Central Government to go into the various proposals of the faculty association of AIIMS and the PGI.

8. This Committee was constituted on 24.2.1998 to:-

"study and recommend the pay structure and allowances of the faculty of AIIMS.

The Committee constituted of the following members:

1. Secretary (Health) Chairman 2. Dr. S.P. Agarwal Member Director General of Health Services. 3. Dr. B.K. Sharma Member Director, PGIMER 4. Shri Vijay Singh Member Joint Secretary (FA) 5. Mrs. Renu Sahni Dhar Member Joint Secretary 6. Prof. M.C. Maheshwari Member Dean (AIIMS) 7. Dr. (Mrs.) Amrit Tewari Member Representative Faculty Association, PIGMER 8. Dr. P. Kulhara Member Representative Faculty Association, PIGMER 9. Prof. Hari Prakash Member Representative Faculty Association, PIGMER 10. Dr. P.K. Dave Convener"

9. The affidavit filed on behalf of AIIMS state:-

"The Committee (hereinafter known as the Baksi Committee), deliberated and finalised its recommendations in July, 1998. After its finalisation and with the approval of the Ministry of Health and Family Welfare, the report of the Baksi Committee was sent to the Ministry of Finance for its approval.

After considerable time, a communication was received from the Government on 21st January, 1999 detailing the pay structure and allowances proposed by them for the AIIMS faculty. The faculty of the Institute did not accept these proposals as they were not in consonance with the recommendations of the Baksi Committee. The AIIMS faculty reiterated the acceptance of the recommendation of the Baksi Committee.

In the meantime, the recommendations of the Baksi Committee had also been considered by the Institute Body in its meeting held on 30th November, 1998 wherein the recommendations of the Baksi Committee both with regard to the pay structure and allowances and enhancement of age of superannuation from 60 to 62 years were ratified by the Institute Body for implementation with the approval of the Government. The Institute Body Consists of members which include the Secretary (Health) and the Joint Secretary (Financial Adviser) from the Ministry of Health and Family Welfare."

10. Facts leading to strike have also been stated in the status report filed on behalf of AIIMS as under :-

"Due to non-finalisation of the pay structure and allowances, the faculty of the Institute was getting restive as the benefits of the Pay Commission had been given to all other organisations in the country except for institutions like AIIMS. The Faculty of the Institute met the Director AIIMS several times seeking his help in expediting the decision in the matter. The Faculty Association of AIIMS also met the senior officials of the Ministry of Health and Ministry of Finance.

As no decision was forthcoming, the Faculty Association of AIIMS (hereinafter known as FAIMS) served a notice on 8.1.99 on the Director AIIMS defining their plain for agitation as below:

- (a) wearing black badges on 11.1.99.
- (b) Taking out a rally to the Prime Minister's office on 18.1.99.
- (c) Mass casual leave on 25th January, 1999.

Thereafter the FAIMS vide notice dated 27.1.99 decided to observe one day token strike on 1st February, 1999 and in case their demands were not settled, to go on indefinite strike w.e.f. 8.2.99.

The Institute administration, being cognisant of the inconvenience and the suffering likely to be caused to the patients coming to the Institute, further intensified its efforts to get the decision on the pay and allowances expedited.

The faculty, however, wore black badges on 11.1.99 as a mark of protest over the delay in the acceptance of Baksi Committee's Report. However, no patient care services or any other services were affected.

The faculty had planned to take mass casual leave on 25th January, 1999. On 23rd January, 1999, the Director AIIMS and the Dean AIIMS along with some senior faculty members of the Institute met the Hon''ble Prime Minister of India to express their deep anguish and requested the Hon''ble Prime Minister to intervene in the matter. They also met the Hon''ble Home Minister on 24th January, 1999 with solemn efforts to avoid the occurrence of an unfortunate strike, which has never happened in the forty years of the history of the Institute.

The Director AIIMS called an urgent meeting of the faculty was also called on 24th January, 1999 at 12.00 noon. An appeal was made to the faculty not to go on the strike. The faculty was also informed that the Hon''ble Prime Minister had made an appeal to the faculty not to resort to mass casual leave.

On 24th January, 1999, a communication was received from the Ministry of Health Welfare informing the Institute that a high powered committee of a group of Ministers has been constituted under the Chairmanship of the Hon''ble Prime Minister, to settle the matter pertaining to pay and allowances of the AIIMS faculty.

In deference to the Hon''ble Prime Minister's request, the faculty continued to work on 25th January, 1999 though they did not withdraw their casual leave applications. No inconvenience was caused to any patient and the Hospital services in the Institute functioned normally.

On 30th January, 1999 a communication was received from the Ministry of Health and Family Welfare urging the faculty members not to go on strike as the group of Ministers had been seized of the matter and that the group of Ministers had authorised the HRD Minister Dr. Murli Manohar Joshi to discuss the matter

with the FAIMS.

The Faculty Association, however, decided to observe a one day token strike on 1st February, 1999. The Hospital services on 1st February, 1999 were not closed and all the services remained functional.

