

(2022) 10 CHH CK 0048

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 4474, 4478, 4479, 4567, 4648, 4667, 5517, 5534, 5539, 5540, 5554, 5558, 5559 5560, 5656 Of 2021

Dr. Dinesh Kumar Patel

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 309

Citation : (2022) 10 CHH CK 0048

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Prabhat Kumar Saxena, Sandeep Dubey

Final Decision : Dismissed

Judgement

1. As common question of law and facts are involved in the bunch of all the aforesaid Writ Petitions, they are heard analogously and are being disposed of by this common order. For sake of convenience WPS No. 5656 of 2021 is being treated as lead case.

2. The details of the petitioners in all the 15 petitions and their place of posting are given in table form, which are as under:-

1.

Dr. Dinesh Kumar Patel

WPS No. 4479 of 2021

PHC Putkapuri,

Block- Pussore, District- Raigarh.

2.

Dr. N.K. Khamari

WPS No. 4478 of 2021

PHC Midmida,

Block- Pussore, District- Raigarh.

3.

Dr. Mukesh Sahu

WPS No. 4474 of 2021

Govt. Homeopathy Ausdhalaya Jurda, District- Raigarh.

4.

Prashant Kumar Saxena

WPS No. 4567 of 2021

PHC Binjkot,

Tahsil- Pussore, District- Raigarh.

5.

Dr. Gajanand Patel

WPS No. 4648 of 2021

PHC Jatri, Block- Pussore, District- Raigarh.

6.

Dr. Tilakram Patel

WPS No. 4667 of 2021

PHC Bonda, Block- Baramkela,

District- Raigarh.

7.

Dr. Seetaram Kar

WPS No. 5558 of 2021

PHC Sariya, Block- Baramkela,

District- Raigarh.

8.

Dr. Sanjeev Kumar Patel

WPS No. 5559 of 2021

PHC Sambalpuri, Block- Kharsiya, District- Raigarh.

9.

Teekelal Mishra

WPS No. 5517 of 2021

PHC Dongripali, Block- Baramkela, District- Raigarh.

10.

Dr. Uddhavraj Modhiya

WPS No. 5534 of 2021

PHC Bangurasiya, Block- Raigarh, District- Raigarh.

11.

Dr. Rambilash Panigrahi

WPS No. 5554 of 2021

PHC Hirri, Block- Sarangarh, District- Raigarh.

12.

Dr. Yashwant Kumar Swarnakar

WPS No. 5540 of 2021

PHC Gadam, Block- Baramkela, District- Raigarh.

13.

Dr. Sheikh Sadik

WPS No. 5539 of 2021

PHC Tarapur, Block- Baramkela, District- Raigarh.

14.

Dr. Karuna Sagar Patel

WPS No. 5560 of 2021

PHC Bhedvan, Block- Sarangarh, District- Raigarh.

15.

Dr. Rajeev Prakash Sen

WPS No. 5656 of 2021

PHC Madhopali, Block- Baramkela, District- Raigarh.

3. The petitioner is working as Ayush Chikitsa Adhikari (Ayush Medical Officer) at Primary Health Centre (PHC), Madhopali, Block- Baramkela, District- Raigarh on

contract basis and has completed 16 years of service on contract without any complaint. The performance of the petitioner is satisfactory and no enquiry has been initiated against the petitioner. Learned counsel for the petitioner would submit that in the previous year, the petitioner was getting Rs. 50,000/- per month salary and respondent No. 5 while issuing fresh appointment order on 11.06.2021 (Annexure P/1) fixed the salary of the petitioner Rs. 40,000/- per month treating the place of posting as normal area whereas, Raigarh is schedule area, therefore, deduction of salary after fresh appointment is without rhyme and reason. He would pray that respondents may kindly be directed to pay Rs. 50,000/- salary per month and also to quash Clause-II of the order dated 11.06.2021 which provides that for normal area salary will be Rs. 40,000/- and for schedule area, the salary will be Rs. 50,000/-. He would further submit that Block- Madhopali, District- Raigarh is a schedule area, therefore, the petitioner is entitled to get salary of Rs. 50,000/-.

