
(2014) 01 GUJ CK 0014
In the Gujarat High Court

Case No : Letters Patent Appeal No. 295 of 2013 in Special Civil Application No. 11363 of 2009, Letters Patent Appeal No. 965 of 2013 in Special Civil Application No. 6959 of 2008, Civil Application No. 8340 of 2013 in Letters Patent Appeal No. 965 of 2013, Letters

State of Gujarat and Others	Vs	APPELLANT
Dr. P.A. Bhatt and Others		RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 37 39(d)

Citation : (2014) 3 GLR 2035 : (2014) LabIC 2129

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : P.K. Jani, Government Pleader, Ms. Vacha Desai, Mr. Vandan Baxi and Mr. Parth Bhatt, AGPs. for the Appellants No. 1 - 3, for the Appellant; N.K. Majmudar, Advocate for the Respondent(s) No. 1, 4, 6 and Mr. Premal R. Joshi, Advocate for the Respondent(s) No. 2 - 3, 5 and 7 - 8, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—Since common questions of fact and law are involved in these batch of appeals and the challenge is also to the selfsame order passed by the learned Single Judge, those were taken up for hearing together and are being disposed of by this common judgment and order. These appeals under Clause 15 of the Letters Patent are at the instance of the State of Gujarat, being an unsuccessful respondent in a batch of writ-applications, and are directed against a common judgment and order passed by the learned Single Judge dated 26th July, 2012, by which His Lordship allowed the writ-applications filed by the petitioners (respondents herein), directing the State Government to extend the benefit of the Tikku Pay Commission, in the matter of higher pay-scale in favour of all the petitioners.

2. Factual matrix:

2.1 A batch of writ-applications was filed by Medical Officers (Class-II) holding degree of BAMS (Ayurved) for a declaration that they are eligible and entitled to get the benefit of higher pay-scale on completion of the prescribed period of service, according to the various Government Resolutions, Circulars and Notifications, and further to hold that they are eligible and entitled to get the benefit of higher pay-scale at par with the one extended to the similarly situated Medical Officers serving as Insurance Medical Officers under the Employees' State Insurance Scheme.

2.2 They prayed before the learned Single Judge that they be extended the benefit of the higher pay-scale according to the recommendations of the Tikku Pay Commission as well as the Government Resolution dated 17th October, 1994. According to the petitioners who have attained the age of superannuation, they were serving as Medical Officers (Ayurved) or as Medical Officers, Class-II (CHVS) and were posted at various Primary Health Centers and Community Health Centers, run and managed by the Health and Family Welfare Department of the State Government.

2.3 The Government of Gujarat, in its Health and Family Welfare Department, issued a Resolution dated 17th October, 1994, stating that the issue of providing sufficient and adequate services of doctors in the hospitals and health centers all around the State was under consideration since long and efforts were being made to obtain such services through ad-hoc appointments, reappointments of the retired doctors, part-time appointments and on the basis of agreement with private doctors etc. Despite such attempts being made by the State Government, sufficient number of doctors were not available, and therefore, it was decided by the State Government to implement the recommendations of the Tikku Committee, which was constituted by the Central Government. The Tikku Committee was constituted with a view to consider how at best possible incentives could be provided to the doctors working under the Central Government, and the necessary modifications in cadres, including the time bond promotion systems for the doctors. A Committee of Union Ministers presided over by the Finance Minister of the State was constituted to consider the possibility of modifying the conditions of service of the doctors employed in the State of Gujarat. The Government, thereafter, decided to accept the recommendations made in the report of the Committee, submitted on 17th September, 1994, and decided to grant benefit of time bound promotion to the doctors working under the Health and Medical Department, including the State Insurance Scheme.

2.4 Thereafter, in the year 1999, the State Government issued another Resolution dated 1st January, 1999, and informed the Examiner, Local Fund and Audit Office, Ahmedabad, who had sought the necessary clarification from the State Government as regards the status of non-MBBS Medical Officers like the petitioners, holding BAMS Degree, whether the benefits of the higher pay-scale recommended by the Tikku Pay Commission could be extended in their favour or not.

2.5 The State Government, vide its Resolution dated 1st January, 1999, clarified that since the Government of India had also considered non-MBBS doctors like GFAM/LMP/BAMS at par with the MBBS doctors, and since the syllabus of GFAM/LMP/BAMS was also recognized by the Indian Medical Council, it informed the Local Fund Office that the Medical Officers (Ayurved) were also entitled to the benefit of the time bound promotion in terms of the Government Resolution dated 17th October, 1994.

2.6 It appears that thereafter, vide order dated 15th April, 2008, the Government decided not to extend the benefit of the higher pay-scale in terms of the Government Resolution dated 17th October, 1994, on completion of their 6, 13 and 19 years of service.

2.7 The petitioners were appointed on ad-hoc basis as Community Health Volunteer Medical Officers (CHVMO), Class-II by the Health Department of the State Government, and thereafter, their services were absorbed and regularized on 4th May, 1999.

2.8 It was submitted before the learned Single Judge that the pay-scale of the doctors possessing MBBS degree and the doctors possessing BAMS degree were equal. It was also submitted before the learned Single Judge that they were appointed and posted at in Primary Health Centers situated all through out the State and were performing the same duties, which the MBBS doctors were performing.

2.9 The learned Single Judge, after taking into consideration all the relevant aspects of the matter, held that the petitioners holding degree of BAMS/BSAM (Bachelor of Ayurved in Medicine and Surgery) were at par with the doctors holding MBBS degree and both the degrees were held to be equivalent for the purpose of granting higher pay-scale, vide Government Resolution dated 1.1.1999.

2.10 The learned Single Judge, accordingly, allowed all the writ-applications and directed the State Government to extend the benefits of the Tikku Pay Commission in the matter of higher pay-scale in favour of all the petitioners.

2.11 The learned Single Judge also directed that since the petitioners had already retired from service, the State Government shall implement the directions as expeditiously as possible and in any case, within a period of three months from the date of receipt of a copy of the judgment.

2.12 Feeling aggrieved and dissatisfied, the State Government has come up with these appeals.

3. Mr. P.K. Jani, the learned Government Pleader appearing for the appellant State of Gujarat submitted that the respondents herein are not entitled to the higher pay-scale as the Notifications and the Resolutions, which have been relied upon by the learned Single Judge are not applicable to the Medical Officers (Ayurved). Mr. Jani submitted that even if the duties and functions are of a

similar nature, different treatment to persons belonging to the same class is a permissible classification on the basis of educational qualifications.

3.1 Mr. Jani submitted that the respondents were not appointed by the State Government, inasmuch as they were all appointed initially under the Community Health Voluntary Medical Officers Scheme of the Government of India, which came to be discontinued and thereafter, the State Government considered the cases of all such doctors sympathetically and decided to continue them in service.

