

(2013) 10 MP CK 0080

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 648, 655 of 2012

Municipal Corporation and Others

APPELLANT

Vs

Dr. Kailash Narayan Garg and Others
 Dr. Kailash
Narayan Garg and Others Vs Municipal Corporation and
Others

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0080

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : P.D. Bidua in W.A. No. 648/2012 and Mr. Arvind Dudawat and Mr. Ankur Mody, in W.A. No. 655/2012, for the Appellant; Arvind Dudawat and Shri Ankur Mody, Advocates in W.A. No. 648/2012 and Shri P.D. Bidua, Advocate in W.A. No. 655/2012, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.—Appellants Municipal Corporation filed W.A. No. 648/2012 against the order 13.8.2012 passed by the learned Single Judge in W.P. No. 3703/2007 (S). The respondents in W.A. No. 648/2012 i.e. employees (Doctors) of the Municipal Corporation also filed W.A. No. 655/2012 against the same judgment passed by the learned Single Judge. Hence, both the appeals are heard together and disposed of by this common judgment. Employees (Doctors) in the Writ Petition before the Writ Court challenged the order dt. 14.11.2005, by which the Corporation refused to grant pay scale of 8000-13500 to the employees.

2. Earlier the employees filed a Writ Petition No. 734/99 and claimed parity in regard to grant of pay scale with Ayurvedic Chikitsa Adhikari working in the Municipal Corporation. Writ Court disposed of the aforesaid writ petition vide order dt. 1.9.2005 and passed the following order:-

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 16.5.01 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 communicated 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 by 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.

Petition is accordingly disposed of.

3. Thereafter, vide order dt. 14.11.2005, Mayor-in-Council rejected the claim of the employees i.e. Homeopathic Doctors in regard to grant of pay scale of Rs. 8000-13500, which was being paid to Ayurvedic Chikitsa Adhikari.

4. Learned Writ Court quashed the order and remanded the matter back to the Municipal Corporation with the observation that it had not applied its mind properly.

5. Learned counsel for the employees (Doctors) has contended that they are entitled to receive the pay scale of 8000-13500 because they are Homeopathic Medical Officers and there is only one post to this effect and the pay scale of the post is 8000-13500. The same pay scale has been granted by other Corporations and the State Government also.

6. Learned Counsel for the Municipal Corporation has contended that the employees (Doctors) were engaged as Compounders. They were never promoted as Homeopathic Chikitsa Adhikari, hence, they are not eligible to receive the pay scale of 8000-13500.

7. The question for consideration before the Court is that whether the Homeopathic doctors are eligible to get the pay scale of Rs. 8000-13500.

8. Dr. Kailash Narayan Garg was appointed as Homeopathic Chikitsak on 19.6.1981 after absorption of his service from the post of Assistant Sanitary Inspector. He had qualification of D.H.B., a two years Diploma course. Dr. Vidya Ram Mahore was appointed as Homeopathic Chikitsak by direct appointment w.e.f. 12.1.1983. He had qualification of D.H.B. BMS, four years Diploma Course. Dr. Ashok Kumar was promoted to the post of Homeopathic Chikitsak from the

Compounder vide order dt. 19.12.1986. He had qualification of D.H.B., two years Diploma course. Dr. Matloob Hussain was also promoted from the post of Compounder vide order dt. 20.6.1981. He has qualification of B.M.S., four years Diploma Course. Public Service Commission did not grant consent for promotion of Dr. Kailash Narayan Garg and Dr. Matloob Hussain. The aforesaid persons were granted pay scale of Rs. 5000-8000.

9. The contentions of the Municipal Corporation is that all the aforesaid persons had never been promoted to the post of Homeopathic Chikitsa Adhikari, hence, they are not eligible to get the pay scale of 8000-13500.

10. There are two posts in the Municipal Corporation in regard to Homeopathic doctors; one is Homeopathic Chikitsa Adhikari of the pay scale of 2200-4000, which was revised in 5th Pay Commission as 8000-13500 and the other is Homeopathic Compounder, the pay scale of which is 950-1530, which was revised subsequently.

