
(2012) 08 MP CK 0251

In the Madhya Pradesh High Court

Case No : Writ petition No. 3703 of 2007 (S)

Dr. Kailash Narain Garg and others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 08 MP CK 0251

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

**Advocate : Arvind Dudawat with Mr. Yogesh Chaturvedi, for the Appellant;
Susheel Chaturvedi, for the Respondent**

Final Decision : Allowed

Judgement

Sujoy Paul, J.—In this writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for setting aside the order dated 14.11.2005 whereby the respondents have declined to grant them the pay-scale of Rs.8000-13500/-. They have prayed for a direction to command the respondents to provide them the said pay-scale.

Brief facts necessary for adjudication of this matter are as under:

The petitioners are Homeopathy Doctors and were working on the post of Homeopathic Chikitsa Adhikari. They filed W.P.No. 734/99 (Dr. K.N. Garg and others Vs. State of M.P. & Others) before this Court. In the said petition, they claimed parity in the matter of pay-scale with Ayurvedic Chikitsa Adhikari. The matter was decided by this Court on 1.9.2005. In para 10 and 11, this Court held as under:

10. Accordingly, in the facts and circumstances of the case for the reasons as stated herein above and keeping in view the order passed on 16.5.2001 it is directed that the claim of the present petitioners namely Homeopathic Chikitsa Adhikari for grant of pay-scale equal to the corresponding scale granted to the

employees of the State Govt. holding the similar post, be placed before the Mayor-in-Council of the Corporation and the decision in this regard be taken within a period of two months from the date of receipt of certified copy of this order and communicate the same to the petitioners.

11. While taking action in the matter Mayor-in Council shall take note of the orders passed with regard to payment of aforesaid pay-scale to similarly situated Homeopathic Chikitsa Adhikari of other Municipal Corporation like Jabalpur Municipal Corporation, directives and circulars of the State Govt. with regard to payment to be made to employees like the petitioners before this court, the pay-scale held b y the petitioners as on date so also the earlier resolution no 136 dated 20.4.90 passed by the Municipal Corporation. After evaluating all the aforesaid documents it is expected that the Mayor-in-Council shall take a decision in the matter. If prayed for personal hearing may also be granted to the petitioners. Needless to emphasis that in case still aggrieved petitioner shall have liberty to assail the matter afresh in accordance with law.

2. Thereafter, the respondents have passed the impugned order dated 14.11.2005 (Annexure P-1) whereby the desired pay-scale was not granted and it was held that the petitioners are entitled for the pay-scale of Rs.5000-8000/-.

3. Shri Arvind Dudawat and Shri Yogesh Chaturvedi, learned counsel for the petitioners criticized the said order. Shri Dudawat submits that the impugned order Annexure P-1 is not in consonance with the directions passed by this Court. It is further submitted that during pendency of the petition, the State Government has issued an order dated 11.1.2010 (Annexure P-23) whereby referring to various petitions pending before various Benches, the State Government took a decision to grant the pay-scale of Rs.8000-13500/-to Homeopathic Chikitsa Adhikari in lieu of Rs.5000-8000/-granted earlier. Shri Dudawat submits that after the decision of the State Government, the respondents have no option but to grant the same to the petitioners. By placing reliance on a document dated 9.3.2010, it is stated that the said decision of State Government has already been implemented in Nagar Nigam, Jabalpur.

4. Shri Yogesh Chaturvedi, learned counsel for the petitioners relied on the document dated 6.2.1991 issued by the State Government whereby similarly situated Homeopathic Chikitsa Adhikaris were granted pay-scale of Rs.2200-4000/-. He also relied on a document dated 16.4.1999 whereby the Commissioner, Nagar Nigam, Gwalior opined that the Homeopathic Chikitsa Adhikaris, who have completed their course of two years or four years perform similar nature of duties and responsibilities. He opined that the said officers cannot be differentiated on the basis of educational qualification and, therefore, on the basis of parity, they be extended the benefit of Rs.8000-13500/-. The learned counsel further criticized the impugned order whereby the claim is rejected.