3.2 Mr. Jani submitted that the Government Resolutions dated 17th October, 1994 and 1st January, 1999 respectively cannot be made ipso-facto applicable in favour of the respondents. Mr. Jani also submitted that the Government Resolution dated 17th October, 1994, on which strong reliance has been placed by the respondents, is applicable to the Allopathic doctors along with Insurance Medical Officers (Ayurved). According to Mr. Jani, only these two sets of doctors were extended the benefit of the higher pay-scale on completion of 6 years, 13 years and 19 years of service respectively.

3.3 Mr. Jani submitted that in the entire Government Resolution dated 17th October, 1994, there is no reference of the fact that the said benefit would also be available to the Ayurved doctors working under the Directorate of Indian System of Medicine and Homeopathy.

3.4 Mr. Jani submitted that the duties which are performed by the Ayurved doctors are quite distinct compared to the duties performed by the doctors holding a MBBS degree. According to Mr. Jani, a doctor holding a MBBS degree is required to attend emergencies, including cases of trauma, surgeries and perform postmortem, whereas an Ayurved doctor is not required to perform any emergency duties and the nature of the treatment given in both the kinds of therapy is different. Mr. Jani submitted that the Tikku Pay Commission was constituted by the Government of India, considering only the doctors holding MBBS degree. The object of constituting the Tikku Pay Commission was to see that more allopathy doctors are available with the State Government, and in such circumstances, the State Government, vide Government Resolution dated 17th October, 1994, had decided to accept the recommendation made by the Tikku Pay Commission.

3.5 Mr. Jani submitted that the Allopathic doctors i.e. MBBS doctors are not easily available with the Department. As against this, Ayurved doctors are easily available. Moreover, the MBBS doctors are required to work for three years in rural areas on they executing a bond, whereas a BAMS doctor is not required to execute any bond, as there is no such provision under the Directorate of Indian System of Medicine and Homeopathy.

3.6 Mr. Jani also submitted that the Allopathic doctors are appointed only after the recommendation of the Gujarat Public Service Commission, whereas the Ayurved doctors under the CHVMO Scheme are not appointed by following the same procedure. Mr. Jani submitted that the Employees State Insurance Scheme

(ESIS) is a scheme floated by the Government of India, and the State Government has been implementing the scheme according to the guidance issued by the Government of India. Under the scheme, the financial expenditure is shared in the ratio of 7:1 i.e. the Government of India has to bear Rs. 7/- out of the total expenditure of Rs. 8/-. Therefore, when the State Government decided to implement the recommendations of the Tikku Pay Commission vide its Government Resolution dated 17th October, 1994, the Insurance Medical Officers (Ayurved) working under the ESIS were covered, but the Medical Officers (Ayurved) working under the Directorate of Indian System of Medicine and Homeopathy are fully paid from the State's exchequer.

4. During the course of hearing of the appeals, Mr. Jani placed a comparative chart of the various characteristics of the ayurved medicine and allopathy medicine. The same is as under:-

5. In such circumstances referred to above, according to Mr. Jani, the learned Single Judge committed an error in holding that the respondents herein are also entitled to the higher pay-scale in terms of the recommendations of the Tikku Pay Commission.

Mr. Jani submitted that there being merit in these appeals, the same may be allowed and the order passed by the learned Single Judge be set aside.

6. The learned counsel appearing for the respondents opposed the appeals and submitted that the learned Single Judge committed no error, not to speak of any error of law, in allowing the writ-applications and directing the State Government to extend the benefits of Tikku Pay Commission in favour of their clients.

7. The learned counsel submitted that the respondents were appointed purely on temporary basis for a period not exceeding one year to the Gazetted post of Medical Officer in Gujarat Public Health Service, Class-II in the pay-scale of Rs. 650-30-740-35-810. According to the learned counsel appearing for the respondents, their clients who are Ayurved doctors were appointed as Medical Officers in the same cadre with the doctors who possess the MBBS degree. The initial appointments were made by the Directorate of Health Services i.e. Health Department. When the respondents were appointed, they were appointed as Medical Officers, Class-II. Even the Medical Officers possessing the qualification of MBBS were appointed by the Directorate of Health Services and as such, there is no distinction in the nomenclature. The respondents, all through out their service career, served as Medical Officers, Class-II. According to the policy of the State Government, even a non-MBBS Medical Officer became eligible and entitled to get the benefit of the higher pay-scale according to the Resolutions and Circulars issued by the Government upon acceptance of the recommendations made by the Tikku Pay Commission.

8. The main plank of the submission canvassed on behalf of the respondents is that once a cadre is formed by recruiting Medical Officers, Class-II, which includes MBBS doctors as well as non-MBBS doctors, then there would normally

be no justification for discriminating between themselves so far as service conditions are concerned. The MBBS doctors and the doctors possessing degree of BAMS constitute a unified cadre. The recruitment policy is common and the recruitment is also done by a common agency.

9. Thus, according to the learned counsel appearing for the respondents, the stance of the State Government that Medical Officers, Class-II (Ayurved) cannot be placed at par with the Medical Officers, Class-II holding MBBS degree so far as grant of the benefit of the Tikku Pay Commission is concerned, is not reasonable.

10. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this appeal is whether the learned Single Judge committed any error in passing the order impugned.

11. It is true that "equal pay for equal work" is not one of the fundamental rights, guaranteed by our Constitution. It is also true that there is no statute or statutory rule prescribing "equal pay for equal work". It is true that equal pay for equal work was described by the Supreme Court in *Kishori Mohanlal Bakshi Vs. Union of India*, as an abstract doctrine. Whether it is an abstract doctrine or not, it is one of the goals, our people have set for themselves. It is one of the Directive Principles of our Constitution that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. (Article-39(d) of the Constitution). Directive Principles are of course, not justiciable in the sense that the courts cannot compel the making of laws to further the Directive Principles of State Policy. But it does not mean that the Directive Principles have to be ignored by the courts. Far from it Article-37 of the Constitution expressly prescribes that the directive principles are fundamental to the governance of the country and that it shall be the duty of the State to apply these principles in making laws. It has been said on high authority that the Directive Principles should serve as an Instrument of instructions to the legislature and the executive. They are the guidelines for the legislature and the executive. So they must serve the judiciary as an instrument of interpretation. In interpreting other provisions of the Constitution including the provisions relating to the fundamental rights for the purpose of adjudicating upon the constitutional validity of any legislative or executive action, the courts will be well justified in looking to the Directive Principles for light and guidance or at any rate to seek assurance. That will be a legitimate use by the Courts of the directive principles.