11. Earlier this court in W.P. No. 739/1999 has considered that whether Homeopathic Chikitsa Adhikari are entitled for revised pay scale of 8000-13500 or not and directed the Mayor-in-Council to consider the aforesaid point and pass the order. The aforesaid Writ Petition was filed by all the respondents in W.A. No. 655/2012. In para 8 of the aforesaid judgment, Writ Court has observed as under:-

8. The question in this case is whether petitioners i.e. Homeopathic Chikitsa Adhikari are entitled to the revised pay-scale of Rs. 8,000-13,500, which is revised scale of pay-scale Rs. 2,200-4,000/-. In the order annexure P/29 dated 14.5.02 it is indicated that the Homeopathic Chikitsa Adhikari are in the revised pay-scale of Rs. 5,000-8,000/- which is the revised pay-scale of Rs. 1,820-3,000/- and, therefore, they can not be granted the aforesaid benefit. Admittedly, petitioners are claiming revision of pay-scale as per resolution of the Corporation annexure P/11 dated 20.4.99 and the power delegated to the Commissioner is only to decide the questions of appointment and promotion of employees in this pay-scale of Rs. 1,540-2760/- or its equivalent. Matter in this case neither relates to appointment nor promotion of the employees and it also pertains to revision of pay-scale to Rs. 8,000-13,500/- in the opinion of this court the said circular annexure R/2-B dated 20.1.88 does not empower the Commissioner to take any decision in this regard. The aforesaid circular is being wrongly interpreted and it does not give power to the Commissioner to take any decision in this regard. The aforesaid circular is being wrongly interpreted and it does not give power to the Commissioner to decide the question with regard to granting the higher pay-scale of Rs. 8,000-13,500/- to employees like the petitioners. Under such circumstances denial of the aforesaid pay-scale to the petitioners without placing the matter before the Mayor-in-council is clearly an illegal act on the part of the Commissioner. After the order dated 16.5.01 was passed in all fairness Commissioner should have placed the matter before the Mayor-in-Council as was done in the case of Ayurvedic Chikitsa Adhikari and

Commissioner should have implemented the decision of the Mayor-in-Council. Instead of doing so, for the reasons which are not being sought to be explained commissioner had himself taken action which according to this court was not in conformity with the directives issued by this court on 16.5.01. That being so, it has to be held that the order annexure P/29 dated 14.5.02 denying benefit to the petitioners was taken by unauthorised person namely Commissioner who was not empowered to take decision without referring it to the Mayor-in-Council and, therefore, that part of the order denying the benefit to Homeopathic Chikitsa Adhikari has to be quashed.

12. Thereafter, the Writ Court remanded the matter back to Mayer-in-Council. From the aforesaid judgment of the court, it is clear that all the respondents in W.A. No. 648/2012 were treated as Homeopathic Chikitsa Adhikari by the court. No writ appeal has been filed by the Municipal Corporation questioning the findings of the Writ Court. Hence, the finding of Writ Court have become final. Apart from this, there is only one post in the Corporation of Homeopathic Doctor, which is Homeopathic Chikitsa Adhikari. The Corporation itself admitted that all the employees (Doctors) were promoted or directly appointed to the post of Homeopathic doctor. When there is only one post of Homeopathic Chikitsa Adhikari in the set up of the Corporation, then certainly the respondents are eligible to be treated as Homeopathic Chikitsa Adhikari. The State Government also granted the pay scale of 8000-13500 to the Homeopathic Doctors after treating them as Homeopathic Chikitsa Adhikari. In such circumstances, the order passed by the Mayer-in-Council in rejection of the claim of the employees (Doctors) is contrary to law. In such circumstances, in our opinion, there is no necessity to remand the matter back to the Mayor-in-Council for fresh decision. Consequently, the appeal filed by the Homeopathic Doctors i.e. W.A. No. 655/2012 is hereby allowed. The appeal filed by the Municipal Corporation W.A. No. 648/2012 is hereby dismissed. Writ Petition filed by the appellants Homeopathic Doctors is hereby allowed. It is directed that appellants doctors in W.A. No. 655/2012 shall be eligible to receive pay scale of Rs. 8000-13500. Looking to the facts of the case, in our opinion, the appellants doctors shall not be eligible to arrears of salary because they had already been retired and their pension has been fixed, however, they shall be eligible for fixation of pension and retiral benefits in accordance with their fixation in the pay scale of 8000-13500. Their pension be calculated accordingly and arrears of pension be also paid to them. Dr. Vidya Mahore is still in service, hence he would get the benefit of pay scale of 8000-13500 from the date of passing of this order.

No order as to costs.