
(2003) 07 BOM CK 0097

In the Bombay High Court

Case No : Writ Petition No. 2429 of 1994

Ramchandra Dharmadhikari

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Graduate Ayurved Vaidya, Pay Scale and Medical Councils Act, 1970 — Section 14

Citation : (2003) 4 MhLj 927

Hon'ble Judges : S.T. Kharche, J;R.J. Kochar, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari, for the Appellant; T.D. Khade, AGP for respondent No. 1 and C.S. Kaptan, for the Respondent

Final Decision : Allowed

Judgement

R. J. Kochar, J.—The petitioner who was aged about 74 years at the time of filing of the present petition, has become of almost 85 years of age. He has filed this petition for a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the decision of the State Government respondent No. 1 dated 6-7-1992 denying him the benefit of the appropriate pay-scale applicable to the Graduate-Vaidyas employed in the hospitals of the respondent No. 2 - the Nagpur Municipal Corporation.

2. The petitioner as a Graduate-Vaidya, has been relentlessly fighting for this small relief which we are inclined to grant because he is legally entitled to get the relief which he has sought in the present petition.

3. The facts are in very narrow compass. The petitioner held a degree of Ayurved Visharad in Nikhil Bharat Varsha Ayurved Vidyapeeth, New Delhi. We may at this stage itself mention that this degree has been recognised as equivalent of the degree of Bachelor of Ayurved Medicines and Surgery (BAMS). There is no dispute and doubt about this legal position in respect of the degree of Ayurved Visharad being equivalent to a degree of BAMS conferred by the Nagpur

University.

4. We may further add at this stage itself that under the Indian Medical Council's Act, 1970 it has been statutorily accepted that the said degree of Ayurved Visharad is equivalent to the degree of BAMS of any University as laid down in Section 14 read with Schedule-2 of the Act. The said Act was brought into force w.e.f. 21-12-1970 and such equivalence has been recognised retrospectively from the date of the degrees to be equated.

5. The petitioner was in the employment of the respondent No. 2 Corporation in the post of Ayurved Vaidya from 1956. At that time, he was not given the pay-scale of Graduate Ayurved Vaidya, as at that time the Ayurved Visharad degree which he possessed, was not recognised by the Corporation on account of lack of proper information. Since the petitioner was regarded as Non-Graduate Vaidya, he was put in a pay-scale of Rs. 100. The pay-scale of the Graduate Vaidya was Rs. 150-10-250/-. There were 17 posts of Ayurved Vaidyas in the hospital of the Corporation. Out of the 17 posts, 3 posts were held by 3 Ayurved Vaidyas who were Graduates and 14 other posts were held by those who were not held to be Graduates, and therefore, their pay-scale was lower than those who were recognised as graduates.

6. The petitioner retired from the service of the Corporation w.e.f. 1-12-1974. Though belatedly he made a representation to the Corporation on 13th September, 1986 demanding the pay-scale of Graduate Vaidya w.e.f. 1956. It cannot be disputed that he approached the Corporation very late but we are not inclined to throw him out of the court on that ground as we have admitted his petition in spite of the said fact of delay in filing the present petition. It will not be in the interest of justice to throw the petitioner out of the court or to deny him the relief on the ground that though he had retired in 1974 he made his representation as late as on 13-9-1986 claiming the difference in the pay-scale of Graduate Vaidya and Non-Graduate Vaidya. The learned Judges who granted Rule in this matter have impliedly overruled the plea of laches and delay in the petition, and therefore, we are not inclined to accept the submission made on behalf of the Corporation that his claim suffers from laches and delay to dismiss the petition. It appears that the respondent Corporation considered the representation of the petitioner dated 13-9-1986 and sanctioned the same by passing a resolution on 22-10-1990 and sanctioned the grant of arrears of salary to the petitioner as per the pay-scale of Graduate Vaidya for the period from 1-3-1956 to 30-11-1974. After passing the said resolution, the Corporation sought sanction from the State Government by its letter dated 20-1-1992. In the said letter, the Corporation has extensively explained all the facts and sought approval of the Resolution. The respondent No. 1 - State however did not find favour with the case of the petitioner and did not accept the resolution passed by the Corporation only on the ground that there were only 3 posts of Graduate Vaidyas and 3 Graduate Vaidyas were already holding the said posts and there was no sanction for the 4th post of Graduate Vaidya, and therefore, petitioner

could not be granted the pay-scale of Graduate Vaidya. This decision was communicated by the State Government to the Corporation by its letter dated 6th July, 1990 whereby the petitioner has been denied the relief and which the petitioner is challenging before us.

7. It appears from the record that the Corporation has been behaving fairly in the case of the petitioner. The Corporation has pursued the matter further with the State Government by explaining the correct position of the staffing pattern by pointing out that there were in all 17 posts of Ayurved Vaidyas and amongst the 17 Ayurved Vaidyas there were 3 Ayurved degree holders, and therefore, they were given the pay-scale of a degree-holder. The Corporation further pointed out that there was no division or bifurcation amongst the 17 posts of the Ayurved Vaidyas, dividing them into two separate cadres. The Corporation specifically explained to the State Government that there were no separate cadres as such, namely - the Degree-holder Ayurved Vaidyas and Non-degree-holder Ayurved Vaidyas. The Corporation had taken pains to explain to the State Government that all the 17 posts of Ayurved Vaidyas were sanctioned and out of the 17 Ayurved Vaidyas, 3 were Graduates who were given the Graduate pay-scale while petitioner was not given the pay-scale of Ayurved Vaidya as the degree which he held, was not recognised by the Indian Medical Council at that time and the recognition came much later by the aforesaid Act of Indian Medical Council's Act, 1970. In respect of the said explanation given by the Corporation, the State Government appears not to have been satisfied for no reasons, and there was no further communication from the State Government and therefore, the Corporation did not pay the arrears to the petitioner and therefore, the petitioner is before us. It is, however, significant that the State Government has not filed its return to oppose the case of the petitioner or to controvert the facts which he has set out in the petition. The Corporation, however, has filed its return and has tried to support the petitioner with some reservations. However, the Corporation has not opposed as it itself had sponsored the case of the petitioner by passing a resolution and by seeking sanction from the government for grant of the arrears.