12. In a recent pronouncement of the Supreme Court in the case of *Steel Authority of India Ltd. and Others Vs. Dibyendu Bhattacharya*, , the Supreme Court after a review of its earlier decisions on the principle of "equal pay for equal work" summarized the law observing as under:-

26.... the law on the issue can be summarized to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the

Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the concerned posts. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties. The onus to establish the discrimination by the employer lies on the person claiming the parity of pay. The expert committee has to decide such issues, as the fixation of pay scales etc. falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible for administration i.e. service conditions etc., is found to be bona fide, reasonable, and on intelligible criteria which has a rational nexus of objective of differentiation, such differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just or prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesale/wholesome identity between the two posts they should not be treated as equivalent and the Court should avoid applying the principle of equal pay for equal work.

Bearing in mind the aforesaid principles laid down by the Supreme Court, we proceed to examine the rival submissions made on either side.

13. Tikku Commission: The Ministry of Health and Family Welfare Department, vide its order dated 3rd May, 1990, constituted a Committee headed by Shri R.K. Tikku, Secretary (Coordination) in the Cabinet Secretariat as its Chairman. The Committee was constituted to look into all aspects of career improvement and cadre restructuring and to make proposals with a view to enable the service doctors to take their due place among the best of Group "A" services of the Central Government and to ensure similarity in career prospects among the four sub-cadres of the Central Health Service. The Committee was also asked to look into the following four aspects relating to the career prospects:-

- (i) Enhancement of retirement age of the service doctors;
- (ii) The question of filling up of vacancies at Specialist Grade II level or equivalent in non-teaching and teaching sub-cadres by promotion from Post Graduate General Duty Medical Officers and determining the percentage to be reserved for filling up such Specialist Grade II posts;
- (iii) The feasibility and desirability of constituting an Indian Medical Service.

(iv) Any other issues directly relatable to career improvement of service doctors.

The Committee, in its report recommended that the Central Health Services should be one unified cadre and the recruitment should take place at the base level of both Graduates and Post Graduates. Various other recommendations were also made.

14. It appears from the materials on record that the State Government took into consideration the Tikku Commission recommendations for providing opportunities of promotion to the Medical Officers of the State. As a matter of fact, the Government realized some time in the year 1994 that there were no sufficient number of doctors in the Hospitals and Health Centers all around the State. The Government also realized that the doctors in sufficient numbers were not easily available, and therefore, in such circumstances, with a view to provide incentives, the State Government thought fit to adopt the recommendations made by the Tikku Pay Commission for doctors at the Central Government level.

15. In that regard, a Committee was constituted presided over by the Finance Minister and the Committee submitted its report as regards modifying the conditions of services of the doctors working in the State. The State Government decided to accept the recommendations made by the Committee in its report, submitted on 17th September, 1994. Accordingly, the Health and Family Welfare Department of the State Government issued a Resolution dated 17th October, 1994, providing for a time bound promotion to the doctors working under the Health and Medical Department and State Insurance Scheme, as follows:-

1. At a primary stage the medical graduates be appointed as Class-II Medical Officers in the pay scale of Rs. 2200-4000 in hospitals and health centers. After regular absorption in the service the Medical Officer Class-II should be considered eligible for promotion in the pay scale of Rs. 3000-4000 and such a post shall be considered as of a Senior Medical Officer.

2. After service of 6 years, the Medical Officer working in the pay scale of Rs. 3000-4500 should be considered eligible for promotion and this post shall be considered as Chief Medical Officer.

3. After 6 years service, officer working in the pay scale of Rs. 3700-5000 should be put in the selection grade of Rs. 4500-5700 and these posts shall be about 15 % of total sanctioned posts of Medical Officer Class-II.

On making provision of time bound promotion as above the separate posts of Senior Medical Officer and Chief Medical Officer shall not be required to be sanctioned or separate recruitment rules for it shall not be prepared.

2. Special Cadres.

(1) Presently the medical graduate is appointed as a specialist in pay scale of Rs. 3000-4500. Therefore all appointments shall be considered as Specialist Grade-II.

(2) After 6 years of regular service as a Specialist Grade-II working in the pay

scale of Rs. 3000-4500, they should be considered eligible for promotion in senior scale of Rs. 4500-5700 and these posts of senior scale shall be 50 % of total sanctioned posts of Specialist Grade-II.

(3) In general duty Medical Officers and specialist cadres the reconstruction of administrative setup in the above posts, pay scale of Rs. 4500-5700 shall be taken into consideration considering the work load and the proportion of work required and proposal thereof shall be prepared and on approval of the Government necessary orders shall be made.

3. These orders shall come in force from the date of dispatch.

By order and in the name of Governor of Gujarat.

16. On a plain reading of the Government Resolution dated 17th October, 1994, it is evident that the same was issued for Medical Officers as a whole. No distinction was sought to be drawn between the Medical Officers, Class II (Ayurved) and Medical Officers, Class-II, possessing MBBS degree. The Resolution described all medical services in general. It also appears from the materials on record that a query was raised by the Local Fund Audit Office, Ahmedabad in connection with the grant of time bound promotion and pay-scales as suggested by the Tikku Commission to the doctors holding the degree of GFAM/LMP/BAMS. The query was very specific and the answer of the State Government to the Local Fund Audit office was equally clear. The State Government informed the Local Fund Audit Office that the doctors holding the degree of GFAM/LMP/BAMS are included in both the Resolutions i.e. 17th October, 1994 and 1st March, 1997 respectively.

17. In such circumstances, the State Government thought fit to issue a Resolution dated 1st January, 1999. The free English translation of the vernacular supplied to us reads as under:-

Governor of Gujarat Health & Family Welfare Department Resolution No. KRV/1098/726/CH Date:- 01/01/1999

Read with:-

(1) Government Health & Family Welfare Department Resolution No. GHS/10945-2842/T dated 17/10/1994

(2) Government Health & Family Welfare Department Resolution No. KRV/1097/1795/CH dated 01/13/1997

(3) Examiner, Local Fund Audit Office, Ahmedabad D.O. Letter No. LHQ/tech-4/PAY VERIFICATION-766, dated 21/04/1998

Resolution:-

According to the recommendations of the TIKKU Commission for time bound promotion of Doctors and sanctioning of higher Pay Scales orders were issued as referred above in No. (1) mentioned in this Department's Government

Resolution dated 17/10/1994 bearing number GHS/1094-2842/T.

Accordingly the Class-II Doctors working under the Employee State Insurance Scheme were also accorded sanctioned for the time bound promotion and pay scales as per TIKKU Commission vide Government Resolution referred above at Sr. No. (2) KRV/1097/1795/CH dated 01/13/1997. The doctors holding the degree of GFAM, LMP & BAMS are also included in that order. The Examiner, Local Fund Audit Office, Ahmedabad D.O. Letter No. LHQ/tech-4/PAY VERIFICATION - 766, dated 21/04/1998 referred to as Sr. No. (3) above had asked for the guidance regarding Non-MBBS Medical Officers like GFAM, LMP & BAMS who were given the benefits of higher Pay Scales of TIKKU Commission. The matter was under consideration of State Government. After careful consideration the Government of India has also consider Non-MBBS Doctors like GFAM/LMP/BAMS equal to the Graduate Doctors (MBBS). Moreover the syllabus of GFAM/LMP & BAMS is also recognized by Indian Medical Council and according to the recommendation of the TIKKU Commission the above mentioned Doctors were given the benefits of the time bound promotion vide this Department order dated 17/10/1994 and the same is resolved to be appropriate.

