

(2010) 09 KL CK 0326

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27308 of 2010 (K)

Riaz K.M., Assistant Professor, Thasleem Sabith, Assistant Professor, Smitha P.S., Assistant Professor and Ashfaq K., Assistant Professor

APPELLANT

Vs

State of Kerala and The Director of Medical Education

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 09 KL CK 0326

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Elvin Peter P.J, for the Appellant; No Appearance, for the Respondent

Judgement

K.T. Sankaran, J.—The petitioners are Senior Lecturers in Government College of Nursing at different places. They were appointed as Senior Lecturers in the Nursing Colleges pursuant to Ext.P1 notification. In Ext.P1, the scale of pay of Senior Lecture (Nursing) was shown as Rs. 10000-15200. The petitioners were appointed as per orders dated 22.2.2010 as Senior Lecturers. It is stated that after issuance of Ext.P1 notification and before the appointment of the petitioners, the first respondent issued G.O.(P) No. 425/2009/H&FWD dated 14.12.2009 (Ext.P6) revising the scales of pay of teachers in Government Medical, Dental, Nursing and Pharmaceutical Science Colleges. As per Ext.P6, the scale of pay of Rs. 10000-15200 was revised as Rs. 15600-39100 Plus Rs. 6,000/- as Academic Grade Pay. The starting pay in the revised Pay Band was shown as Rs. 18,600/-. The case of the petitioners is that they are entitled to be granted Rs. 18,600/- as minimum pay in the revised Pay Band. They also state that petitioners 1, 2 and 4 were granted that benefit while the 3rd petitioner was not granted the benefit. The revised pay of the 3rd petitioner was fixed at Rs. 15,600/- as per Ext.P10 pay slab.

2. Pointing out the anomalies and disparities in the fixation of pay, the petitioners

submitted Exts.P12, P13, P14 and P15 representations before the first respondent. The representations are yet to be disposed of. The reliefs prayed for by the petitioners in the Writ Petition are the following:

- i) issue a writ of mandamus or any other appropriate writ, direction or order directing the 1st respondent to consider and pass orders on Ext.P12 representation after affording an opportunity of being heard to the petitioners.
- ii) issue a writ of certiorari or any other appropriate writ, direction or order calling for the records leading to Entry contained in paragraph 6(b) in the first column "designation" under Assistant Professor, namely, new recruits, and the entry contained in the third column, revised corresponding pay band, against Assistant Professor (Starting at Rs. 15,600) as also the amount of Rs. 6000/- in column No. 4 against Assistant Professor, and quashing the same.
- iii) declare that newly recruited Assistant Professors in the Nursing Colleges are entitled to get a starting pay in the pay band of Rs. 15600-39100.
- iv) declare that the pay fixation granted to petitioners 1, 2 and 4 are legal and valid.
- v) declare that the 3rd petitioner is entitled to be granted a starting pay of Rs. 18600/- as in the case of petitioners 1, 2 and 4.
- vi) declare that the provision contained in Ext.P6 Order for granting only Rs. 6000/- to the petitioners who are Post Graduate Degree holders as grade pay while granting Rs. 7000/- to Assistant Professors in the Medical Colleges, is discriminatory and violative of Article 14 of the Constitution of India.
- vii) issue a writ of mandamus or any other appropriate writ, direction or order directing the Respondents to grant patient care allowance to the petitioners at par with the teaching staff in the Medical Colleges.
- viii) and grant such other and further reliefs as this Hon''ble Court may deem fit and proper in the circumstances of the case including costs.

3. The contentions of the petitioners as revealed from paragraph 4 to 7 in the Writ Petition are the following:

4. The Government as per G.O. dated 16.6.2000 revised the pay and allowances of Teachers of Medical, Dental and Pharmaceutical Colleges. True copy of the said Order along with Annexure is produced herewith and marked as Exhibit P-11. From a perusal of Ext.P11 order the scales of pay, allowances etc. granted to the teaching staff in the Medical Colleges, Dental Colleges and Nursing Colleges in the State and their conditions of service were one and the same. The said fact will be evident from the Annexure appended to Ext.P11. The pay scales granted to Teachers in the Medical, Dental and Pharmaceutical Colleges were identical because the duties performed and the importance of all the branches of Medical Education were found to be equal. It was replacing Ext.P11 order the Government issued Ext.P6 order. However, while issuing Ext.P6 order gross

