

GAHC010243272022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7642/2022

THE AYURVEDIC DOCTORS ASSOCIATION AND 2 ORS.
NATIONAL HEALTH MISSION, ASSAM, HOUSE NO. 22, MILANJYOTI PATH,
SIJUBARI, HATIGAON, GUWAHATI- 781038, IN THE DISTRICT OF KAMRUP
(METRO), ASSAM, REPRESENTED BY ITS PRESIDENT NAMELY, DR.
MUKUL SARMA.

2: MUKUL SARMA
S/O LATE GIRINDRA NATH SARMA
VILL. AND P.O.- PATACHARKUCHI
DIST.- BARPETA
ASSAM
PIN- 781326.

3: SHEIKHUL ISLAM
S/O MD. SAMED ALI
VILL.- GAREMARI (MAZDIA)
P.O.- PACHIM MAZDIA
P.S.- SARGHEBARI
DIST.- BARPETA
ASSAM
PIN- 781305 (THE GENERAL SECRETARY OF THE AFORSAID
ASSOCIATION)

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HEALTH
AND FAMILY WELFARE DEPTT., DISPUR, GUWAHATI- 6.

2: THE MISSION DIRECTOR
NATIONAL HEALTH MISSION
NATIONAL HEALTH MISSION
ASSAM
SAIKIA COMMERCIAL COMPLEX

SRINAGAR PATH
GUWAHATI- 5

Advocate for the Petitioner : MR B SINHA

Advocate for the Respondent : SC, HEALTH AND F W

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

28.06.2023

Heard Mr. B. Sinha, the learned counsel for the petitioners and Mr. B. Gogoi, the learned counsel appearing on behalf of the National Health Mission (NHM), Assam.

2. The petitioners herein are an Association of Ayurvedic Doctors working under NHM, Assam. The petitioner No.2 is the President of the said Association and the petitioner No.3 is the General Secretary of the said Association. By way of the instant writ petition, the petitioners have assailed the order dated 21.10.2022 whereby the Mission Director, NHM, Assam in terms with the order dated 29.03.2022 passed in WP(C) No.8759/2018 had revised remuneration of the Medical Officers (Ayurvedic) from Rs.30,500/- per month to Rs.40,000/- per month during the period from 28.12.2018 to 30.03.2019 and Rs.50,000/- per month w.e.f. 01.04.2019. In the said order, it was also mentioned that existing Medical Officers and Ayurvedic doctors under NHM, Assam would be eligible to draw the revised initial remuneration for the corresponding period in case of drawing lesser remuneration per month.

3. It is further relevant to take note of that the petitioners, by way of the

instant writ petition, have also sought for a mandamus directing the respondents authorities to make the salary of the Medical Officer (Ayurvedic) at par with the Medical Officer, Allopathic under NHM, Assam w.e.f 18.12.2018 and from April, 2019 onwards.

4. In order to decide the controversy raised in the instant writ petition, it is relevant to take note of that in WP(C) No.8759/2018, the grievance of the petitioners herein who were also the petitioners in the said writ proceedings is that while the NHM has engaged Allopathic and Ayurvedic doctors under the NHM on contract basis, the fixed pay given to the Allopathic doctors is higher than the pay given to the Ayurvedic doctors.

5. The Coordinate Bench of this Court vide the judgment and order dated 29.03.2022, taking into account the judgment passed by the Division Bench of the Uttarakhand High Court as well as the State of Assam having taken a conscious decision to give the same scale of pay to the Allopathic doctors and Ayurvedic doctors working in the Health Department directed the respondent, i.e. NHM in the said writ petition to release the salary to the petitioners therein at par with the Allopathic Medical Officers of NHM, Assam with effect from the date of filing the writ petition, i.e. 18.12.2018. It is pursuant to the said judgment dated 29.03.2022, the impugned communication was issued.

