

(2000) 03 DEL CK 0030
In the Delhi High Court
Case No : CW. No. 1014 of 1999

Dr. Abbas Ali Khan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-03-2000

Acts Referred:

Citation : (2000) 5 AD 119 : (2000) 85 DLT 803 : (2000) 56 DRJ 320 : (2000) 3 SLJ 266

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. B.B.Sawhney and Mr. M.J. Nasir, for the Appellant; Mr. Keshav Dayal , Mr. Sudhir Makkar and Mr. Ravi Sikri, for the Respondent

Judgement

K. Ramamoorthy, J.—The Petitioners have prayed for the following reliefs:-

"In the premises aforesaid, it is most respectfully prayed that this Hon''ble Court may be pleased:

a) Issue a writ in the nature of mandamus or any other appropriate writ order(s), direction commanding the respondents 1 to 3 to pay to the petitioners the same amount of stipend which was and/or is being paid to post Graduate MD students of Modern Medicine till 1.1.96 as per earlier quantum and as per the v pay commission revised scale/stipend thereafter with retrospective effect from their respective dates of admission."

2. Petitioners 1 to 6 are studying in the 1st Year of the post Graduate MD(Unani) course. Petitioners 7 to 15 are in the second Year of the post Graduate MD(Unani) course. Petitioners 16 to 27 are in the third year of the Post Graduate MD(Unani) course. Petitioners 28 to 45 had complied their Post Graduate MD(Unani) course, and they are claiming stipend with reference to the period they had undergone the course.

3. The Petitioners claim stipend for the period of their study as being paid to the

Post Graduate MD students of Modern system of Medicine till 1.1.1996 and for the period posterior to it as per the decision by the Vth pay Commission.

4. The case of the Petitioners, that could be gathered from the averments in the writ petition, could be stated thus: According to the petitioners, in the year 1978, the post Graduate Institute of Indian Medicine was brought under the control of the Indian Institute of Medical Sciences. A faculty of Indian Medicine was established which was later on came to be called Faculty of Unani Medicine. The Faculty of Modern Medicine and the Faculty of Unani Medicine are under the control of the Institute of Medical Science. The petitioners have given a comparative table showing the stipend which is paid to Post Graduate students of Unani Medicine of the fourth respondent Jamia Hamdard, and the post Graduate MD students of Modern System of Medicine. The same is as under:-

Stipend to PG, MD students			Fixed Stipend to PG, of Modern Medicine MD(Unani) students			of Jamia Hamdard.		
						Yr. Basic DA HRA		
TA	CCA	Total	Petitioners	Petitioners	except	16,28,29&37	Petitioners	
16,28,29&37 =====								
===== I 9000 1980 2700 800 300 14780/-								
2500/- 5600/- II 9275 2039 2781 800 300 15195/- 2500/- 5700/- III 9550								
2101 2865 800 300 15616/- 2800/- 5900/-								

Hindu University & Others" had granted the relief to the doctors placed under the similar circumstances as the petitioners.

8. The petitioners rely upon the judgment of this court dated 27.1.1998.

9. On the 16th of April, 1999, Mr.Lal Singh, working as under Secretary in the Department of Indian System of Medicine & Homeopathy (Ministry of Health & Family Welfare), had filed an affidavit mentioning the proceedings in CW.610/97 and the appeal against the order dated 27.1.1998 having been dismissed by the Division Bench by order dated 19.8.1998 on the ground of delay. In paragraph 8 of the counter, it is stated by the respondents:

"Regarding extension of benefit of enhanced stipend to the PG students similarly placed, it is stated that the matter was considered in consultation with the Ministry of Law & Justice. Jamia Hamdard is neither a central University nor a National Institute. It is for the state Government to decide the rate of stipend to be paid to MD students of the University. The respondents have however complied with the order of the Hon"ble High Court of dated 27.1.1998 as required."

10. In paragraph 10 of the counter, the stand taken by the respondents is:

"As regards sub-para (ii) of para 3, it is submitted that the contention of the petitioner that they are entitled to the same stipend as is being paid to the students of Modern System of Medicine is not tenable. Indian systems of Medicine and Modern system of Medicine are not comparable. Both systems have their own historical origin. The stipend paid to the students of Modern System of Medicine is not automatically applicable to the students studying in Indian systems of Medicine educational institutions."

11. In paragraph 17 of the counter, it is stated:

"With regard to contention made in sub-para (x) of para 3 that no action was taken on the letter dated 5.1.99 and 10.2.99 of the petitioners to extend the benefit of the judgment dated 27.1.98 of the Hon"ble High Court in CWP.No.610/97 to all the petitioners herein, it is stated that the matter was examined by the Government of India in consultation with Ministry of Law and justice and it was decided to file LPA against the judgment dated 27.1.98 in the Hon"ble High Court."

