

(2011) 05 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8794 of 2010 (S)

Shambhu Datt Sharma

APPELLANT

Vs

State of MP and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Citation : (2011) 05 MP CK 0039

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Challenging the order passed by the Respondents as contained in Annexure P/10 dated 20.11.2009, rejecting the claim of the Petitioner in the matter of fixation of his pay in the pay scale 18203000/- and refusing to grant similar benefit to the Petitioner as has been granted to one Dr. Krishna Dutta Bhatele, this writ petition has been filed.

2. Facts, in brief, indicate that Petitioner was initially appointed as a Vaidya in Ayurved Dispensary, Mahragaon, District Narsinghpur by the Janpad Sabha, Gadarwara vide order-dated 26.8.1965. In the year 1987, his services were taken over by Janpad Panchayat, Narsinghpur. Vide notification - Annexure P/1 issued on 1.6.1967 certain classifications of Vaidya - Grade I was made and according to the Petitioner he was also classified as a Vaidya - Grade I. In the year 1988, the entire dispensary was taken over by the Government and vide order-dated 30.3.1988, 154 Ayurved Chikitsa Adhikari were merged in the services of the State Government vide order - Annexure P/2. Petitioner was also one such person whose services were taken over by the State Government. According to the Petitioner after taking over of the services of the Petitioner by the State Government, Petitioner was entitled to be granted the post of Ayurved Chikitsa Adhikari in the pay 1820-3000/-. Instead, all the persons similarly situated like the Petitioner were absorbed in the cadre of Assistant Ayurved Chikitsa Officer, in the pay scale 1150-1800/-. Because of the aforesaid, various

petitions were filed before the MP Administrative Tribunal and by a common order passed on 7.5.1997, all the petitions were allowed. The order passed by the Tribunal was challenged by the State Government before the High Court in W.P. No. 5276/1997 and the writ petition was disposed of vide order-dated 1.7.1999 partly allowing the claim of the State Government. The High Court directed that after taking note of the qualifications laid down in the Notification dated 1.6.1967 - Annexure P/1, a scheme be framed for absorption of Vaidya's keeping in view the principle laid down for appointment/absorption as Ayurved Chikitsa Adhikari, through direct recruitment and by promotion. All the cases were to be considered afresh. In compliance to the order passed by this Court on 1.7.1999, the State Government constituted a Screening Committee on 25.2.2000 and the Committee submitted its report on 20.2.2001, after submission of report by the Committee, Respondents issued orders on 3.5.2001, whereby some Assistant Ayurveda Officers were directed to be absorbed as Ayurveda Medical Officers, but the name of the Petitioner and that of Dr. Krishan Dutta Bhatele was not included in such list, even though Petitioner and Dr. Krishan Dutta Bhatele alongwith many others possessed the requisite qualification as laid down in the circular dated 1.6.1967 - Annexure P/1 to be appointed/absorbed as Ayurveda Medical Officers. Being aggrieved by the aforesaid, it is stated that Dr. Krishan Dutta Bhatele and many others filed Writ Petitions and in the case of Dr. Krishan Dutta Bhatele, a Bench of this Court passed order-dated 5.5.2006, in W.P. No. 17994/2003, vide Annexure P/5. In pursuance to the said order, Dr. Krishan Dutta Bhatele has been granted absorption retrospectively in the cadre of Ayurveda Chikitsa Adhikari in the pay scale 1800-3300/-. It is the case of the Petitioner that as Dr. Krishan Dutta Bhatele was junior to the Petitioner and Petitioner was also identically situated, he also approached this Court and in Writ Petition No. 4244/2008(s), vide order-dated 12.5.2009, Respondents were directed to consider the case of the Petitioner in the light of the decision rendered in the case of Dr. Krishan Dutta Bhatele and take a decision. The State Government having rejected the claim by the impugned order-dated 20.11.2009 - Annexure P/10, Petitioner is again before this Court assailing the action.

3. According to the Petitioner, his case and that of Dr. Krishan Dutta Bhatele are identical in nature, both of them were working as Vaidya in Janpad Panchayat in the same pay scale 280-480/- when their services were absorbed on the same date i.e. 22.4.1988.