6. Mr. B. Gogoi, the learned counsel appearing on behalf of the NHM submits that in a recent judgment by the Supreme Court in the case of ***State of Gujarat & Others vs. Dr. P. A. Bhatt & Others***, reported in ***2023 SCC OnLine SC 503***, the Supreme Court had decided the issue as to whether Allopathic doctors and doctors of indigenous medicine said to be performing "equal work" so as to be entitled to "equal pay". Mr. B. Gogoi,

the learned counsel for the NHM referring to Paragraph Nos.42, 43 & 44 of the said judgment submits that the Supreme Court has categorically observed that the duties to be performed by an Allopathic doctor and by an Ayurvedic doctor are completely different and distinct. Mr. B. Gogoi, the learned counsel for the NHM, therefore, submits that the Supreme Court while recognizing the importance of doctors and the need to promote alternative/indigenous systems of medicine observed that both the categories of doctors are certainly not performing equal work to be entitled to equal pay. The learned counsel for the respondents, therefore, submits that the second prayer that the relief enumerated as (b) cannot be granted in view of the judgment of the Supreme Court in the case of **Dr. P. A. Bhatt** (supra). The learned counsel for the respondents further submitted that the impugned order dated 21.10.2022 was issued taking into account the respective salaries at that relevant point of time. However, at that relevant point of time, there were certain Medical Officer (Ayurved), e.g. the petitioner Nos.2 & 3 herein whose salaries were higher than Rs.40,000/- per month as on 18.12.2018, it is under such circumstances to protect them it has been mentioned that only those doctors who were getting lesser remuneration than the revised remuneration would be entitled to the benefit thereof. The learned counsel for the respondent NHM further submits that after 18.12.2018, there is no further discrepancy and the revised scale has already been notified with effect from 01.04.2019 and the arrear pay would be duly paid to those doctors who are entitled to. The learned counsel for the NHM, therefore, submits that it may be some members of the petitioner No.1 Association who may not have received the entitlement in terms with the order dated 21.10.2022, and as such, they may submit representation before the said authority.

7. On the other hand, Mr. B. Sinha, the learned counsel for the petitioners has submitted that in the year 2012-13, the remuneration of Allopathic doctors as well as Ayurvedic doctors were the same. However, subsequently there was an increase in remuneration of the Allopathic doctors and the remuneration of the Ayurvedic doctors remained stagnant. By that time, the writ petition, i.e. WP(C) No.8759/2018 was disposed of, the remuneration of the Allopathic doctors was much higher than the rate as fixed in the order dated 21.10.2022. The amount which has however been taken into account in respect to the petitioner Nos.2 & 3 is based upon the increment and not on the basis of the remuneration. The learned counsel for the petitioner further submits that the said Medical Officers (Ayurvedic) and the Medical Officers (Allopathic) in the Government of Assam, Department of Health and Family Welfare is however receiving the same amount.

8. I have heard the learned counsel for the parties and given my anxious consideration to the matter.

9. From the judgment passed by the Supreme Court in the case of **Dr. P. A. Bhatt** (supra), wherein it was categorically observed that Ayurvedic doctors and Allopathic doctors discharge diverse functions and are not performing the equal work and as such would not be entitled to equal pay, the issue, therefore, pertaining to grant of pay on the principle of equal pay for equal work therefore stands concluded in view of the judgment of the Supreme Court in the case of **Dr. P. A. Bhatt** (supra).

10. As regards the contention relating to the challenge to the order dated 21.10.2022 whereby the benefits of the revised structure have been given only to cases who were drawing lesser remuneration per month and taking into account the submission of Mr. B. Gogoi, the learned counsel for the NHM

that the said was done so in order to protect those Medical Officers (Ayurvedic) so that they do not get lesser amount than what has been revised, this Court, therefore, is of the opinion that the question of interference with the order dated 21.10.2022 is not called for. Be that as it may, this Court is also of the opinion that if the members of the petitioners' Association is only getting benefit in terms with the order dated 21.10.2022, the members of the petitioners' Association would be at liberty to file representation before the respondent No.2, who shall taking into account the order dated 21.10.2022, grant the benefits as given therein.

11. With the above observation and direction, the instant petition stands disposed of.

JUDGE

Comparing Assistant