12. In paragraph 19 of the counter, it is stated:

"In reply to para 5, it is submitted that under the centrally sponsored scheme of 1990 dated 23rd July, 1990 the central assistance could be sanctioned for upgradation of post-graduate department of Indian systems of Medicine only. The central scheme was not framed to extend assistance to the post-graduate department of Modern Medicine. As per pattern of assistance of the scheme for upgradation of post-graduate department of Indian system of Medicine, the ceiling was fixed for payment at the rate of Rs.1800 and to 2nd and 3rd years

students at the rate of Rs.2000/-. The rates of stipend were revised to Rs.2500/- for 1st & 2nd year students and Rs.2800/- for 3rd year students respectively."

13. In paragraph 23 of the counter, the stand taken by the respondent is:

"It is submitted that it is the responsibility of the state Government to fix the amount being paid as stipend to the post-graduate students of the medical colleges under their jurisdiction. The Government of NCT of Delhi is the competent authority to fix the amount of stipend. There is no disparity in the stipend paid in the institutions getting grant from the Government of India and the Jamia Hamdard post-graduate students in payment of stipend by the respondents. It was also averred that the Central Government has no role in fixing the rate of stipend paid, to the post-graduate students of the institutions under the control of the state Governments. The central Government is only fixing the rate of stipend in respect of central institutions. Jamia Hamdard is not a central university or national institute as it is an institution under the state Government of NCT, Delhi and as such it is for the state Government to decide the rate of stipend to be paid to the MD students of their University. The rate of stipend to the post-graduate students is uniform in nature to all post-graduate colleges in different states. Under the centrally sponsored scheme. The conditions prescribed in the scheme are very explicit that the rate of stipend payable to the students will be equal to the rate being paid to the post-graduate students in other upgraded departments in the state."

14. On the 1st of May, 1999, an affidavit in rejoinder to the counter affidavit filed by the first respondent union of India, was filed by the petitioners. Along with the rejoinder, the petitioners had filed annexures P-8 to P-12. Annexures P-8 is the copy of the letter dated 12.5.94 written by the Secretary, central council of Indian Medicine, Swami Ramtirth Nagar, New Delhi to the forth respondent Jamia Hamdard. The letter reads as under:-

Sub: Starting of post-graduate course in Unani.

Sir,

"I am directed to invite your kind attention to this office letter No.11-34/93-U dated 08.12.1993 on the subject mentioned above and to inform you that Hamdard Unani Tibbia college was visited by the visitors of the central council of Indian Medicine for the purpose of assessing the Minimum standards and requirements available at the institution for the purpose of starting post-graduate course in Unani Tib in conformity with the Minimum standards and requirements laid down by the central council.

Keeping in view of the recommendation of the visitors, the Jamia Hamdard was permitted to start post-graduate course in two subjects i.e. Ilmul Advia and Moalejat provided the Regulations prescribed by the central council are followed strictly departure from the prescribed regulations will be treated violation of prescribed Regulations, certain shortcomings were pointed out to you to be

removed. It appears that necessary action for the same has not been initiated as the compliance report of the same has not been received so far.

You are Therefore requested to take the necessary action under intimation to this council and furnish the compliance report as early as possible. "

Annexure.P-9 is copy of letter dated 13.8.1995 written by the Ministry of Health & Family Welfare written to all Health Secretaries(states) and all Universities. The same reads as under:-

Sub: Centrally sponsored Scheme-up gradation of Deptts. for post- Graduate Training & Research in ISM - revision of rates of stipend of students reg.

Sir,

I am directed to convey the sanction of the president to the enhancement of stipend of post-Graduate students of Indian systems of Medicine of various ISM Colleges upgraded to post-Graduate level by the Government of India under the centrally sponsored Scheme, from the existing rate of Rs.1800/- P.m. for the 1st Year students and Rs.2000/- p.m. for the 2nd & 3rd years students to Rs.2500/- p.m. for the 1st & 2nd Year students and Rs.2800/- p.m. for the 3rd Year students.

2. Para - 2(9) (i) of this Ministry"s Circular letter No.Z. 15011/4/88-AY, Desk-I dated 23.7.90 containing the pattern of assistance under the scheme, shall stand revised and read as follows:

"The rate of stipend payable to students will be equal to the rate being paid to the post-graduate students in other upgraded deptts. Prevalent in the the states (but in any case not more than Rs.2500/- p.m. for the 1st & 2nd Year and Rs.2000/- p.m. for the 3rd year students"

The above orders will take effect from 1.8.96.

4. The Additional expenditure on account of this revision in the rate of stipend shall be met by the institutions concerned from within the sanctioned central assistance to them under the scheme.