Thus, from the Resolution of 1st January, 1999, it is evident that the Government, after due consideration, had thought fit to consider the non-MBBS doctors like the respondents herein, at par with the doctors possessing MBBS degree.

18. In the aforesaid factual backdrop, we now proceed to consider how a Medical Officer, Class-II (Ayurved) was appointed and the provisions of law as regards their registration.

19. One order of appointment dated 7th February, 1979 has been placed on record, which reads as under:-

In pursuance of the power vested in him by the Government Resolution, Health and Family Welfare Department No. Mis-1077-3477-Kh dated 19-25/7/77, the Directors of Health Services (Health Section), Ahmedabad is pleased to appoint the following Medical Officers purely on temporary basis for a period not exceeding one year to the Gazetted post of Medical Officer in Gujarat Public Health Services, Class-II, in the pay-scale of Rs. 650-30-740-35-810-EB-35-880-40-1100-EB-40-1200.

20. It also appears from the order, which is on record that around 64 persons were posted as Medical Officers, Class-II at the various Public Health Centers in different districts.

21. We shall now look into the provisions of the Gujarat Medical Practitioners" Act, 1963.

Section 2(b) defines the term "Ayurvedic system of medicine" or "Ayurvedic system". It reads as under:-

Section 2(1) In this Act, unless the context otherwise requires-

(a)

(b) "Ayurvedic system of medicine" or "Ayurvedic system" means the Ashtang Ayurvedic system of medicine, whether supplemented or not by such modern advances as are consistent with the fundamental principles of Ayurvedic 2 [* *]

Section 2(h) defines the term "Homeopathy". It reads as under:-

(h) "Homeopathy" means the system of medicine founded by Dr. Samuel Hahnemann which includes the Bio-chemic therapy as propounded by Dr. Schussler and the expression "Homoeopathic" shall be construed accordingly.

Section 2(o) defines the term "recognized qualification". It reads as under:-

(o) "recognized qualification" means any of the qualification specified in the Schedule;

Section 2(p) defines the term "register". It reads as under:-

(p) "register" means the register of practitioners prepared and maintained u/s 17;

Section 2(q) defines the term "registered practitioner". It reads as under:-

(q) "registered practitioner" means a practitioner whose name is for the time being entered in the register.

Section 17 of the Act provides for registration and enlistment. Section 17(1), (2) and (3) reads as under:-

Section 17. Registration and enlistment.

(1) As soon as may be after the appointed day, the Registrar shall prepare and maintain thereafter a register of Ayurvedic and Unani practitioners for the State, in accordance with the provisions of this Act.

(2) The register shall be in the prescribed form and there shall be one register consisting of two parts. Part I shall include the names of registered practitioners possessing any of the recognized qualifications and Part II shall include the names of registered practitioners other than those included in Part-I.

(3) Every person who possesses any of the qualifications specified in the Schedule shall, at any time on an application made in the prescribed form to the Registrar and on payment of a fee of ten rupees, be entitled to have his name entered in the register.

22. The above takes us to the Schedule. Part-C to the Schedule reads as under:-

PART-C

Qualification in the Ayurvedic system of medicine with a course supplemented by modern advances with:-

- (a) the Inter Science (B-Group) examination as qualification for admission or
- (b) the Matriculation or S.S.C. Examination or its equivalent examination as qualification for admission, provided the course is of a duration of six or more years.

23. We shall now look into the Medical Officers (Gujarat Medical Services Class-II) Recruitment Rules, 1977. Rule 2(a) and (b) reads as under:-

2. Appointment to the post of Medical Officer, in the Gujarat Medical Services, Class-II, shall be made either

(a) By promotion of Medical Officers Class-III, who possess-

(I) The M.B.B.S. Degree of a University recognized by the Government of Gujarat or any other qualifications specified in the first or second schedule to the Indian Medical Council Act, 1956 OR

(i) Registerable qualification under schedule I, II, III of the Indian Medical Council Act, 1956 OR

(ii) Qualifications as specified in part "C" and "D" of the Schedule of Gujarat Medical Practitioners" Act 1963, and has rendered meritorious services of ten years as Medical Officer, either in Gujarat Medical Services Class-III or under Panchayats OR

(b) By direct selection.

24. Thus, from the above it is evident that for the purpose of appointment to the post of Medical Officer in the Gujarat Medical Services, Class-II, the requisite qualifications are an MBBS degree of a University, recognized by the Government of Gujarat or any other qualifications specified in the 1st or 2nd Schedule to the Indian Medical Council Act, 1956, and importantly for us, the qualifications as specified in Part "C" and "D" of the Schedule of Gujarat Medical Practitioners" Act, 1963, referred to above.

25. A BAMS degree issued by the University of Gujarat i.e. Bachelor of Ayurvedic Medicine and Surgery is one of the degrees specified in Part "C" to the Schedule, which the respondents herein possess.

26. From the above, it is evident that a doctor holding an MBBS degree is also appointed as a Medical Officer under the Rules, 1977 and at the same time, a doctor possessing qualifications as specified in Part-C of the Schedule to the Act, 1963 is also appointed to the same post as a Medical Officer.

27. Thus, the mode of recruitment and the Rules governing the recruitment are the same applicable to a doctor holding an MBBS degree as well as a Medical Officer holding a BAMS degree. The pay scale also was the same at the time of appointment which was revised from time to time.

28. It appears that for the first time in the year 2008, the Government decided

to draw a line between the Medical Officers, Class-II, holding MBBS degree and Medical Officers, Class-II holding a BAMS degree. The Government was conscious of the fact that the Medical Officers, Class-II holding a BAMS degree were also posted at the various Health Centers and were performing the same duties and functions, which a Medical Officer possessing an MBBS degree were performing.

This gave the cause of action to the respondents herein, to file petitions as the State Government decided not to extend the benefit of higher pay-scale on completion of 6 years, 13 years and 19 years of service to the Medical Officers holding a BAMS degree.

29. We have no doubt in our mind that the Government was very clear about treating both the sets of Medical Officers at par as reflected from the Resolutions of 1994 and 1999. However, with a view to ease the financial liability, it appears that such a stance was taken by the State Government, at a later stage, which does not appear to be in accordance with law.