8. Shri S. P. Dharmadhikari, learned counsel appearing for the petitioner has given us the chronology of the events which we have set out hereinabove. He has assailed the misconception on the part of the State Government to deny the claim of the petitioner that there were two separate cadres amongst the 17 Ayurved Vaidyas posts and that 3 Ayurved Vaidyas posts were sanctioned as Graduate degree-holders and 14 held by Non-graduate Ayurved Vaidyas. He has pointed out from the record that there was no such division amongst the 17 Ayurved Vaidyas. He also submitted that there was no such separate cadre of Graduate Ayurved Vaidya and Non-graduate Ayurved Vaidya. He submitted that there was no question of seeking any sanction for the 4th post of Graduate Ayurved Vaidya as there was no such separate post for Graduate Ayurved Vaidya. The plea of the Corporation before the State Government was that the petitioner was Graduate Ayurved Vaidya and was entitled to be placed in the pay-scale of

Graduate Ayurved Vaidya which was not given to him by mistake. Shri Dharmadhikari further pointed out that the Nagpur University itself had recognised the equivalence of the degree of the petitioner with the degree of the Nagpur University of BAMS with retrospective effect from the date of such degrees as provided u/s 14 read with Schedule 2 of the Act. According to the learned counsel under the Indian Medical Council's Act, 1970 the equivalence of such degrees is accepted retrospectively w.e.f. 1956. He further submitted that the degree of the BAMS of the Nagpur University has been retrospectively equated with the Ayurved Visharad Degree held by the petitioner and this the legal position was accepted by the Corporation on the basis of the communication sent by the Nagpur University, in its letter dated 24th July, 1990. This fact was communicated to the State Government by the Corporation in its letter dated 11-5-1993.

9. According to us, there is a great force in the submission made by Shri Dharmadhikari, the learned counsel for the petitioner. It appears that the State Government has not dealt with the case of the petitioner in correct perspective by ignoring the legal position. There is no proper application of mind to the facts and the legal position as placed before us by the Corporation. In this case, the Corporation has been just and fair to put forward the legitimate case of the petitioner on the basis of the facts and law. We are satisfied that there were 17 posts of Ayurved Vaidyas out of which 3 were Graduate Ayurved Vaidyas and 14 were regarded as Non-graduate Ayurved Vaidyas. It was a mistake on the part of the Corporation, not to have regarded the petitioner as Graduate Ayurved Vaidya. We treat this mistake of the Corporation as a bona fide mistake which they have certainly tried to correct subsequently when the petitioner pointed out the said mistake and injustice done to him. According to us, therefore, the petitioner being a Graduate Ayurved Vaidya, was entitled to the pay-scale of the Graduate Ayurved Vaidya from 1-3-1956. He ought to have been given the pay scale of Rs. 150-10-250/- and all other consequential benefits including the revision of pay-scale of the Graduate Ayurved Vaidya from time to time till the date of his retirement.

10. We may mention here that the learned counsel appearing for the Corporation submitted that the petitioner should not be given the benefit of the difference from dated 1-3-1956 but he should be given the benefit only from the date on which the Indian Medical Council's Act was brought in force. We are not satisfied with the said submission as the petitioner was employed from 1-3-1956 and at that time itself he was a Graduate Ayurved Vaidya. At that time the position was not clear, and therefore, he was not treated as Graduate Ayurved Vaidya and was not therefore given the pay-scale of Graduate Ayurved Vaidya. It is crystal clear that the degree of Ayurved Visharad held by the petitioner, has been accepted as equivalent to the degree of BAMS of the Nagpur University. This equivalence has been statutorily recognised by the Indian Medical Council's Act, 1970 with retrospective effect. The petitioner held the said degree from the day one on which he joined the service, and therefore, he is entitled to get the pay-scale of

the Graduate Ayurved Vaidya retrospectively. We will be doing injustice to him if we deny him the benefit of the said pay-scale which he would have otherwise been given, if the question of equivalence had been clear. We do not want the petitioner to suffer on account of lack of clarity or lack of understanding. The petitioner is certainly entitled to the difference in salary received by him and the salary which he ought to have received. We do not wish to deprive him of his legitimate dues which he has so far been denied without any justification whatsoever. He has satisfied us on the facts and the legal position, and therefore, he succeeds in the petition.

11. The writ petition is allowed. Rule made absolute in terms of prayer clause - 1 and 2. The respondent No. 1 shall sanction the Graduate Ayurved Vaidya pay-scale to the petitioner within three weeks from today. The respondent No. 2 Corporation would thereafter immediately compute the legal dues and shall make payments of the arrears within a period of four weeks from the receipt of the sanction from the respondent No. 1. No order as to cost.