On 2nd February, 1999, the Director of the Institute held a faculty meeting wherein he apprised the faculty of the steps taken by the Government to come to a decision and urged the faculty to give time to the group of Ministers and not to go on indefinite strike from 8th February, 1999.

The Director AIIMS also informed the Secretary (Health) as well as the Minister of State for Health and Family Welfare that an indefinite strike by the faculty would be unprecedented in the history of the Institute and would cause incalculable harm to the Institute and urged them to use their good offices in settling the matter before 8th February, 1999. The Director and the Dean also met the Hon''ble HRD Minister with this plea.

The Faculty Association of AIIMS held their general body meeting in the evening of 5th February, 1999. On 5th February, 1999 a letter was received from Hon''ble HRD Minister urging the FAIMS not to resort to indefinite strike as the group of Ministers were considering the matter.

The FAIMS however decided to go on indefinite strike w.e.f. 8th February, 1999 (8.00 a.m.). The FAIMS vide letters dated 5.2.99 and 6.2.99 communicated this decision to the Director AIIMS stating that the faculty will not attend their duties in OPDs and Casualty, will not carry out investigative services except emergency investigations for in-patients. They would not attend to teaching, research and other works. They, however, informed that the indoor patients already admitted would be taken care of by the faculty and that the EHS services would continue to function normally.

On 6th February, 1999, the Director AIIMS called on urgent meeting of all Heads of the Departments to discuss the management to hospital services in the event to faculty going on indefinite strike w.e.f. 8th February, 1999.

The Hon''ble HRD Minister called the FAIMS on 7th February, 1999 for discussions which was also attended by the Director and the Dean. There was, however, no decision arrived at, and the faculty went on strike on 8th February, 1999."

11. Narration of the aforementioned facts would suggest that the root cause of the Members of Faculty going on strike is the issuance of letter dated 21.1.1999 by Government of India, Ministry of Health and Welfare conveying approval of the Government to the revision of scales of pay, which as per the stand taken by the Members of Faculty is not in consonance with the recommendations made by Baksi Committee. Government of India, after the Faculty Members started agitating decided to reconsider the matter and go again into the question regarding scales of pay, payable to Members of Faculty and it was decided to have the matter looked into by a group of Ministers. It is stated on behalf of the

Government of India that now the strike has been withdrawn, Government will get the matter examined by considering the views of the Faculty Association of AIIMS. It is stated that this process is a time consuming one. Because of the going Budget Session of Parliament, it will not be possible to take a final decision till the end of June, 1999.

12. In this Public Interest Litigation, we are not supposed to go into the complicated questions as regards pay scale or the factors which weighed with Government of India in not accepting fully the recommendations of Bakshi Committee. We are concerned mainly with the question of ways and means by which resort to such like strikes deserves to be avoided. We have also been informed that by letter dated 26.2.1999, Government of India, Ministry of Human Resource Development, Department of Education, Technical Section-1 had conveyed its decision to revise the scales of pay of the Faculty and Scientific/Design Staff of Indian Institute of Technology (IITs), Indian Institutes of Management (IIMs), Indian Institute of Science (IISc), Bangalore, National Institute of Industrial Engineering (NITIE), Mumbai, Indian School of Mines (ISM), Dhanbad and Indian Institute of Information Technology and Management, (IIITM) Gwalior, which revision has been made effective from 1.1.1996 and according to the Members of Faculty, the same is more or less in consonance with their claim and report of Bakshi Committee. Members of Faculty claim that there is no reason why Government should not have approved the recommendation of Bakshi Committee constituted by it.

13. As the matter is yet under consideration by Government of India and approval has yet to be accorded, we are of the view that in order to end the stalemate, it will be but appropriate to issue directions similar to the one, which were issued on 18.12.1998 by Apex Court in Supreme Court Employees Welfare Association Vs. Union of India and Others (I.A. No. 14 and 15 in Writ Petition (Civil) No. 801/86 and 1201/88, directing the authorities to make payment as per pay scales recommended by the Chief Justice of India.

14. Consequently, taking all relevant factors into consideration we direct that purely by way of an ad hoc arrangement and without prejudice to the rights and contentions of the respondents including faculty members, the respondents are directed to make available to the Members of Faculty of AIIMS and others the revised pay scale as per the recommendations of the K.K. Bakshi Committee on and from 1.3.1999 and continue paying the same till a final decision is taken by the Government of India in the matter. All arrears of revised pay scales up to 28.2.1999 be made available to the employees as per the decision conveyed by the Government of India in its letter dated 21.1.1999, which will be worked out and paid by 30.4.1999. Payment of arrears as per the scales of pay mentioned in letter dated 21.1.1999 and of future salary on and from 1.3.1999 as per the recommendation of K.K. Bakshi Committee will be subject to adjustment as and when decision is taken by the Government.

15. We further direct that as the matter is being re-examined by the Government

by taking into consideration the view of the Faculty Members, the Members of Faculty be also associated therein and in case it is not inconvenient in addition the Members of the Committee, which was constituted, namely, K.K. Baksi Committee be also associated and decision be taken by 30.6.1999.

16. We adjourn the matter for directions to 11.4.1999.