

(2010) 08 KL CK 0208
In the High Court Of Kerala
Case No : O.P. No. 19101 of 2002 (Y)

Dr. Anitha S. Nair, Lecturer and Dr. Harikumar S., Tutor	APPELLANT
Vs	
State of Kerala, The Controlling Officer and Principal and The Principal	RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 08 KL CK 0208

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : K.P. Dandapani, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The petitioners are teaching staff of Athurasramam N.S.S. Homeopathic Medical College, Kottayam. The Direct Payment System was introduced in their College also, with effect from 1.11.1995. Thereafter, direct payment agreement was executed between the management of the College and the Government on 1.12.1995, for the purpose of introducing the Direct Payment System in respect of the employees of the Athurasramam N.S.S. Homeopathic Medical College also. By Ext.P1 Government Order dated 20.3.2001, the Government decided to adopt and implement the scales of pay to teaching staff as per AICTE Scheme to teaching staff of Government Homeo Medical Colleges also and accordingly, scales of pay of teaching staff of Government Homeopathic Medical Colleges were revised with effect from 15.1.2001. But orders implementing revised scales of teaching staff of Aided Colleges were not issued. Aggrieved by the same, the petitioners approached this Court by filing O.P. No. 31288/2001, in which, by Ext.P2 judgment, this Court directed the Government to consider the representation to be filed by the petitioners in that regard. Thereafter, the petitioners submitted Ext.P3 representation. Considering that

representation, Government passed Ext.P4 order granting the revised scales of pay in accordance with Ext.P1 Government Order to private Homeopathic Medical College teaching staff also, but with effect only from 1.4.2002. The petitioners are aggrieved by the fixation of 1.4.2002 as the date with effect from which the teachers of private Homeopathic Medical Colleges were granted the revised scales of pay. According to the petitioners, as per Clause 19 of the direct payment agreement between the management of the college and the Government, scales of pay and allowances of the teaching and non-teaching staff of the College where the petitioners are working would be same as those of corresponding categories of Government Homeopathic Medical Colleges. Therefore, according to the petitioners, fixation of different dates for implementation of revised scales of pay for the petitioners contrary to that for teaching staff of government Homeo Medical Colleges is arbitrary and discriminatory. The petitioners therefore seek the following reliefs:

(i) issue a writ of mandamus or any other appropriate writ, order or direction, declaring that the action of the 1st respondent in extending the benefit of revised scales of pay and allowances granted as per Exhibit P1 order with effect from 1.4.2002 alone, is totally arbitrary and illegal and violative of Article 14 of the Constitution of India,

(ii) issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents to extend the revised scales of pay and allowances ordered in Exhibit P1 Government Order to the petitioners, who are teachers of Private Homeopathic Medical Colleges coming under Direct Payment System, with effect from 15.1.2001, i.e., the date on which Exhibit P1 Government Order has been made applicable.

2. A counter affidavit has been filed by the first respondent, wherein the stand taken is that for fixation of cut off date for revision of scales of pay, the Government has absolute discretion and in exercise of that discretion, the Government has decided to fix 1.4.2002 as the date from which the revised pay scales are to be implemented for teaching staff of Private Homeopathic Medical Colleges. According to the first respondent, the petitioners are not entitled to challenge the said fixation of the cut off date for revision of scales of pay and the petitioners cannot contend that the date of effect of the pay revision should be with effect from an anterior date.

3. I have considered the rival contentions in detail. As I have already stated, the Direct Payment System was introduced with effect from 1.11.1995 for Private Homeo Medical Colleges and the College, in which the petitioners are working, has also entered into such an agreement. Therefore, with effect from 1995, the Direct Payment System is in vogue in the College in which the petitioners are working also. Clause 19 of the said agreement reads as follows:

(19). Scale of pay & allowances of the teaching and non-teaching staff of the Government Homeopathic Medical Degree College will be adopted as the pay &

allowances of the similar categories of the staff of the Institution. Any arrears of the staff on account of fixation of pay, increments, etc., for the period from November, 1995, will be paid by the Government after those claims are worked out by the Principal, Government Homeopathic Medical College, Thiruvananthapuram and approved by the Government.

Going by the same, with effect from the date when Direct Payment System was introduced, the scales of pay of teachers of the College, in which the petitioners are working, are also the same as that of teaching staff of the Government Homeopathic Medical Degree Colleges. The Government chose to revise the scales of pay of teaching staff of Government Homeopathic Medical Colleges by Ext.P1 with effect from 15.1.2001. Therefore, going by Clause 19 of the direct payment agreement quoted above, those scales of pay should become applicable to the teaching staff of the College in which the petitioners are working also. After having executed the direct payment agreement with the College in which the petitioners are working, the Government cannot take the stand that they will fix a different date for implementing the revised scales of pay to teaching staff of the petitioners' College. I am of opinion that if that is permitted, that would amount to arbitrariness and discrimination, in so far as after 1995 the scales of pay of teaching staff of both Government and Aided Homeopathic Medical Colleges of corresponding categories should be the same. Therefore, the benefits of Ext.P1 Government Order have to be extended fully to the petitioners.

To that extent, the fixation of 1.4.2002 as the date from which the revision of scales of pay of the petitioners have been given effect to, is clearly arbitrary and illegal. Accordingly to that extent, Ext.P4 is quashed. It is declared that the petitioners are entitled to the revised scales of pay in accordance with Exts.P1 and P4 Government Orders along with those of the teaching staff of the Government Homeopathic Medical Degree Colleges with effect from 15.1.2001. Consequently, the petitioners become entitled to revision of scales of pay with effect from 15.1.2001 instead of 1.4.2002. It is declared so. Arrears of salary due to the petitioners consequent to the said declaration shall be paid to the petitioners as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.