5. Per contra, Shri Susheel Chaturvedi, learned counsel for the Corporation,

supported the order. He submits that the order is in accordance with law. The learned counsel submits that the petitioners were given revised pay-scale of 5000-8000/-on the basis of unrevised pay-scale of Rs. 1600-2720/-(4th pay commission). He further submits that it was the stand of the respondents before this Court in the earlier round of litigation, i.e. W.P. 734/99 that petitioners are not Ayurvedic Chikitsa Adhikari and, therefore, there is no question of granting them pay-scale of Rs. 8000- 13500/-.

6. I have bestowed my anxious consideration to the rival contentions of the parties and perused the record.

7. So far the argument of Shri Chaturvedi that petitioners are not Homeopathic Chikitsa Adhikari is concerned, in the considered opinion of this Court, this argument is no more open to the respondents. In the earlier round of litigation, this Court treated the petitioners as Homeopathic Chikitsa Adhikari and directed the respondents to do the aforesaid exercise:

1) The Mayor-in-Council shall take note of the orders passed with regard to payments of desired pay-scale to similarly situated Homeopathic Chikitsa Adhikari of other Municipal Corporations like Jabalpur Municipal Corporation.

2) The relevant directives and circulars of the State Government were also required to be seen while taking decision.

3) The earlier resolution no. 136 dated 20.4.90 were also required to be examined by Mayor-in-Council.

4) On the basis of aforesaid evaluation, the final decision was required to be taken.

8. A bare perusal of the order in W.P.734/99 shows that this Court treated the petitioners as Homeopathic Chikitsa Adhikari. In absence of challenge to the said order, it has attained finality. The respondents in the rejection order also treated the petitioners as Homeopathic Chikitsa Adhikari and did not reject their claim on the ground that they are not holding the said post. Thus, this argument is not available to the respondents to show that petitioners are not holding the said post.

9. The Commissioner, Nagar Nigam by communication dated 16.4.99 opined as under:

10. The concerned Ministry of State Government passed the order dated 11.1.2010 (Annexure P-23). The relevant part of which reads as under:

11. The impugned order shows that the respondents have not applied their mind as directed by this Court. They relied on the opinion of their Advocate and ultimately held that the petitioners were entitled for the revised pay-scale of Rs. 1600-2720/-, i.e. Rs. 5000-8000/-, which has already been granted to them. In my considered opinion, it was not the claim of the petitioners. The petitioners came before this Court with a specific prayer that they are entitled for Rs.

2200-4000/-, revised as Rs.8000-13500/-. The respondents have not applied their mind about the circulars of the State Government on the subject, pay-scales of the counter parts of the petitioners working in the State Government, the question of parity with similarly situated officers working in other Corporations including Jabalpur Corporation and without adverting to those points, rejected the claim.

12. During pendency of the present petition the Urban Administration and Development Department has issued order dated 11.1.2010 (Annexure P-23) and as a policy decided to revise the pay-scale of Rs. 5000-8000/-to Rs. 8000-13500/-. It is noteworthy that while taking the said decision, the State Government had taken into account various orders of this Court passed by different Benches including the order passed in W.P. No. 734/99. This decision taken by the State Government includes the Writ Petition filed by the petitioners in the earlier round. Despite repeated questions, Shri Chaturvedi is not in a position to answer as to how the Corporation can deviate from the decision taken by the State Government.

13. Considering the aforesaid, I am of the opinion that the resolution (Annexure P-1) dated 14.11.2005 is not passed in accordance with specific directions by this Court. The relevant points directed to be considered are not considered and irrelevant material and points were taken into account. This hits the Wednesbury principles. Thus, the impugned order Annexure P-1 cannot be permitted to sustain and is hereby set aside. The State Government has already taken a decision to grant them the pay-scale of Rs.8000-13500/-. This decision is passed by taking into account the earlier writ petition of petitioners, i.e. W.P. 734/99. In the aforesaid factual backdrop, I deem it proper to set aside the impugned resolution dated 14.11.2005 and command the respondents to reconsider the claim of the petitioners by taking into account the directions passed by this Court in W.P. No. 734/2009. The respondents shall also take into account the order of the State Government (Annexure P-23) and will take a decision in accordance with law. The entire exercise be completed within six weeks. If the respondents come to the conclusion that the petitioners are entitled for parity and the claim, the same be paid to them from due date in accordance with law within 45 days from the date of taking decision. Petition is allowed. No cost.