
(2009) 12 CHH CK 0019
In the Chhattisgarh High Court
Case No : Writ Petition No. 1605 of 2005

Ram Krishna Gupta (Dr.) and Others

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Citation : (2010) 3 MPJR 110

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.

By this petition, the petitioners seek a writ of mandamus commanding the respondent-authorities to pay the arrears since 1988 till retirement of the petitioner No. 2 and dues pending for payment in the nature of increments from 1988 till retirement of the petitioners and other benefits.

The facts, in nutshell, as projected by the petitioners, are that initially the petitioners were appointed as "Vaidyas" in charge of Ayurved Dispensaries (Aushadhalayas) run by the Janpad Sabhas in the rural areas. The petitioners were appointed by the Janpad Sabha i.e. local body under the provisions of C.P. & Berar Local Government Act, 1948. The Janpad Sabhas were abolished in 1972 and in its place Janpad Panchayats were constituted at the block level.

The Health Department of the State of Madhya Pradesh after giving the benefit of age relaxation and educational qualification decided to absorb the Vaidyas in the Health Department of the State. Thereafter, the Madhya Pradesh Public Health (Indian System of Medicine and Homoeopathy) (Gazetted) Service Recruitment Rules, 1987 (for short "the Rules, 1987") came into force on 11-5-1988. In the Rules, 1987 it was provided that 60% posts of Ayurved Chikitsa Adhikari were required to be filled by direct recruitment and remaining 40% by promotion from Ayurved Sahayak Chikitsa Adhikaris. The minimum experience required for

promotion to the post of Ayurved Chikitsa Adhikari was five years on the 1st day of January in the year, their cases were to be considered for promotion.

The present petitioners were absorbed in the service of the State of Madhya Pradesh by orders dated 3-5-2001 (Annexure - P/1) and 29-10-2001 (Annexure-P/2) with effect from the date stated in the order itself with the condition that their arrears from the date of their absorption or from the date of retirement till the order is passed shall be computed on notional pay basis, but they would not be entitled arrears of wages on the principle of "no work no pay"

According to learned counsel appearing for the petitioners the salary was paid to the petitioners except the petitioner No. 2 Dr. Chandrika Prasad Tiwari on the basis of notional pay. The petitioners have retired from their services on 28-2-1992, 31-8-1992, 31-10-1993 and 21-12-1995, respectively. They were not paid the arrears as per the orders dated 3-5-2001 and 29-10-2001, Thus, this petition.

I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

The grievance of the petitioners No. 1 and 3 arose on 3-5-2001 and the petitioners No. 2 and 4 on 29-10-2001. The petitioners slept over their right till they filed this writ petition 12-4-2005. The petitioners have relied on the orders dated 3-5-2001 and 29-10-2001. issued by the Department of Medical Education, Government of Madhya Pradesh, to claim relief. The petitioners have not produced any document or circular or memo issued by the State of Chhattisgarh except the copy of order dated 18-8-2003. (Annexure - P/3) where under one Dr. Uttamchand Naik (petitioner No. 4 herein) was given certain benefits on the basis of absorption on 15-4-1988.

Despite several opportunities granted to the State, no response has been filed.

On perusal of the order dated 18-8-2003 (Annexure - P/3) where under the petitioner No. 4 herein has been granted notional pay revision on the basis of the order dated 29-10-2001 whereby he was absorbed as on 15-4-1988 on the post of Ayurved Chikitsa Adhikari Class II (Gazetted). The petitioners have clearly averred in their pleadings that except petitioner No. 2, all others have been granted relief. Since the petitioner No. 4 has been granted relief, the petitioner No. 2 is also entitled to relief in the same line as granted to the petitioner no. 4 by order dated 18-8-2003.

As far as other petitioners are concerned, if they have not been granted relief, they are also entitled to the same relief, as the State of Chhattisgarh has accepted the orders dated 3-5-2001 and 29-10-2001 while granting relief to the petitioner No. 4.

In view of foregoing, the State authorities are directed to consider the case of the petitioners No. 1, 2 and 3, if not granted the payment of arrears on the basis of notional pay as granted to the petitioner No. 4 by order dated 18-8-2003.

In the result, the writ petition is allowed to the extent indicated above. No order as to costs. Rule is made absolute.