30. The respondents have led cogent evidence even to show that they were performing vasectomy etc. and therefore, the stance of the State Government that both the cadres are different due to their duties and responsibilities, does not appear to be correct. It also appears from the materials on record that the respondents have undergone training, which was being imparted to the Medical Officers holding MBBS degree. They also performed emergency duties as in-charge Medical Officers of the Primary Health Centers. It also appears from the materials on record that the respondents as Medical Officers holding degree of BAMS had worked independently as in-charge of the Primary Health Centers.

31. The principal argument of Mr. Jani, the learned Government Pleader appearing for the appellant has been that it is not always impermissible to provide two different pay-scales in the same cadre, if the qualifications and the duties are distinct.

32. For the time being, even if we accept the aforementioned proposition, there is no escape for the appellant from the fact that the respondents as Medical Officers holding BAMS degree (Ayurved) have actually worked and performed the same functions and duties which a Medical Officer holding MBBS degree has to perform. In such circumstances, we find merit in the submission canvassed on behalf of the respondents that once a unified cadre is formed of Medical Officers Class-II holding MBBS degree and BAMS degree, then in such circumstances, there would normally be no justification for discriminating between them on the premise that a Medical Officer holding MBBS degree stands on a higher footing than a Medical Officer holding a BAMS degree. As held by the Supreme Court in the case of *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, that although the doctrine of "equal pay for equal work" does not come within Article 14 as an abstract doctrine, but if any classification has been made relating to the pay-scale and such classification is unreasonable and/or if unequal pay is based on no classification, then Article 14

will at once be attracted and such classification should be set at naught and equal pay may be directed to be paid for equal work.

33. Where unequal pay has brought about a discrimination within the meaning of Article 14, it will be a case of equal pay for equal work, as envisaged by Article 14. If the classification is proper and reasonable, and has a nexus to the object sought to be achieved, the doctrine of "equal pay for equal work" will not have any application, even though the persons doing the same work are not getting the same pay. It is for the Government or the management to fix the pay-scales, after considering various other matters and the Court can only consider whether such fixation of pay-scales has resulted in an invidious discrimination or is arbitrary or patently erroneous in law or in facts.

34. Mr. Jani, the learned Government Pleader placed strong reliance on the decision of the Supreme Court in *Union of India (UOI) and Another Vs. Manu Dev Arya*, In the said case, the respondent was appointed as a Research Assistant with the Central Council for Research in Homeopathy, in 1987 in the pre-revised pay-scale of Rs. 425-700. He had been getting non-practising allowance at the rate of Rs. 75/- in the pre-revised scale of pay. The doctors and physicians however, were getting non-practising allowance in the pre-revised pay-scale at the rate of Rs. 150/-. Non-practising allowance of the doctors and physicians in the pay-scale of Rs. 2000-3500 was revised with effect from 1st January, 1986, in terms of an order of the Government of India dated 27th February, 1991. A representation was made by the respondent claiming the enhanced rate of non-practising allowance, which was not allowed. A writ-petition, thereafter, was filed by the respondents therein before the High Court, praying for issue of a writ of mandamus directing the appellant therein to pay non-practising allowance at the enhanced rate, which would be in commensurate to the revision in the non-practising allowance paid to the doctors and the physicians. The High Court took the view, applying the principles laid down in Articles 14 and 39D of the Constitution of India that the doctors and the physicians on the one hand and the Research Officers in the Homeopathy Department on the other, cannot be treated differently and the appellant could be held to have made a hostile discrimination without there being any reasonable ground for making a differential treatment in the matter of enhancement of non-practising allowance payable to the respondent. The Supreme Court took into consideration a policy decision taken by the Government of India as regards the grant of non-practising allowance. The Supreme Court held that it failed to see how the doctrine of "equal pay for equal work" could be invoked in the said case. The doctors and physicians, who were appointed on the allopathy side and were drawing a higher scale of pay could be treated differently. Only because at one point of time the Research Assistant and the doctors had been given the benefit of non-practising allowance, the same by itself would not mean that the discrimination had been meted out.

35. In our opinion, this decision is of no avail to the appellant, as the same was in the facts of that case and most importantly, it appears that the Rules relating

to the appointment and recruitment of the doctors and the physicians appointed on the allopathy side were different as compared to a Research Assistant. Moreover, it was more of a policy decision only on the aspect of non-practising allowance, which could not have been claimed as a matter of right. This is precisely the reason why the Supreme Court in paragraph 11 has observed that although a discrimination can be inferred in relation to certain types of allowances, but non-practising allowance would stand on a somewhat different footing. In the present case, we are concerned with the higher pay scale on completion of 6 years, 13 years and 19 years of service, based on the recommendation of the Tikku Pay Commission, which at one point of time the State Government had accepted in toto.

36. Mr. Jani also placed reliance on the decision of *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, in support of his submission that even if the duties and functions are of similar nature, but if there is a variation in the measure of responsibilities, the principle of "equal pay for equal work" would not apply. In the said case, the petitioner was initially appointed in 1967 to the post of Teacher Coordinator in the pay-scale of Rs. 210-425 in the Research Project Rehabilitation Unit in Audio and Speech Pathology, a project funded by the Indian Council of Medical Research. The unit was taken over by the All India Institute of Medical Science in 1970 along with the staff attached to the said unit. The petitioner's services stood transferred to the All India Institute of Medical Science and he continued to hold the post of a Teacher Coordinator in the institute. The petitioner's main grievance was that Hearing Therapist performed the same duties and functions as Senior Speech Pathologist, Senior Physiotherapist, Senior Occupational Therapist, Audiologist, and Speech Pathologist, yet the respondents have practised discrimination in paying salary to the petitioner in a lower scale of pay. It was asserted that the qualification prescribed for the aforesaid posts were almost similar and they are working in the same institution under the same employer but the respondent authorities had practised discrimination in refusing to accept the petitioner's claim for equal pay.

37. In the aforesaid factual background, the Supreme Court held that even assuming that the petitioner performs similar duties and functions as those performed by an Audiologist, it was not sufficient to uphold his claim for equal pay. The Court held that in judging the quality of work for the purpose of equal pay, regard must have not only to the duties and functions, but also to the educational qualifications, qualitative difference and the measure of responsibilities prescribed for the respective posts. It further held that even if the duties and functions were of similar nature, but if the educational qualifications prescribed for the two posts were different and there was difference in the measure of responsibilities, the principle of "equal pay for equal work" would not apply.

38. We are afraid, we are unable to appreciate as to how this decision would help

the appellant. From the decision of the Supreme Court, one thing is very evident and that is regarding the educational qualifications. It appears that the educational qualifications for the two posts were different.