5. This issued with the concurrence of Finance Division Dy.No.2681/96-Fin.II dated 9.8.1996."

Annexure.P-10 is a copy of counter affidavit filed by the NCT of Delhi in CW.610/97. Annexure.P-11 is a copy of notification dated 16/18.1.1999 issued by the Banaras Hindu University and the same is as under:-

"In accordance with the directives issued by the Government of India, Ministry of Human Resource Development (Department of Education) vide. OM.No.E4-78/97-U.1 dated 18th November, 1998 in respect of the revision of pay scales of Jr.Residents and Sr.Residents working in various central Universities w.e.f.1.1.96 provided they are in conformity with the scales approved by the Ministry of Health and Family Welfare, the University Grants Commission vide their letter

No.F.31-3/97 (CU) dated 28th November, 1998 communicated approval to the revision of the emoluments of the junior and senior residents.

In view of above the vice-chancellor has been pleased to pass orders to implement the following scale of pay/emoluments for Jr.Residents and Sr.Residents working in the University as per directives of the UGC.

1. Junior Residents:

First Year - Rs.09000.00 p.m. (inclusive of NPA) Second Year - Rs.09275.00 p.m. (inclusive of NPA) Third Year - Rs.09550.00 p.m. (inclusive of NPA) 2. Senior Residents:

First Year - Rs.10350.00 p.m. (inclusive of NPA) Second Year - Rs.10675.00 p.m. (inclusive of NPA) Third Year - Rs.11000.00 p.m. (inclusive of NPA) 3. Senior Residents:

(Having only PG Diploma) First Year - Rs.10025.00 p.m. (inclusive of NPA) Second Year - Rs.10350.00 p.m. (inclusive of NPA) Third Year - Rs.10675.00 p.m. (inclusive of NPA) 4. Senior Residents:

(Having no PG Degree or Diploma)

First Year - Rs.09700.00 p.m. (inclusive of NPA) Second Year - Rs.10025.00 p.m. (inclusive of NPA) Third Year - Rs.10350.00 p.m. (inclusive of NPA)

Annexure.P-12 is a copy of letter dated 24.3.1999 written by the under Secretary to the Government of India, Ministry of Health & Family Welfare (Department of ISM & H), Red cross Road, New Delhi to the pay & Accounts Officer, Ministry of Health & Family Welfare, Nirman Bhavan, New Delhi. This is with reference to the Grant-in-aid to the Institution/colleges under the scheme for upgradation of ISM & H colleges for the year 1988-99.

15. In paragraph 2 of the rejoinder affidavit filed by the petitioners to the counter affidavit of the first respondent it is stated:-

"In reply to para 2 of the preliminary objections, it is submitted that there is gross disparity in amount of stipend paid to the petitioners and that which is being paid to post-Graduate MD students of other institutions of both Indian system of Medicine and Modern Medicine (Allopathy). It is further submitted that the petitioners, except petitioners 16, 28, 29 and 37, are being paid fixed amount of monthly stipend of Rs.2500/- for the first and second year of the course, and Rs.2800/- for the third year of the course, whereas the post Graduate students of Indian system of Medicine of some other Institutions and of Modern Medicine are being paid monthly stipend in the scale of Rs.9000 to Rs.9550/- along with usual allowances as set out in para 3(iv) of the petition. It is relevant to mention that teaching faculty of the post Graduate course which is also sponsored by the respondent No.1 is getting the UGC scales as per the 7th pay commission Report. Earlier, post Graduate students of Indian Medicine of Banaras Hindu University, Aligarh Muslim University and other institutes/

Institutions were also being paid stipend at the meagre rate of Rs.1000/- for I year and Rs.2000 for II year under the said scheme. It is only after the judgment dated 13.01.1993 of the High Court of Allahabad (Annexure P-7 to the Writ petition) that their stipends and those of some other institutes were brought at par with those of post-graduate students of Allopathy (Modern Medicine). It is thus incorrect to allege that there is no disparity in the stipend paid in institution of Indian systems of Medicine getting grant under the scheme.

As regards course content, period of training etc., it is pertinent to point out that all institutions whether it be Banaras Hindu University, Aligarh Muslim University, Jamia Hamdard or any other institute/institution covered by the scheme has to have curriculum and syllabi as prescribed by the central council of Indian Medicine. This is amongst the mandatory conditions of the Scheme in question.

It is incorrect and is denied that stipend is paid under the central scheme for only 5 years where after it is to be taken over by the state Government or that it is for the state Government to fix the stipend. There is no such provision in the Scheme. In any event, in case of universities and deemed universities, Central grant has to be continued though it may be routed through the University Grants Commission."