4. The State has filed its return contending that it is not in dispute that the petitioners are working on contract basis on the post of Ayush Medical Officers. It has been further contended in the return that State of Chhattisgarh, Department of Health & Family Welfare had issued order dated 08.11.2017 (Annexure R/1) in respect of salary of Ayush Doctor appointed on contract basis, which provides two slabs for granting pay scale. If the medical officer is posted in schedule area, he is entitled to get Rs. 50,000/- and if he is posted in normal place of posting then the medical officer is entitled to get Rs. 40,000/- per month. He would further submit that the erstwhile Government of Madhya Pradesh has issued circular dated 11.03.1996 (Annexure R/2), which provides categories of blocks in the District- Raigarh considering working condition and short comings faced by the Government servants to discharge their duties, has categorized as Category-I, II & III of various Districts namely Raigarh, Surguja, Bastar, Raipur, Bilaspur & Rajnandgaon. Since the present dispute arises out Raigarh District, therefore, this Court is examining block categories with respect to District- Raigarh only. Raigarh District has one block namely Manora, which has been classified as Category-I, Block- Bagicha, Duldula, Lailunga, Tamnar have been classified as Category-II and Block-Kansabel, Tapkara, Kunkuri have been classified as Class-III category. Thereafter, the State of Chhattisgarh has introduced Class-IV category looking to the difficulties faced by the Government servants while discharging their duties. Kharsiya, Gharghoda, Dharmjaigarh have been classified as Class-IV category vide order dated 27.12.2006. It has been further contended that the place of posting of the petitioner at PHC Madhopali, Block- Baramkela does not fall within the schedule area and it does not fall within the category for which salary Rs. 50,000/- is given to Ayush Medical Officer, therefore, the writ petition deserves to be dismissed by this Court.

5. Learned Dy. Advocate General for the State would further submit that Government of Chhattisgarh has issued circular dated 03.06.2015 (Annexure R/5) with regard to posting of employees to schedule area and they have classified in extreme schedule area and normal schedule area. It has been

further contended that Government of Chhattisgarh while considering the fact that maximum portion of Chhattisgarh State falls within schedule area as classified as extreme schedule area and non-schedule area in paragraph 1 of circular dated 03.06.2015. As per the said circular, the extreme schedule area of Chhattisgarh State is Sukma, Dantewada, Narayanpur, Bijapur and blocks namely Koyalibeda, Durgkondal & Antagarh of Kanker District. Normal schedule area of Chhattisgarh State are Bastar, Kondagaon, Surguja, Koriya, Balrampur, Surajpur, Jashpur, Korba, Dhamtari, Balod, Kanker, Gariyaband, Rajnandgaon & Raigarh.

6. Learned State counsel would further submit that the District Ayurved officer, Raigarh vide letter dated 10.03.2021 sought guidance from the higher authority with regard to payment of salary to the contract Ayush Doctors posted at normal area and schedule area of Raigarh District. The Director, Ayurved, Yog and Prakritik Chikitsa, Unani, Siddha and Homeopathy (AYUSH), Chhattisgarh vide memo dated 12.05.2021 directed the District Ayurved Officer, Raigarh to fix the salary of the contract doctors posted at Schedule and Non-Schedule area as per circular dated 08.11.2017. In support of his contention, he has referred to a copy of order dated 12.05.2021 (Annexure R/3). As per letter dated 22.05.2018 wherein, it has been clarified that the Medical Officer who have been posted in schedule block of normal District will be paid at par with the Ayurvedic Doctors posted at schedule area. He would further submit that in pursuance of pay fixation order of contractual Ayush Doctors dated 08.11.2017, the Secretary, Government of Chhattisgarh, Health and Family Welfare Department has fixed the salary of contractual doctors at Rs. 40,000/- who are posted in normal area and Rs. 50,000/- for the doctors who are posted at schedule area. Since the place of posting of the petitioners though at schedule area, but not core schedule area, they are not entitled to get salary @ Rs. 50,000/- per month and would pray for dismissal of the writ petitions.

7. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

8. On above factual matrix, the issue involved in these petitions is whether the petitioners who are Ayush Medical Officer on contract working in the place where they are discharging their duties, falls within ambit of core schedule area, are entitled to get higher salary in comparison to the Ayush Medical Officer, who are posted in normal schedule area.