The observations made by the Supreme Court in Para-11 makes all the difference. We quote Para-11 as under:-

11. The petitioner's contention that Speech Therapists have been granted higher scale of pay in other Institutions, namely, Rohtak Medical College, National Institute for Hearing Handicapped, Hyderabad, Safdarjang Hospital, and P.G.I., Chandigarh cannot be taken into consideration as the petitioner has failed to place any material showing the duties and functions performed by the Speech Therapist in the aforesaid Institutions or the qualifications prescribed for the same. Merely because Speech Therapists performing similar duties and functions in other Institutions are paid higher pay scale is no good ground to accept the petitioner's claim for equal pay. There may be difference in educational qualifications, quality and volume of work required to be performed by the Hearing Therapists in other Institutions. In the absence of any material placed before the Court it is not possible to record findings that the petitioner is denied equality before law. Moreover, if the employer is not the same the principle of "Equal Pay for Equal Work" would not be applicable. We do not consider it necessary to discuss the matter further as the petitioner has not placed requisite material before the Court for the application of the principle of "Equal Pay for Equal Work".

39. From the above it is evident that the Pay Commission had considered the case of Hearing Therapists and had not accepted their claim for higher scale of pay. The Pay Commission was in a better position to judge the volume of work, qualitative difference and the reliability and responsibility required for the two posts. Besides this the Supreme Court observed that in the absence of any material placed before the Court it was not possible to record the findings that the petitioner was denied equality before law. The court also observed that it did not consider it necessary to discuss the matter further as the petitioner had not placed requisite material before the Court for the application of the principle of "equal pay for equal work".

40. Such is not the position so far as the case in hand is concerned. We have discussed in earlier part of our judgment that there is evidence to suggest that the respondents were discharging all the duties and functions which a MBBS Doctor has to discharge and not only that, they were appointed at Health Centers assigning independent charge of the same. They had also undergone training for vasectomy etc.

41. In the present case, we are considering appointment of a Medical Officer, Class-II in the State Health Services, which includes both a Medical Officer holding MBBS degree and a Medical Officer holding a BAMS degree. As observed earlier, Rules and Regulations governing their recruitment, appointment and

other conditions of service are the same. This decision, in our opinion, is of no avail to the client of Mr. Jani.

42. In *State of Mysore Vs. M.H. Krishna Murthy and Others*, the facts were as follows: There were formerly two separate units of the accounts service of the Mysore Government, viz., the P.W.D. Accounts Unit and the Local Fund Audit Unit. On 15/5/1959 these two units were integrated under the common administrative control of the Controller of State Accounts and the Mysore State Accounts Services Cadre and Recruitment Rules were issued. A combined cadre strength was fixed. Promotion to the higher posts in the service was on the basis of seniority cum merit. But the Mysore Government issued a notification so fixing the cadre strengths as to reduce the number of promotional posts available to the public works accounts unit to a very low figure as compared with the promotional opportunities open to the officers in the other wing.

The Supreme Court upheld the judgment of the Mysore High Court holding that the notifications were unconstitutional.

The question which remains for consideration by us is one relating to the validity of a division into two classes of members of the same service, belonging to the same cadre, for purpose of a difference to be made in their promotional chances. Learned counsel for the State has sought to justify these differences in the historical background to the practice of making the distinction in promotional chances. The Mysore High Court had very rightly observed that neither a fortuitous artificial division in the past nor the unconstitutional practice of making an unjustifiable discrimination in promotional chances of Government servants belonging to what was really a single category, without any reference either to merit or seniority or educational qualifications could justify the differences in promotional chances. We think that it had rightly declared the purported amendments in the Rules of 1959, which sought to disintegrate a service which had been integrated, to be ultra vires.

43. From the above, it is clear that while it is permissible to make a reasonable classification for the purpose of appointment or promotion where the sources of recruitment are different, it is not permissible to subdivide the same source so as to create a class within a class. Where recruitment to a post is from different sources the difference of source cannot be further continued for the purpose of promotion. Those that have been joined together by the rules should not be put as under by other rules.

44. The reason to rely on the aforesaid decision of the Supreme Court is to fortify our view that if the Medical Officers, Class-II inclusive of both, MBBS and BAMS were appointed from one source as one unified cadre with a common pay scale and governed by one set of rules, then at the later stage the Government would not be justified in making a classification for the purpose of drawing higher grade scale on the premise that the educational qualification differ.

45. Assuming that the classification of Medical Officers, Class-II (MBBS) and

Medical Officers, Class-II (BAMS) based on their educational qualifications was a permissible classification for the purpose of promotion, if any which required greater skill and higher competence, it did not follow that a classification based on educational qualification was permissible in the matter of salary (higher grade scale) when all of them belong to one integrated service having been recruited by the same process of selection.

46. We may also quote with profit the decision of the Supreme Court in the case of State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., wherein in Para 19 Court made the following observations:

Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and proof that all things are equal. Thus, before any direction can be issued by Court, the Court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of filing of the respective writ petition.

In the present case also, on the basis of the materials on record, we are convinced that the respondents have been able to make-out a case for applying the doctrine of equal pay for equal work.

47. We may also quote with profit the decision of the Supreme Court in the case of Jaipal and Others Vs. State of Haryana and Others, wherein the Supreme Court in Para-6 made the following observations:

Having regard to these facts and circumstances, we are of the view that there is no difference in the nature of duties of the instructors and squad teachers and both of them carried-out similar work under the same employer. The doctrine of equal work equal pay would apply on the premise of similar work but it does not mean that there should be complete identity in all respects. If the two classes of persons do some work under the same employer, with same responsibility, under similar working conditions, the doctrine of equal work equal pay would apply and it would not be open to the State to discriminate one class with the others in paying salary. The State is under a constitutional obligation to ensure that equal pay is paid for equal work.

48. The aforesaid decision of the Supreme Court, in our opinion, helps the respondents in all respects. We lay stress on the observations made by the Supreme Court to the extent that there need not be complete identity in all respects for the purpose of applying the doctrine of equal work equal pay and if two classes of employees do the same work under the same employer, with same responsibility, under similar working conditions, then the doctrine of equal work equal pay should be applied and the State would be under a constitutional obligation to ensure that equal pay is paid for equal work. In the present case also, as discussed earlier, the respondents were posted at various Primary Health

Centers and were assigned independent charge of such centers. All the responsibilities and duties which a Medical Officer, Class-II (MBBS) would discharge were being discharged by the respondents and it could not be said so far as the aspect of responsibility is concerned, the same of the Medical Officers, Class-II (MBBS) would be much higher than compared to the respondents.

49. We may also quote with profit the decision of the Supreme Court in the case of State of Haryana and Another Vs. Ram Chander and Another,

49.1 In the said case, the respondents were working as Language Teachers in the Haryana Government Vocational Education Institute. They taught Hindi and English to Standards-XI and XII students who studied at such institutions. The respondents were appointed in the pay scale of Rs. 600-1100 which was subsequently revised to Rs. 1400-2600 w.e.f. 1/1/1996 according to the Haryana Civil Services (Revised Pay) Rules, 1987. The respondents' grievance was that they were language teachers teaching students of Std. XI and XII forming part of Higher Secondary Educational System who had been paid the same pay scale that was made available to their counter parts who were teaching Std. XI & XII students in the Higher Secondary School in the State as they were equally circumscribed as their counter parts and consequently on the principle of "equal pay for equal work" they were entitled to the higher pay scale which was made available to the Higher Secondary school teachers in those schools.