16. In paragraph 3 of the rejoinder affidavit filed by the petitioners to the counter affidavit of the first respondent it is stated:-

"Contents of para3 of the preliminary submissions are misconceived and are denied. It is utterly false and is denied that central Government has got no role in fixing the rate of stipend for PG students. It is unfortunate that counter affidavit filed on behalf of the Government of India through a Ministry is to deliberately misleading and seeks to confuse the issue by fudging the singular relevant issue, namely, that the scheme for PG students of Indian Medicine was framed, implemented and are fully funded by the Central Government. The scheme was and is intended and is open, subject to fulfillment of prescribed conditions, to all recognised institutions of medical education, whether they be central Universities or Institutions or state Universities or Institutes or "deemed" Universities or Private recognised institutions. the common qualifying thread is infrastructure, curricula and syllabi satisfying standards prescribed by the Central Council of Indian Medicine. Stipends (as also staff salaries) under the scheme have all along been fixed and funded in full by the central Government.

It is denied that stipend under the Central Scheme is paid only for five years. It is and has been continued thereafter Jamia Hamdard is a deemed University which is not under the "control" of either the Central Government or the state Government. Its affairs are as much "regulated" by the Central Government as the state Government. In fact, being a "deemed" University under the UGC Act, it is more, if at all, in the "control" of the central Government than the state Government. It is misleading to aver that "it is governed by the rules and regulations of the Government of NCT of Delhi". It is not at all a state institution

or an institution "under" the state Government and is governed by general law and rules and regulations. Stipend was never meant to be nor was fixed by the Government of NCT of Delhi as alleged or at all.

True copy of counter affidavit filed on behalf of the Government of NCT of Delhi in CW.No.610 of 1997 is annexed hereto as Annexure P-10.

The averment that the Banaras Hindu University and Aligarh Muslim University are "under the control of the University Grants Commission" is again calculatingly misleading. It overlooks the fact that Jamia Hamdard being a deemed university is as much "under the control of the University Grants Commission" as any other University.

Moreover, it is pertinent to note here that teaching and non-teaching staff employed under the Central Scheme have been granted and are being paid revised UGC scales notified after the V pay Commission Report. This is also so in case of PG students of Modern Medicine (Allopathy) and in case of PG students of BHU, AMU and some other institutes under the central Scheme. It is wholly arbitrary, unfair and patently discriminatory to deny commensurate enhancement to the petitioners. This is clearly a case of unjustifiable "step-motherly treatment".

17. In paragraph 4 of the rejoinder affidavit filed by the petitioners to the counter-affidavit of the first respondent it is stated:-

"There can be no denial of the fact that the scheme in question is a central Scheme framed and fully funded by the central Government and is open to all Universities and recognized medical education institutions. Stipends were and have throughout been fixed and paid for by the central Government and were revised in case of some only of the Universities/Institutions after and pursuant to the judgment of the High Court of Allahabad dated 13.01.93. As per the ratio of that judgment, stipends of all PG students of Indian systems of Medicine of all institutions covered by the Scheme should in all fairness have been brought at par with those of PG students of Modern Medicine. The plea raised about competence to fix stipends only for central Universities or National Institutes is not bona fide and is clearly by way of afterthought. It cannot be understood as to how "the very purpose of the Scheme framed by the Central Government would be defeated" if it has to pay stipend equally to PG students under its own Central Scheme in recognised institutions which satisfy the required prescribed by the central Council of Indian Medicine. The averments fly in the face of the judgment dated 13.01.93 of the High Court of Allahabad (Annexure.P-7) and that of this Hon'ble court in CW.610/97, and also defy logic."

18. On the 7th July, 1999, the petitioners filed an additional affidavit. In paragraph 2 of the additional affidavit, it is stated:

"I say that admission to post-graduate courses in Indian systems of Medicine is by selection through written test followed by interview. The selection process is

highly competitive, for at Jamia Hamdard there are 6 post-graduate MD(Unani) seats for which several hundreds of candidates compete and chance of a candidate being successful is less than 1%.

19. In paragraph 3 of the additional affidavit, a reference is made to the documents filed as annexures to show parity between the two categories of doctors. The same reads as under:-

"I further say that pay scales and services conditions of medical staff (doctors), both teaching and non-teaching, in case of Modern Medicine (Allopathy) on the one hand and Indian systems of Medicine on the other are at par with each other. Illustrative documents evidencing this fact are annexed hereto as Annexure "A" collectively."

20. An abstract of the Annexure-A filed by the petitioners is given by the petitioners and the same is as under:-

TABULATED KEY TO ANNEXURES MODERN MEDICINE INDIAN SYSTEMS OF MEDICINE Page No. 2,6 & Professor Rs.14300-20100 14 Professor Rs.4500-7300 12 A (item 11 p2) (Rs.4500-3700) (Pre-revised) pre-revised 6&12A Lecturer Rs.2200-4000 6&12A Lecturer Rs.2200-4000 (pre-revised) (pre-revised) 18 Res.Medical Rs.8000-13500 18 Chemical Rs.8000-13500 Officer Registrar 5. Med.Officer Rs.2200-4000 13&15 Med off. Rs.8000-13500 (pre-revised) (Item 10) (Rs.2200-4000 Pre-revised)=====

21. On the 7th of July, 1999 an additional supplementary affidavit was filed on behalf of the first respondent Union of India. In paragraph 3 of the additional supplementary affidavit, it is stated by the first respondent:-

"That the central Government is not bound to pay stipends to the petitioners, since the institution is neither a central University, nor an institution of National importance under entry 64 of Union list. Moreover, the judgment of Allahabad high Court relates to the Banaras Hindu University, which is a central University and no parity can be claimed on account of similarly situated persons."