4. Shri K.C. Ghildiyal, learned Counsel for the Petitioner, taking me through the original service books of the Petitioner and that of Dr. Krishan Dutta Bhatele, pointed out that the said similarity and argued that in the case of Dr. Krishan Dutta Bhatele subsequently certain entries were made by the Janpad Panchayat and he was shown to be in a higher pay scale of 350-650/- at the time of absorption whereas Petitioner's scale at the time of absorption was shown as 280-480/-. Contending that the Chief Execution Officer of the Janpad Panchayat made entry in the service book of Dr. Krishan Dutta Bhatele after the absorption

showing his pay and fixing his pay in the scale 350-650/-. Similar fixation was not done in the case of the Petitioner and, therefore, the discrepancy arose, Shri Ghildiyal seeks for interference into the matter. Shri Ghildiyal points out that the claim of the Petitioner and the entire service record of the Petitioner and that of Dr. Krishan Dutta Bhatele are similar, but a distinction is being made only on the ground that at the time of absorption in government service Dr. Krishan Dutta Bhatele was in the higher pay scale of 350-650/-, whereas Petitioner was in the lower scale of 280-480/-, therefore, he cannot claim the benefit. By filing a rejoinder and by making a specific averment to the effect that at the time of absorption both the Petitioner and Dr. Krishan Dutta Bhatele were in the pay scale 280-480/- and the revision of pay of Dr. Krishan Dutta Bhatele in the higher scale of 350-650/- was done after making some entry in his service book, by the Janpad Panchayat, which was not done in the case of the Petitioner and, therefore, the discrepancy arose, Shri Ghildiyal prays for interference into the matter.

5. That apart, Shri Ghildiyal points out that all such persons, who are Ayurveda Ratna with Hindi Sahitya Sammelan, Prayag Certificate have been absorbed in the cadre of Ayurveda Medical Officers and in the case of the Petitioner only a discriminatory attitude is being followed. Accordingly, Shri Ghildiyal submits that the case of the Petitioner has not been considered properly and, therefore, the action impugned be quashed.

6. State Government has filed reply the State Government categorically comes out with a case that at the time of absorption Petitioner was in the lower pay scale of 280-480/- and Dr. Krishan Dutta Bhatele was in the higher pay scale of 350-650/-, therefore, the benefit cannot be granted to the Petitioner. As far as Janpad Panchayat -Respondent No. 4 is concerned, Respondent No. 4 has kept a total silence with regard to the entries made in the service book of Dr. Krishan Dutta Bhatele after his absorption by the State Government, but contends that it is for the departmental authorities to take action now. During the course of hearing, learned Counsel for the Janpad Panchayat stated that there being no direction in the earlier case filed by the Petitioner, the Janpad Panchayat has not taken action whereas in the case of Dr. Krishan Dutta Bhatele the Janpad Panchayat was served with a copy of the order passed by this Court and, therefore, they made the entries.

7. Having heard learned Counsel for the parties and on a perusal of the records it is seen that both Petitioner and Dr. Krishan Dutta Bhatele were working in the Janpad Sabha and subsequently they were employees of the Janpad Panchayat. In the original service book of both the Petitioner and Dr. Krishan Dutta Bhatele, an entry is made with regard to their relieving for joining government service in pursuance to the orders passed by the State Government and the said entry is made in the service book of both the employees on 22.4.1988. Before 22.4.1988 in the service book of both these employees they are shown to drawing salary in the scale 280-480/- and on 1.10.1984 both of them are shown to be drawing

salary at 330/- per month. Their pay fixation in the Grade 280-480/- is done on 1.10.1984, 1.10.1985, 1.10.1986 and 1.10.1987 and both were drawing pay at Rs. 330/-, Rs. 340/-, Rs. 350/- and Rs. 362.50, in the scale 280-480 during this period. However, in the service book of Dr. Krishan Dutta Bhatele surprisingly after he is shown to have been relieved on 22.4.1988, some entries by "red ink" is made and it seems to have been made on the basis of some resolution passed on 30.5.1999 by the Janpad Panchayat and by this entry the pay fixation of Dr. Krishan Dutta Bhatele is done again with effect from 1.3.1980 in the revised pay scale 350-650/- and on 1.10.1984 his pay is shown to be fixed at Rs. 475/- and on 1.10.1987 it is shown to be fixed at Rs. 560/-. All the entries in the service book of both the persons are identical, but after scoring out some entries in the case of Dr. Krishan Dutta Bhatele with regard to his pay fixation from 1.3.1980 to 1.3.1987, a fresh entry is made and according to Shri Ghildiyal this is a subsequent entry made by the Janpad Panchayat and in the case of the Petitioner for reasons which remain unexplained such an entry by correction has not been made. In the return filed by Respondent No. 4, it is only indicated by them that they have forwarded the matter to the State Government and it is for the State Government to make the entry. According to the Petitioner, this action was taken in the case of Dr. Krishan Dutta Bhatele only after orders were passed by this Court.

