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**(2009) 08 AHC CK 0269**  
**In the Allahabad High Court**

Radhey Shyam Dubey

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision :** 20-08-2009

**Acts Referred:**

**Citation :** (2009) 4 AWC 4193 : (2009) 123 FLR 801

**Hon'ble Judges :** Sudhir Agarwal, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Sudhir Agarwal, J.—Sri Abhishek Mishra for the petitioner and learned standing counsel for the respondents.

2. Since pleadings are complete, as requested and agreed by learned Counsel for the parties, this matter has been heard and is being decided finally under the Rules of the Court.

3. Aggrieved by the order dated 31.1.2007 (Annexure-1 to the writ petition) passed by Secretary, Medical Education, U.P. Government, Lucknow rejecting the representation of the petitioner for grant of pay scale of Rs. 1,400-2,600 with effect from 1.1.1986 and 1,640-2,900 with effect from 1.1.1993, the present writ petition has been filed seeking a writ of certiorari for quashing the same and also for issuance of a writ of mandamus for payment of salary in the above mentioned pay scale from due dates as above.

4. The facts in brief, as stated in the writ petition are, that the petitioner was working as Stenographer in the office of Principal Durgajee State Homoeopathic Medical College (hereinafter referred to as "Medical College") since 30.12.1978. The aforesaid Medical College is said to be exclusively owned, controlled and run by the State Government. It is said that considering the claim of the State Government employees for providing pay scale at par with the Central Government employees working in the equivalent post, the matter was considered by the State Government and by Government order dated 16.7.1993,

it recommended the pay scales to the category of the Stenographers in the light of the pay scales of the officers with whom they are attached as under:

dze la[;k vf/kdkjh ftlds lkFk vk"qkfyfid lEc) gks vk"qkfyfid dk osrueku?:0? dk osrueku ? :0? 1- :0 3]000&4]500 rFkk :0 3]700&5]000 ls de 1]200&2]040 2- :0 3]700&5]000 vkSj blls vf/kd fdUrq :i;s 5]100&5]700 ls de 1]400&2]600 3- :0 5]100&5]700 vkSj blls vf/kd fdUrq :0 5]900&6]700 ls de 1]640&2]900 4- :0 5]900&6]700 ;k blls vf/kd 2]000&3]200

5. Sub para 2 of the said order provides that the Stenographers attached with officers in the pay scale below Rs. 3,700-5,000 shall be given pay scale of Rs. 1,200-2,040. There are some further directions in regard to the application of the above Government order dated 16.7.1993 as contained in the subsequent Government order dated 19.4.1995 but the same are not relevant for the purpose of the present dispute. However, this much is suffice to mention that for Stenographers, who were entitled for the scale Rs. 1,400-2,600 as per the Government order dated 16.7.1993 with effect from 1.1.1986, the same was modified to the scale of Rs. 1,640-2,600 and the scale of Rs. 1,400-2,300 was modified to Rs. 1,200-2,040.

6. It is said that there is only one post of the Stenographer in the Medical College which is attached with the Principal whose pay scale became Rs. 3,700-5,000 with effect from 1.1.1986 and, therefore, as per the Government Order dated 16.7.1993, the petitioner was entitled for pay scale of Rs. 1,400-2,600. However, the respondents sought to pay him salary by revising his scale as Rs. 1,350-2,200 with effect from 1.1.1986 whereagainst he made representation and, thereafter filed Writ Petition No. 20758 of 1996, which was disposed of finally vide judgment dated 8.7.1996 with the following direction:

This writ petition is disposed of finally with the direction to respondent No. 2 to decide the representations of the petitioner contained in Annexure-3 to the petition, within a period of eight weeks from the date of receipt of a certified copy of this order alongwith a copy of this petition by a speaking and reasoned order and communicated the same to the petitioner immediately thereafter.

7. Pursuant thereto, the Director, Homoeopathic, U.P. Lucknow passed an order on 16.11.1996 holding that the petitioner is entitled to the pay scale of Rs. 1,400-2,600 considering the pay scale of the Principal of the College being Rs. 3,700-5,000 but not entitled for the pay scale of Rs. 1,600-2,900 as the same was admissible to such Stenographers who were attached with officers in the pay scale of Rs. 5,100-5,700 and above, which is not the pay scale of the Principal of the Medical College. Thereafter, the State Government, however, passed an order on 8.1.1997 (Annexure-6 to the writ petition) holding that it has not found any justification for granting pay scale of Rs. 1,400-2,600 to the petitioner pursuant to the Director's letter dated 12.8.1996.

8. Aggrieved by the aforesaid order of the State Government, the petitioner filed Writ Petition No. 13578 of 1997. This Court vide

judgment dated 22.5.2006 found that the order of the State Government was a non-speaking, unreasoned order and, consequently, the same was quashed and the respondents were directed to pass a fresh reasoned order within a period of three months.