22. It is stated by the first respondent in paragraph 5 of the additional supplementary affidavit:

"That the central council of Indian Medicine have framed PG Education Regulation, 1979 in Ayurveda, Unani and Siddha. The primary aim of PG Education in Ayurveda as well as Unani is the orientation in specialities and to produce specialist who can be efficient teachers, clinicians and pharmaceutical experts in their respective field (Annexure-I). Thus, two system of Indian Systems of Medicine has come into being by virtue of Indian Medical Central Council Act, 1970. Ayurveda and Unani (the old system) is regulated by the central council of Indian Medicine. Whereas, the modern system (Allopathy) is governed by the Indian Medical Council Act, 1956."

23. The stand taken by the first respondent Union of India, is that the central

Government is not liable to fund the fourth respondent Institution for running PG courses beyond the completion of Five Year Plan as per the scheme. The stand taken is that the Jamia Hamdard is not under the control of the first respondent. It is a deemed University funded by the University Grants Commission. The stand taken in the additional supplementary affidavit is that the view taken by this court in the judgment dated 27.1.1998 in CW.610/97 titled as "Post Graduate Students of MD (Unani) Jamia Hamdard & other Vs. Union of India & others", cannot be sustained because this court had not kept in mind the clear cut distinction between the subject of state List and Concurrent List and the relief was awarded on wholly erroneous and fallacious grounds.

24. It is projected in paragraph 9 of the additional supplementary affidavit:

"That the appropriate authority to fix and pay the stipend to the petitioner is either the state Government or the state Government or the Jamia Hamdard University, the role of Central Government (Ministry of Health & Family Welfare, department of Indian Systems of Medicine and Homeopathy) is very limited to the extent of central Institutions or the Institutions covered by the central scheme Circulated to all state Governments/Uts vide letter No.Z. 15011/4/88-AY. Desk-1, dated 23rd July, 1990 and further amended vide letter No.Z. 14013/5/91-AY. Desk-1, dated 16th June, 1992 and letter No.R.11011/1/91-AY. Desk-1, dated 13th August, 1996."

25. In paragraph 10 of the additional affidavit, expressing its generosity, the first respondent has stated:

"Further more, the respondent No.1 has no objection if the rate of stipend is enhanced and expenditure are being met by the institutions from its own resources."

26. In paragraph 11 of the additional supplementary affidavit, the stand taken by the first respondent is:

"That it is for the concerned state Government (under whose control an institution functions) to fix rates to stipend. The Hon"ble Judge has grossly erred in abrogating the liability of state Government or of the Institute by imposing it on the central Government."

27. The submission made in the additional supplementary affidavit is that the judgment of the Allahabad High Court, which is filed as Annexure P-7, dated 13.1.1993 is not applicable for the following reasons:

"That the petitioner University was a central University (BHU) whereas, the Jamia Hamdard is not a central University.

That no counter affidavit was filed by the Union of India in the Ministry of Health and Family Welfare in the case of Allahabad High Court and Therefore the stand of Union of India in the Ministry of Health and Family Welfare was not before the Hon"ble Court.

That in that case, University Grants Commission was directed to pay the enhanced stipend. There was no direction to the Union of India, Ministry of Health and Family Welfare regarding payment of stipend.

28. On the 7th of July, 1999, a reply to the additional supplementary affidavit was filed by the petitioners. In paragraph 1 of the reply to the additional supplementary affidavit, it is stated by the petitioners:

"Contents of para 1 are irrelevant and are calculated to mislead this Hon'ble court by digressing from the central relevant fact that the scheme in question is a central Scheme sponsored and financed by the Government of India which has not only been fixing but also revising the stipends payable to post Graduate students of Indian systems of Medicine. The Scheme was meant for and was intended to be open to and apply uniformly to all accredited Universities (whether central or states), deemed Universities as also private educational institutions/collages as may be cleared/approved/recognised for the said purpose by the central council of Indian Medicine."