8. From the factual aspect of the matter as is evident from the record it is clear that when absorption of the Petitioner and Dr. Krishan Dutta Bhatele took place on 22.4.1988, pay of both of them as on 1.10.1987 was fixed in the scale 280-480/- and on 1.10.1987 both were drawing salary of Rs. 362.50/-. It is, therefore, clear that on the date of absorption both the Petitioner and Dr. Krishan Dutta Bhatele were drawing pay in the scale Rs. 280-480/- and based on some subsequent entries made by the Janpad Panchayat, Respondents are now contending that Dr. Krishan Dutta Bhatele was in the higher pay scale of 350-650/-, therefore, Petitioner cannot claim same benefit when he was drawing salary in the lower scale of 280-480/- on the said date when his services were absorbed. This assertion of the Respondents seems to be totally incorrect, if the original service books are perused and the entries as indicated hereinabove are taken note of. Shri Ghildiyal is right in contending that based on certain subsequent entries made by the Janpad Panchayat in the service book of Dr. Krishan Dutta Bhatele, benefit is granted to him whereas similar benefit is denied to the Petitioner without any justification. Records indicate that both the Petitioner and Dr. Krishan Dutta Bhatele were working under identical situation, both possessed the same qualification and when their services were absorbed on 22.4.1988, both were drawing identical pay and therefore, there is no reason as to why similar benefit be not extended to the Petitioner.

9. In the Notification issued by the State Government vide Annexure P/1, to be classified as a Vaidya - Grade I, the employee is to have a Degree of Ayurveda Ratna with Hindi Sahitya Sammelan, Prayag Certificate. Petitioner possessed all these certificates and in the case of one Shri Sadhram Deshmukh also, same

benefit is granted.

10. Keeping in view all these circumstances, there is no reason as to why discrimination should be made in the case of the Petitioner alone on the basis of some entry made by the Janpad Panchayat after the absorption, which entry was not made in the case of the Petitioner. It seems that the Petitioner has been meted out with a discriminatory treatment in comparison to the said similarly situated persons, like Dr. Krishan Dutta Bhatele and Shri Sadharam Deshmukh, who is also identically situated like the Petitioner.

11. If the judgment rendered by this Court on 5.5.2006, in the case of Dr. Krishan Dutta Bhatele, in W.P. No. 17994/2003, is taken note of, it would be seen that persons who had the qualifications as per Annexure P/1, were absorbed as Ayurveda Medical Officers and have been directed to be granted the pay in the higher scale of 1820-3300/-and not in the lower scale of 1150-1800/-.

12. Keeping in view the aforesaid, there is no reason as to why the Petitioner, who is also qualified to be absorbed as Ayurveda Chikitsa Adhikari/Ayurveda Medical Officer like Dr. Krishan Dutta Bhatele and Shri Sadharam Deshmukh, be denied similar benefit. If the judgment rendered by this Court in the case of Dr. Krishan Dutta Bhatele i.e. W.P. No. 17994/2003, is taken note of, it would be seen that Petitioner and Dr. Krishan Dutta Bhatele are identically situated and now claim of the Petitioner is being denied only on the ground that on the date of absorption he was in the lower pay scale compared to that of Dr. Krishan Dutta Bhatele, which fact also seems to be incorrect, as the pay scale of Dr. Krishan Dutta Bhatele is shown to be revised by certain entries made in the service book, after his absorption. The Respondents are unable to justify this, they are not in a position to show how and under what circumstances entries in the service book of Dr. Krishan Dutta Bhatele was made after his absorption, what was the reason for doing so and why similar treatment was not extended to the Petitioner when both were identically situated at the time of absorption into government service, in the matter of pay and other benefits.

13. Accordingly, this petition is allowed. The order impugned dated 20.11.2009 - Annexure P/10 is quashed and Respondents are directed to take steps for fixing the pay of the Petitioner at par with Dr. Krishan Dutta Bhatele and grant him all consequential benefits, including arrears and refixation of pension and post retiral benefits, within a period of three months from the date of receipt of certified copy of this order.

14. The original service books be returned back to Shri J.K. Jain, learned Dy. Advocate General, for needful.

15. Petition is accordingly allowed and disposed of. No order as to costs.