9. It is pursuant to the aforesaid judgment that the impugned order has been passed by the State Government rejecting petitioner's claim for the pay scale of Rs. 1,400-2,600. It is said that vide Government order dated 26.6.1993, the State Government has provided pay scale of Rs. 1,350-2,200 to the Stenographers working in the non-Government but aided graduate and post-graduate Colleges and, therefore, the respondents have adhered to the above pay scale to the petitioner though the said Government order has no application to the case of the petitioner.

10. The learned Counsel for the petitioner submitted that the employees of the State Medical Colleges are Government servants and cannot be otherwise equated with the employees of non-Government institution, namely, educational institutions where the employees are not holding a civil post. The decision taken by the Government in respect to non-Government Colleges and Institutions ipso facto could not have been applied to the petitioner in view of the decision taken by the Government without any reservation for providing pay scale to the various category of the Stenographers in the light of the pay scales of the officers with whom they are attached inasmuch the Principal of the Medical College was also a Head of the Department and an officer of the State Government, therefore, the benefit of the Government Order dated 16.7.1993 and 19.4.1995 could not have been denied to him.

11. The respondents have filed counter-affidavit. It is admitted that the petitioner was appointed on 30.12.1978 as Stenographer by the Committee of Management of the Medical College and was placed in the pay scale of Rs. 120-220. Initially, the Medical College was not a Government Institution but on 11.12.1981, the institution became a Government Institution and the petitioner became a Government employee of Medical Education Department. With respect to his claim for the pay scale of Rs. 1,400-2,600, it is said that according to the decision taken by the Committee headed by the Chief Secretary, it was decided that the Stenographers working in the educational institutions are not entitled for getting pay scale equivalent to the Stenographers working under purely Government Department. Accordingly, the Government National Homoeopathic Medical College and concerned Hospital, though was not under the purview of the Education Department, but were under the Medical Education Department, yet they were extended the said decision and the Stenographers working thereat were provided the pay scale of Rs. 1,350-2,200. The Medical College in question is also being under the purview of the Medical Education Department, the same decision has been extended to the petitioner also and, therefore, there is no error in providing the pay scale of Rs. 1,350-2,200 to the petitioner.

12. I have heard learned Counsels for the parties and perused the record.

13. The decision of the Government for providing pay scale of Rs. 1,350-2,200 to the educational institutions is contained in Government order dated 26.6.1993 (Annexure-10 to the writ petition) which clearly show that the same is applicable to the non-Government degree and Post Graduate Colleges and the non-teaching employees of such institutions provided they are receiving grant-in-aid from the Government. The said decision and the said Government order is evidently not applicable to the Medical College in question in view of the categorical stand of the respondents that with effect from 11.12.1981, the Medical College is a Government Institution and the employees thereof are Government employees as is evident from the following averments contained in para 4 of the counter-affidavit:

The said College was inducted by the Government on 11.12.1981. Thus, the institution became Government Institution since 11.12.1981. therefore, the petitioner came to become Government employee of Medical Education Department since 11.12.1981.

14. In view of the above stand, I fail to understand the concept of the respondents stated in para 5 of the counter-affidavit that the Government order dated 16.7.1993 providing the pay scale of Rs. 1,400-2,600 with effect from 1.1.1986 was applicable to the Stenographers working in the . "purely Government department". The concept of "pure" and "impure" Government Department is neither understandable nor could be explained by the learned standing counsel. Probably the respondents wanted to say that the Medical College as such was not a Department of the Government. However, it is not the case of the respondents that the Medical College is a statutory, autonomous body or that it is a department of its own not attached with the Government or something like that. On the contrary, it is admitted case of the respondents that the institution became a Government Institution and the petitioner became a Government employee of Medical Education Department, meaning thereby the institution in question, when taken by the Government, became a part and parcel of the Medical Department of the U.P. Government which is admittedly a Government Department and cannot detach its identify with other similar departments. It is always open to the Government to run as many educational institutions or to create bodies as it decide which may be managed by its different departments. But so long as these bodies are part and parcel of the regular Government Department, they have to be treated like a part of the Government Department and their employees cannot be isolated and discriminated. Once it is also admitted that the petitioner was a Government servant of the Medical Department, there is no justification to exclude the petitioner from the effect and consequence of the Government order dated 16.7.1993. The said Government Order would clearly apply to him. The decision of the. respondents, therefore, in not providing the pay scale Rs. 1,400-2,600 to the Stenographers attached with the Officers, who are Head of Department and in the pay scale of Rs. 3,700-5,000 with effect from 1.1.1986 and consequential higher scale for the subsequent period as the case may be, therefore, cannot

sustain.

15. In the result, the writ petition is allowed. The impugned order dated 31.1.2007 (Annexure-1 to the writ petition) is hereby quashed. The respondents are directed to pay salary to the petitioner in the pay scale of Rs. 1,400-2,600 with effect from 1.1.1986 and to give him further promotions and revised pay scales in accordance with law and relevant Government Orders treating him as working in the pay scale of Rs. 1,400-2,600 with effect from 1.1.1986. The respondents shall determine the arrears of salary payable to the petitioner as per above directions and shall pay the same to the petitioner within three months from the date of production of a certified copy of this order.

16. The petitioner shall be entitled to cost which is quantified to Rs. 5,000.