illegality has been committed by the Government, in as much that faculty in the Nursing Colleges has been meted out invidious discrimination as compared to the counterparts in the Medical Colleges and Dental Colleges. In page-6 of Ext.P6 order the revised Pay Band and Grade Pay to Medical and Dental College faculty is shown. In the case of Assistant Professors (new recruits) the scale of pay shown therein is Rs. 15600-39100 and in the third column in bracket it is provided that starting pay of the new recruits will be Rs. 18600. At the same time, in page-7 of Ext.P6 order though the scale of pay of Assistant Professors of new recruits in the Nursing Colleges is also shown as Rs. 15600- 39100, the starting pay shown therein is Rs. 16500. Thus wide disparity is sought to be thrust upon the new recruits in the Medical Colleges. They are being paid Rs. 3000 less than their counterparts in the Medical Colleges. Similarly, from a perusal of the grade pay granted to Teachers in the Medical Colleges and Nursing Colleges, it can be seen that while Medical and Dental College Faculties, Assistant Professors (new recruits) are given Rs. 7000 as grade pay, petitioners are given only Rs. 6000 as grade pay. Thus vide Ext.P6 order, in the case of Assistant Professors (new recruits) like the petitioners a disparity of Rs. 4000 is sought to be implemented by the Government as against Assistant Professors (new recruits) in the Medical Colleges. Thus the provision contained in internal page-7 of Ext.P6 Order providing for a starting pay of Rs. 15600 for Assistant Professors in the Nursing Colleges and grade pay of Rs. 6000 is absolutely illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

5. As stated supra, the scale of pay of the post of Lecturer while issuing Ext.P1 Notification was admittedly Rs. 10000-15200. The revised pay of the said scale shown in the Fitment Table 9A is Rs. 15600-39100 and the starting pay in the Pay Band shown therein is Rs. 18600. Hence the petitioners are entitled to get a starting pay of Rs. 18600 on their appointment as Senior Lecturers, redesignated as Assistant Professors. Petitioners 1, 2 and 4 were granted the said scale, at the same time, the 3rd petitioner alone was granted the pay of Rs. 16500. The above action of the respondents is absolutely illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

6. All the petitioners possessed the qualification of M.Sc. (Nursing) and they are Post Graduates. In Medical Colleges, Assistant Professors with Post Graduate Degree, as submitted supra, are granted academic grade pay of Rs. 7000. At the same time, petitioners, who are Assistant Professors with Post Graduation were being paid academic grade pay only Rs. 6000. The petitioners as well as their counterparts in the Medical Colleges discharge the same duties both in the Clinic as well as in the Academic sides. Hence the action of the respondents in granting only Rs. 6000 as grade pay to the petitioners while granting Rs. 7000 to Assistant Professors in the Medical Colleges is discriminatory, unfair, unreasonable and violative of Article 14 of the Constitution of India.

7. Further in Annexure III(2) of Ext.P6 Government Order Teachers in the Medical Colleges and Dental Colleges are paid patient care allowance coming to

15% of the revised basic pay. At the same time, the petitioners who are in the Nursing Colleges are not paid any allowance for patient care. Patient care allowances is paid by way of compensation for the risk to which Teachers in the Medical Colleges as well as in the Nursing Colleges are exposed on the Clinical side while examining patients. In fact, Teachers in the Nursing Colleges spent more time with the patients than Teachers in the Medical Colleges and therefore Nursing College faculty is exposed to greater risk of contracting the disease of the patients. Hence depriving of Lecturers in the Nursing Colleges any allowance for patient care while granting 15% of the revised basic pay as patient care allowance to their counterparts in the Medical Colleges is discriminatory and violative of Article 14 of the Constitution of India.

4. Learned Counsel for the petitioners submitted that for the time being, the petitioners would be satisfied if relief No. (i) is granted leaving open the contentions raised by the petitioners. The request is just and reasonable. Accordingly, the Writ Petition is disposed of as follows:

- a) The first respondent shall consider and dispose of Exts.P12 to P15 as expeditiously as possible and at any rate within a period of three months from the date of receipt of a copy of this judgment, after affording an opportunity of being heard to the petitioners.
- b) The petitioners shall produce a copy of the Writ Petition and certified copy of the judgment before the first respondent.