29. In paragraphs 2 & 3 of the reply to the additional supplementary affidavit, it is stated:

"Contents of paras 2 and 3 are likewise irrelevant and deliberately misleading. The question is not at all of financing an institution per se but of provisions of stipends under a centrally sponsored scheme for Post-Graduate courses uniformly open to all accredited Universities, deemed Universities and other educational institutions which satisfy certain standards. The respondents have named 3 institutions run by the central government and 2 run by the state Government only to confuse the issue. Jamia Hamdard is a deemed University which happens to be geographically located in Delhi. It is governed and controlled equally by both central and local laws. It is as much under "control" of the central Government as of the state Government. It is neither run nor controlled by the state Government. However, it may here be pointed out that the central scheme applies even to institutions run by state Government. However, it may here be pointed out that the central scheme applies even to institutions run by state Government. The contentions that it is for the state Government to fix the stipends under the Central Scheme or that the central Government is not liable to pay stipends to the petitioners are wholly misconceived and untenable. It is pertinent to note that post graduate MD students of Indian system of Medicine at Banaras Hindu University were also being paid meagre stipends like the petitioners till the judgment of the High Court of Allahabad. The Petitioners are entitled to parity of treatment with post graduate students of Banaras Hindu University."

30. In paragraphs 9 to 11 of the reply to the additional supplementary affidavit, it is stated:

"Contents of paras 9 to 11 are false and baseless. The Scheme was framed by the central Government and is intended to apply to all accredited medical

education institutions, whether they be run or controlled by the centre, state or a private body. It is the central Government which fixed the stipend and also later revised it. The state Government has had nothing to do with the same. PG students of Indian Medicine in central Institutions run or controlled by the centre were also being paid meagre stipends under the scheme till the judgment of Allahabad High Court (Annexure P- 7 to the writ petition). Applications were invited and entertained by the central Government from all accredited educational institutions of Indian Medicine. It is reiterated that the Scheme was framed and is funded by the central Government. The responsibility of providing adequate stipends on principles of parity lies squarely on the shoulders of the central Government."

31. In answer to the points raised by the first respondent in the additional supplementary affidavit with reference to the judgment of the Allahabad High Court, it is submitted by the petitioners in paragraph 12 of the reply to the additional supplementary affidavit:

"Averments made in para 12 are baseless and are by way of after thought. The contention that the ratio of Allahabad High Court case is not applicable to the present case because of the reasoning that Jamia Hamdard is not a central University and that no counter affidavit was filed on behalf of the union of India or direction to pay enhance stipend was made against the UGC is misconceived, untenable and of no consequence. With respect to first submission, it is submitted that scheme for P.G. Students is a central scheme fully funded by the respondent No.1, which also inter alias fixes the rate of stipend. The scheme was and is intended to apply to all accredited Universities, deemed Universities and other educational institutions which satisfy certain standards. It is not material whether an institution is a central University or not. Regarding the second contention that no counter affidavit was filed on behalf of union of India, it is submitted that same is of no consequence. Admittedly the post Graduate MD students of Indian System of Medicine at Banaras Hindu University were being paid meagre amount of stipend, like the petitioners herein till the judgment of the High Court of Allahabad, the filing of counter Affidavit could not have improved their case. As regards the third contention it is submitted that ratio of Allahabad High Court is squarely applicable to the present case. It is submitted that central funding to post Graduate MD course is continued beyond the initial 5 years though it is then routed through the UGC. The writ petition deserves to be allowed with cost."

32. In paragraph 9 on merits of the reply to the additional supplementary affidavit, it is stated:

"In reply to para 9, it is submitted that there is gross disparity in amount of stipend paid to the petitioners and that which is being paid to post Graduate MD students of other institutions of both Indian System of Medicine and Modern Medicine. The petitioners (except Petitioners 16, 28, 29 and 37) are being paid fixed amount of monthly stipend of Rs.2500/- for the first year and second year

of the course and Rs.2800/- for the third year of the course, whereas the post Graduate MD students of Indian System of Medicine of some other Institutions as also of Modern Medicine are being paid monthly stipend in the scale of Rs.9000/- to 9550/- along with usual allowances as set out in para 3(iv) of the petition. It is submitted that teaching and non-teaching staff mentioned in para under reply are getting the UGC scales as per the 5th Pay Commission Report. It is clarified that Jamia Hamdard is a deemed University which is not under the "control" of either the central Government or the state Government. Its affairs are as much "regulated" by the central Government as the State Govts. In fact being a deemed University under the UGC Act, it is more, if it all is, in the control of the central Government than the state Government."

33. In paragraph 10 on merits of the reply to the additional supplementary affidavit, it is stated:

"Contents of para 10 of the additional supplementary affidavit on merits are misconceived and are denied. The number of staff prescribed by the PG Regulation is for the department as a whole and not only for the post Graduate course. Clause (c) of Circular dated 23.6.96 issued by the respondent No.1 (annexure IV to the affidavit under reply) also envisage this. According to clause "c" of the Circular, sanction of actual staff by the respondent No.1 is made after examining the position of the existing staff in the Department which is to be upgraded. It is submitted that respondent No.1 after examining the position of staff in the Department of Moalejat and ilmud Advia, which have since been upgraded under the centrally sponsored scheme, sanctioned 12 additional (six in each department). The sanction of additional posts was granted by the respondent No.1 to meet the shortfall and the department wise requirement of staff as prescribed by the PG Regulations. It is further submitted that teaching and non-teaching staff under the centrally sponsored scheme are getting the UGC scales as per the 5th Pay Commission Report. The rest of the teaching and non-teaching members of the University are getting UGC scales and are paid jointly by the University Grants commission and the respondent No.4."