49.2 The learned Single Judge of the High Court came to the conclusion that there was no justification for the appellant State to deny equal pay scales to the respondents as were made available to the lecturers in Higher Secondary Schools as the nature of work carried-out by the respondents was identical with the work of the teachers in higher secondary schools. The learned Judge negated the contentions of the appellants that the respondents were not comparable with the higher secondary school teachers as the respondents' educational qualifications differed from those which were required to be possessed by the higher secondary school teachers-cum-lecturers. The learned Single Judge accordingly allowed the writ petition and directed the appellants to make available to the respondents the higher pay scale of Rs. 2000-3500 as was granted to the higher secondary school teachers.

49.3 The appellants feeling aggrieved by the decision of the learned Single Judge carried the matter in Appeal before the Division Bench of the High Court. The Division Bench dismissed the Letters Patent Appeal affirming the view of the learned Single Judge.

49.4 The appellants, thereafter, approached the Supreme Court by filing a Special Leave Petition. It was vociferously argued on behalf of the appellants before the Supreme Court that the educational qualifications of language teachers in Vocational Training Institutes were different from the educational qualifications for being appointed as a lecturer or teacher in the higher secondary schools. Therefore, in such circumstances it was submitted that the respondents

having ordinary passed-class Masters Degree could not have claimed parity of pay scales with the lecturers in school cadre who was required to have Masters Degree in 2nd Division with 50% marks in the relevant subject. It was also submitted before the Supreme Court that the Cadres of both those categories of employees were different. It was also submitted that the institution in which they worked were also different. It was further submitted that although they taught Standards-XI and XII students, the respondents could not be said to be teaching the same type of students as were taught in Standards XI and XII in higher secondary schools which were non-technical schools.

49.5 On the other hand it was argued on behalf of the respondents before the Supreme Court that they were doing the same type of work as their counterparts in school cadre and qualitatively and even quantitatively the work which the respondents were doing was almost identical with the work which their counterpart language teachers were doing while teaching higher secondary school students of Std. XI and XII. It was also argued that so far as the educational qualifications were concerned, it was true that the lecturers in school cadres were required to have Masters Degree in 2nd Division with 50% in the relevant subject, but the said educational qualification was more than offset so far as the educational qualifications of the respondents language teachers were concerned as they had to have additionally B.A., B.Ed. Degree with Hindi or English as the case may be, as one of the teaching subjects in the Bachelor of Education course along with the Masters degree.

49.6 The Supreme Court, after giving their anxious consideration to the rival contentions observed that before a set of employees can claim parity of Pay Scales on the principle of equal pay for equal work, it had to be shown by such claimants that qualitatively and quantitatively the work which they did was of the same type and nature as that of their counter parts whose pay scales were pressed in service for getting the parity. The Supreme Court also observed that not only that, but even identical. It further observed that it was well settled by a series of decisions of the Supreme Court that different pay scales could be prescribed for employees having different educational qualifications. It further observed that consequently if the matter had rested at that stage, they would have been required to closely consider whether it was open to the High Court to undertake the exercise of trying to find-out whether the Masters Degree in 2nd Division with 50% marks in the relevant subject being the educational qualification for becoming a lecturer in school cadre, represented an educational qualification which was parallel and equivalent to the educational qualification possessed by language teacher in Technical Institute having B.A., B.Ed. degree with the concerned subject as one of the teaching subjects in B.Ed. and a Masters Degree which may be even passed class masters degree.

49.7 The Supreme Court observed that however, the said exercise was spared for them for the reasons they proceeded to unfold.

49.8 The Supreme Court made the following observations in Para-20 which in our

opinion clinches the issue. We quote para-20 as under:

In the light of these salient features which are well established on record there would be no escape from the conclusion that but for the difference in educational qualification both these sets of employees are similarly circumscribed. So far as the educational qualifications difference is concerned, that would have, as noted above, made some vital difference but for the fact that the appellants themselves in their own wisdom thought it fit to ignore this difference in the educational qualifications by offering a uniform time scale of Rs. 1640-2900 to all Post Graduate lecturers in higher secondary schools. For all these reasons, no fault can be found with the decision rendered by the high court especially in the light of later developments at the end of the appellants themselves who treated all these teachers at par by promulgating the revised pay rules in the light of the recommendations of the Pay Revision Committee as well as by Anomalies Commission as noted in detailed by us earlier.

50. From the above, it is evident that the Supreme Court was conscious of the fact that the educational qualifications would have made the difference but as the Government itself in its wisdom had thought it fit to ignore such difference in the educational qualifications by offering a uniform time scale to all Post Graduate lecturers in higher secondary schools interference was not warranted. In the present case also, if the educational qualifications is the only aspect coming in the way of the respondents, then the Government would not have prescribed a uniform pay scale at the time of appointment for both the sets of Doctors i.e. MBBS and BAMS.

51. Before concluding, we deem fit to consider one more decision of the Supreme Court in the case of Dr. C. Girijambal Vs. Government of Andhra Pradesh, because this judgment would not be a complete judgment if we overlook the said decision.

51.1 In the said case the appellant passed Diploma in Ayurvedic Medicine (DAM) from the Kerala University in the year 1962 having studied such a course for four years and nine months with one more year of House Surgeoncy. Besides Ayurvedic Medicine the said course consisted of Modern Medicine also. Such Diploma was also included in the Second Schedule to the Indian Medicine Central Council Act, 1970. According to the appellant the Government of Kerala had treated the holders of D.A.M. at par with holders of G.C.I.M. (Graduate of the College of Integrated Medicine) and L.I.M. (Licentiate in Indigenous Medicine) with regard to registration of medical practitioners in modern medicine and all the three were also entitled to Class "A" Registration Certificate under the Andhra Ayurvedic and Homeopathic Medical Practitioners Registration Act, 1956.

51.2 In response to an advertisement which was published by the Zilla Parishad, Nellore the appellant applied for appointment to the post of Medical Officer, Local Fund Ayurvedic Dispensary, Duggarajapatnam, Nellore District and after an interview on being selected the appellant joined the duties of the post. Her salary

was fixed in the pay scale of 125-220 although the post carried a higher salary according to the advertisement. The appellant, therefore, made representations to the concerned authorities stating that she was entitled to a higher pay scale, but the authorities refused to give her the higher pay scale on the ground that only candidates with "A" Class Registration could be given the scale of Rs. 180-320 and the pay scale of Rs. 125-220 was for candidates holding the qualifications other than "A" Class Registration. The appellant, therefore, applied to the Andhra Board of Ayurveda on payment of the requisite fees to register her as "A" Class Practitioner and on their refusal to do so she filed a writ petition in the Andhra Pradesh High Court. On a consideration of the provisions of the Registration Act, the High Court held that the appellant being a person who possessed a Diploma similar to the GCIM or LIM was entitled to be registered in Class "A" and the High Court further directed the Zilla Parishad that the appellant be given higher pay scale of Rs. 180-320. The High Court's directions were carried out and the appellant was given all the benefits of the higher pay scale of Rs. 180-320 with retrospective effect from the date of her appointment.