9. Before advertng to the facts of the case, it is expedient for this Court to consider why the salary of an employee who is posted at area where he faced difficulties, is fixed on higher side than the employee who is posted in normal area. The object of the providing such scheme is to overcome the employees with the difficulties faced by them while discharging their duties and to motivate them to discharge duties by granting higher pay which is in the form of hardship allowance payable to them for the hardship they suffered on account of the working environment, climatic situation or any other factors which come against them to discharge their duties.

10. Hon'ble the Supreme Court has examined the hardship and difficulties, allowances or difference in pay on account of difficulties suffered by the persons posted in a such places. Hon'ble the Supreme Court in Union of India & others Vs. Ram Gopal Agrawal & others (1998) 2 SCC 589, has held at paragraph 10 as under:-

"10. We have heard learned counsel for the parties and we find that there is clear distinction in the terms and conditions of service, the nature of work and even tenure of service inter se between combatised and non-combatised personnels. The combatised personnel retire at the age of 53 while the non-combatised personnel retire at the age of 55. The nature of work, so far as combatised personnel are concerned, are arduous in nature in the operational and sensitive areas. In fact even the non-combatised personnel while working in that operational areas and such sensitive, places are granted the ration allowances. It is only when they are working in `static areas there is no provision for this allowance. Even therms and conditions, service conditions are totally different. The combatised personnels are governed by Central Reserve Police Force Act and Rules which is an army rule more stringent in nature while non-combatised staff is governed by the civilian law, namely, C.C.S. Rules made by the Government of India under Article 309 of the Constitution. The question of discrimination in the matter of allowances has to be listed differently even inter se between those falling under classs of "equal pay for equal work". In cases where some performing overtime duties, night duties, duties in hazardous places viz, mountain, terrain at heights or at sensitive borde areas an additional allowance is made applicable for the nature of work they perform. Similarly, when option is given it is with clear intention of there being plus and minus points in the two categories. That by itself differentiates inter se between the tow. Once not option to enjoy the benefit as in the present case, to continue in service of one category upto larger length of service (55 years) and not to involve in the hazardous nature of duties with stringent service conditions cannot come forward to claim and benefit of the other category also on the ground of discrimination. In fact, treating unequal to be equal itself would be discriminatory, Thus, we conclude it is neither a case of "equal pay for equal work" nor a case of discrimination or violation of Articles 14 and 16 of the Constitution of India."

11. Now this Court has to see whether the petitioner who is posted at block-Baramkela falls within the core schedule area or schedule area where the working conditions are difficult or not. It is not in dispute that maximum part of the Chhattisgarh falls within schedule area, therefore, the State Government has considered which is core schedule area and which is normal schedule area. Each block of Raigarh District namely Kharsiya, Gharghoda, Dharamjaigarh, Tamnar, Lailunga where the petitioners are posted falls within the ambit of normal schedule area and also considering the fact that the petitioners have not brought on record any material to demonstrate that the working conditions in the blocks where the petitioners are posted are tedious, as such, they are entitled to get salary @ Rs. 50,000/-per month.

12. From facts and records of the case, it is quite vivid that the petitioner has not been able to place on record the documents to demonstrate the fact that the petitioners who are posted in the respective blocks falls within ambit of core schedule area where working condition are tedious and they are facing difficulties to carry out their activities. No such material is placed on record. The petitioners have tried to make out their case that District-Raigarh is schedule area, therefore, they are entitled to get higher pay to the extent of Rs. 50,000/- per month, cannot be accepted though District- Raigarh may be schedule area, but the Government of Chhattisgarh has further clarified that normal schedule area and core schedule area. The place where the petitioners are posted falls within ambit of normal schedule area, therefore, they cannot claim pay parity at par with the Ayush Medical Officer working in the core schedule area.

13. The petitioners have not produced any documents or material to demonstrate that District- Raigarh falls within core schedule area where they are working in tedious working condition or have also not demonstrate that the Assistant Medical Officers who are working in normal schedule area are getting salary @ Rs. 50,000/- per month, in such situation, it cannot be held that the petitioners are entitled to get salary as prayed by them to the tune of Rs. 50,000/- per month.

14. Accordingly, the bunch of these writ petitions being devoid of merit are liable to be and are hereby dismissed. No order as to costs.