34. The learned counsel for the petitioners, Mr.B.B.Sawhney, submitted that as per the judgment of this court dated 27.1.1998, referred to above, the respondents are bound to pay stipend to the petitioners as payable to the students studying modern medicine. The learned counsel referred to the scheme dated 23.7.1990 issued by the Government of India, Ministry of Health & Family Welfare and also referred to the letter dated 31.8.1999 issued by the Government of India, which is already extracted. The learned counsel submitted that the stand taken by the Union of India in the counter -affidavit and the additional supplementary affidavit is not at all tenable in law. In the Scheme of things, it is the duty of the central Government, NCT of Delhi, and the fourth respondent to pay stipend to the students. The learned counsel submitted that under the constitution, the obligation of the central Government and the state Government cannot be denied by them to the student in Indian system of

medicine the stipend which they are entitled to.

35. The learned senior counsel for the first respondent Mr.Keshav Dayal, submitted that the Indian Medical council Act, 1956 and the Indian Medical Central council Act, 1970 act in two different fields and the petitioners cannot seek the reliefs against the central Government. The learned senior counsel referred to pages 122 to 123 of the additional supplementary affidavit. The learned senior counsel submitted that the Allahabad High Court issued the writ against the University Grants Commission. The Allahabad High Court had also noticed that the Government of India did not file any counter. The learned senior counsel submitted that the obligation of the Central Government was not dealt with by this court in its judgment dated 27.1.1998. The learned senior counsel submitted that there was no question of any bar and no principles of res judicata would apply. The learned senior counsel submitted that on the 6th of November, 1970, the Ministry of Health & Family Planning (Department of Health), Government of India, issued a circular to all the state Governments and all universities relating to the pattern of assistance for the upgrading of Departments for PG Training & Research in the Indian System of Medicine. The circular dated 6.11.1970 reads as under:

"I am directed to say that it is proposed to upgrade one Department in each college for Post-Graduate Training in Ayurveda/Unani/Siddha during the 4th Five Year Plan in the existing Colleges (as centrally sponsored scheme). The Government of India have laid down the following pattern of assistance for the purpose:

1. Associate Professor or Professor. 1 2. Readers 3 3. Lecturers 3 4. Technicians 3 5. Technical Assistants 3 6. Laboratory Assistants 2 7. Laboratory Attendants 2 8. Senior Clerk 1 9. Junior Clerk-cum-Typist 1 10. Stipend will be given at the rate as prevailing in the state concerned but not exceeding Rs. 200/- p.m. per student.

11. Rs.600/- per annum per student for contingencies like Chemical etc.

12. Funds for non-recurring expenditure will be provided on the basis of scrutiny of actual requirements.

The scales of pay etc. of these posts will be according to state scales of pay etc. for similar posts. This staffing pattern should be considered as a ceiling and sanction for staff to under-graduate colleges shall be made after examining the position of the existing staff in the Department which is to be upgraded.

2. The application for assistance will be considered provided the following conditions are fulfilled -

i) The college shall be affiliated to a recognised University in the state.

ii) The academic control of the Department and awarding of degree will be vested in the Faculty of Ayurveda/Unani/Siddha, as the case may be, and the University

respectively.

iii) The syllabus for the course will be prepared by the Faculty and approved by the University and the Government respectively.

iv) The Central Government will review annually the progress of work done on the basis of which the necessary central assistance will be released.

v) The Department should be of All India Character and 50% seats should be kept reserved for students from outside, if forthcoming.

vi) Filling teaching posts will be by regular modes of recruitment, namely, competitive selection by advertisements.

vii) Prevalent pay scales in the state concerned, will be admissible to the proposed staff.

viii) The admission capacity should be restricted to 20 post Graduate students only.

3. In view of the position stated above, it is requested that the applications from ISM Colleges fulfilling the conditions stipulated above, may kindly be forwarded to this Ministry along with a recommendation of state Government concerned as quickly as possible. After the administrative approval to upgrading of departments to such Institutions, is given the state Government may incur the expenditure themselves and get them reimbursed later through ways and means advances.