51.3 Thereafter the pay scales of Medical Officers in Zilla Parishad and Panchayat Samitis were revised twice. According to one of the GOMs, the then existing scale of Rs. 220-425 of Medical Officers holding GCIM was revised to Rs. 250-500 and the then existing scale of Rs. 180-320 for Medical Officers holding LIM was revised to Rs. 200-400. Under another GOM the then existing scale of Rs. 250-500 was again revised to Rs. 530-1050 and the then existing scale of Rs. 200-400 was again revised by stating the revision into two categories (i) Rs. 530-1050 for MOs holding LIM and (ii) Rs. 430-800 for other MOs. Under the first revision, the appellant was given the scale of Rs. 200-400 and when the second revision was undertaken, she was fixed in the revised pay scale of Rs. 430-800. The appellant represented to the Government that she ought to have been given the scale of Rs. 530-1050 as was done for Medical Officers holding either GCIM or LIM but as she did not receive any reply from the Government, she filed a petition before the Andhra Pradesh Administrative Tribunal seeking the relief of revised pay scales contending that since under the earlier writ petition the High Court had accepted that her qualifications were similar or equivalent to holders of GCIM which entitled her to Class "A" Registration and she was entitled to the scale of pay meant for Medical Officers holding GCIM from the date of her appointment and the benefits of all the revisions in that scales.

51.4 The Tribunal rejected the writ petition holding that the appellant was not entitled to higher pay scale as she did not possess the requisite qualifications mentioned in the GOM dated October 20, 1975.

51.5 Feeling dissatisfied, the appellant filed a SLP before the Supreme Court.

51.6 Before the Supreme Court the appellant reiterated the same two contentions which were urged before the Tribunal. The Supreme Court while dismissing the Appeal made the following observations in Para-6 as under:

Dealing with the first contention we would like to observe at the outset that that the principle of equal pay for equal work cannot be invoked or applied invariably in every kind of service and certainly it cannot be invoked in the area of professional services when these are to be compensated. Dressing of any injury or wound is done both by a doctor as well as a compounder, but surely it cannot be suggested that for doing this job a doctor cannot be compensated more than the compounder. Similarly, a case in Court of law is argued both by a senior and a junior lawyer, but, it is difficult to accept that in matter of remuneration both should be treated equally. It is thus clear that in the field of rendering professional services at any rate the principle of equal pay for equal work would be inapplicable. In the instant case Medical Officers holding the qualification of G.C.I.M., or the qualification of L.I.M. or the qualification of D.A.M., though in charge of dispensaries run by Zilla Parishads, cannot, therefore, be treated on par with each other and if the State Government or the Zilla Parishads prescribe different scales of pay for each fault category of Medical Officers no could be found with such prescription. The gravamen of the appellant's contention has been that in earlier proceedings the High Court had accepted the position that a holder of D.A.M. (like the appellant) was similar to the holder of G.C.I.M. and as such the appellant along with the holders of G.C.I.M. was entitled to Class "A" Registration Certificate and, therefore, in the matter of remuneration she should have been treated in the same manner as the holder of G.C.I.M. all throughout her service. However, it needs to be clarified that the similarity or equality conferred on holders of G.C.I.M., L.I.M. and D.A.M. was for the purpose of their registration as practitioner of modern medicine under the Registration Act, 1956, all being put under Class "A" Registration and not in the matter of proficiency. The High Court in its order had also made it clear that for the purposes of registration under the Registration Act the appellant as a holder of D.A.M. was similar to G.C.I.M. and was entitled to Class "A" Registration Certificate. That these three categories were not equated in the matter of proficiency will be amply borne out by the fact that right from the beginning the pay scales prescribed for these categories were different, highest pay scale being available to holders of G.C.I.M. the next lower being available to holders of L.I.M. and the lowest to Medical Practitioners other than G.C.I.M. and L.I.M. The contention of the appellant, therefore, that because her Diploma was regarded as similar or equivalent to G.C.I.M. for registration purposes she should be given the pay scale that was available to the holder of G.C.I.M. cannot obviously be accepted and in our view, it was rightly rejected by the Tribunal.

52. What is discernable from the aforementioned observations of the Supreme Court in Para-6 is as under:

- i) In the field for rendering professional services the principle of equal pay for equal work would be inapplicable.
- ii) The similarity or equality conferred on holders of GCIM, LIM and DAM was for the purpose of their registration as practitioner of Modern Medicine under the

Registration Act, 1956 all being put under Class "A" Registration and not in the matter of proficiency.

iii) The three categories were not equated in the matter of proficiency would be amply borne-out by the fact that right from the beginning the pay scales prescribed for those categories were different, highest pay scales being available to the holders of GCIM, the next lower being available to the holders of LIM and the lowest to the Medical Practitioners other than GCIM and LIM.

If the observations made by the Supreme Court in Para-6 are made applicable straightway in the present case, then perhaps on the first blush it would appear to anyone that the respondents have no case to claim parity with the Medical Officers, Class-II (MBBS) and the doctrine of equal pay for equal work would not apply. However, if the observations are read closely then this decision is distinguishable on facts.

53. So far as the observations of the Supreme Court that the principle of equal pay for equal work cannot be invoked or applied in the area of professional services when those are to be compensated, should not be construed as laying down an absolute proposition of law that in the area of professional services like medical services the principle of equal pay for equal work cannot be invoked. However, the important distinguishing feature is that the three categories, viz., GCIM, LIM and DAM were not equated in the matter of proficiency right from the beginning which is evident from the fact that the pay scales prescribed for those categories were also different. This is not so in the present case.

54. As discussed above, the pay scales of both the Medical Officers ? MBBS and BAMS, was the same at the time of their appointments, the cadre also remained the same and the duties and responsibilities also remained the same. The another distinguishing feature is with regard to similarity or equality of the holders of GCIM, LIM and DAM for the purpose of their registration as practitioner. Such is not the position so far as the case in hand is concerned.

Therefore, in our opinion the aforesaid decision also is of no avail to the appellants.

In view of the above, we hold that the learned Single Judge took the correct view in the matter and rightly allowed the writ-applications filed by the respondents herein. We hold that there is no merit in the appeals and they deserve to be dismissed. All the appeals stand dismissed with no order as to costs. The connected Civil Applications also stand disposed of accordingly.