4. This issues with the approval of the Ministry of Finance and planning Commission.

5. If a state Government wish to recommend the case of non- Government Institution, such case will be decided on merit."

36. The learned senior counsel for the first respondent Mr.Keshav Dayal, referred to page 140 of the paper book, wherein scheme Dated 23.7.1990 is referred to. He also referred to page 142 of the paper book, wherein the circular issued by the Ministry of Health & Family Welfare, Government of India dated 15.6.1992 is filed. The same is as under:-

Sub: Centrally sponsored Scheme - Upgrading of depts. for Post- Graduate Training & Research in ISM - pattern of assistance to be provided during the 8th plan.

Sir,

I am directed to refer to this Ministry's letter No.215011/4/88-Ay.Desk-I dated 23.7.90 on the subject mentioned above and to say that the pattern of assistance for the scheme on expenditure on maintenance of 19 posts has been reviewed by the Government.

2. It has since been decided that the central assistance under the scheme shall be limited to the following six posts only for each of the upgraded Deptt. for PG training & research in ISM colleges during the 8th plan.

Name of the Post No. of Post Professor/Reader/ Associate /Professor 1 Asstt. Prof./Lecturer 1 Technician 1 Technical Assistant 1 Laboratory Attendant 1 Junior Clerk/Typist 1 3. Proposal for financial assistance under the Scheme in respect of each of the Deptts upgraded by this Ministry from the year 1990-91 onwards for PG Training & Research may please be submitted accordingly."

The learned senior counsel relied upon paragraph 2 in that letter.

37. The learned senior counsel for the first respondent Mr.Keshav Dayal, referred to the circular issued by the Ministry of Health & Family Welfare, Government of India on the 13th of August, 1996. The same is as under:-

Sub: Centrally sponsored Scheme - Upgradation of Deptts. for Post-Graduate Training & Research ISM - revision of rates of stipend of students - reg.

Sir,

I am directed to convey the sanction of the president to the enhancement of stipend of post-Graduate of Indian systems of Medicine of various ISM colleges upgraded to post-graduate level by the Government of India under the centrally sponsored scheme, from the existing rate of Rs.1800/- p.m. for the 1st year student and Rs.2000/- p.m. for the 2nd and 3rd years students to 2500/- p.m. 1st and 2nd year students and Rs.2800/- p.m. for the 3rd year students.

2. Para-2(9)(i) of this Ministry's Circular letter No.Z.15011/4/88-Ay. Desk-I dated 23.7.1990 containing the Pattern of assistance under the scheme shall stand revised and read as follows:

"The rate of stipend payable to students will be equal to the rate being paid to the post-Graduate students in other upgraded Deptts. prevalent in the states but in any cases not more than Rs.2500/- p.m. for the 1st & 2nd year and Rs.2800/- p.m. for the 3rd year students."

3. The above orders will take effect from 1.8.1996.

4. The additional expenditure on account of this revision in the rate of stipend shall be met by the Institutions concerned from within the sanctioned central assistance to them under the scheme.

5. This issues with the concurrence of Finance division Dy.No.2681/96-Fin.II dated 9.11.1996."

The learned senior counsel submitted that the petitioners cannot be heard to say that the central Government had acted in violation of Article 14 of the constitution of India as the doctors in the Indian system of Medicine and the doctors in the Modern Medicine are not equally placed.

38. Mr. B.B. Sawhney, the learned counsel for the petitioners, in his rejoinder arguments, submitted that in the fourth respondent/University PG course was started in 1994-95, and after completion of Five Years, the obligation of UGC will arise, and Five Year Plan period, the Government has to pay. The learned counsel submitted that direction may be issued to the state Government, UGC and the central Government.

39. Having regard to the facts and circumstances, the entire scheme of things and under the Indian Medical Council Act, 1956, the Medical Council Act, 1970 and the directions issued by the Government of India, provisions of the university Grants Commission and considering the role of University Grants Commission, under the aegis of the central Government, students studying in Indian System of Medicine cannot be treated differently from the students who are studying in the Modern system of Medicine. All systems of Medicines in India are important and these systems are adopted for the public benefit. If the students studying in different systems are treated differently in respect of payment of stipend, that will hinder the process of proper education in all the systems. One would gather the impression that the Modern systems of Medicine is far superior to the other systems of medicine. The central Government being in the possession of the over all control of the machinery under the Acts, it has to take effective steps to see that the students are treated without any kind of discrimination. When the students had come forward with a claim of parity, the central Government should have taken the stand and instructed either the UGC or the state Government concerned to pay the stipend on par with the students of Modern System of Medicine. I am quite unable to appreciate the submissions made on behalf of the first respondent Union of India, that it is not concerned with the payment of stipend to students on the Indian System of Medicine. In my view, that is contrary to our constitutional framework. The principles laid down by this court in CW.610/97 would squarely govern this case.

40. The Union of India, the university Grants Commission and the NCT of Delhi shall pay stipend, as claimed by the petitioners, through the fourth respondent Jamia Hamdard University, and this payment shall be made on or before the 30th of June, 2000.

41. The writ petition stands allowed.

42. There shall be no order as to costs.