



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

Case No. : WP(C)/275/2020

ONOM SAROH
S/O LT. TANOR SAROH, PRESENTLY SERVING AS COMPOUNDER, POLICE
TRAINING CENTRE(PTC), HEALTH UNIT BANDERDEWA, PO/PS
BANDERDEWA, PAPUM PARE DIST. AP.

VERSUS

The State of AP and Others
THROUGH THE CHIEF SECRETARY, GOVT. OF AP, ITANAGAR.

2:THE CHIEF SECRETARY

Age: 0

Occupation :

GOVT. OF AP ITANAGAR.

3:THE SECRETARY (FINANCE)

Age: 0

Occupation :

GOVT. OF AP ITANAGAR.

4:THE DEVELOPMENT COMMISSIONER

Age: 0

Occupation :

FINANCE (P AND I) DEPT. GOVT. OF AP ITANAGAR.

5:THE SECRETARY (HOME)

Age: 0

Occupation :

GOVT. OF AP ITANAGAR.

6:THE DIRECTOR GENERAL OF POLICE

Age: 0

Occupation :
POLICE HEADQUARTERS GOVT. OF AP ITANAGAR

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : GA (AP)

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

09.04.2024

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. I. Riram, Additional Senior Government Advocate for the State respondents.

2. By filing this writ petition, the petitioner has prayed for a direction to the respondent authorities to upgrade the scale of pay of the petitioner as Compounder at par with the scale of pay of the Pharmacists of the Department of Health & Family Welfare, Government of Arunachal Pradesh as well as the Pharmacists serving under the Directorate of Prison, Arunachal Pradesh, w.e.f. 18.12.2014, i.e. the date on which the Pharmacists of the Department of Health & Family Welfare, Government of Arunachal Pradesh was granted Grade Pay of Rs. 4200/- in PB-2, Rs. 9300-34,800/- and for granting of all consequential benefits to the petitioner w.e.f. 18.12.2014.

3. The case of the petitioner, in brief, is that he is a degree holder in Bachelor of Pharmaceutical Sciences having passed out from Dibrugarh University in First Class in the year 2005 and is a registered Pharmacist under the Pharmacy Council of the State of Arunachal Pradesh and as such, is a registered Pharmacist under Section 31(a) of the Pharmacy Act, 1948

(hereinafter referred to as the 1948 Act).

4. Pursuant to the advertisement dated 20.11.2006, issued for filling up of various posts including 1 (one) post of Compounder in Arunachal Pradesh Police, the petitioner was appointed as Compounder after due selection process in the Arunachal Pradesh Police vide order dated 05.10.2007 in the scale pay of Rs. 4500-125-7000/- per month plus other allowances as admissible from time-to-time. Accordingly, the petitioner joined his service at Primary Health Centre, Police Training Centre (PTC), Banderdewa. 5. It is contended that the 6th Central Pay Commission's (CPC) recommendation came into force w.e.f. 01.01.2006 and a new concept of grade pay was introduced, which has been adopted by the State of Arunachal Pradesh. Accordingly, pursuant to the adoption of the 6th CPC recommendation, the Pharmacists of the Department Health & Family Welfare, Government of Arunachal Pradesh were granted the revised pay scale of Rs. 5200-20200 PB + GR Rs. 2800.

6. It is contended that pursuant to the 6th CPC recommendation, the Pharmacists serving under the Central Government and its various instrumentalities were being granted the revised pay scale of Rs. 9300-34,800 PB 2 + GP Rs. 4200. Accordingly, the Pharmacists serving under the Government of Arunachal Pradesh placed their grievance before the concerned authorities regarding the anomaly of pay vis-à-vis the Pharmacists serving under the Central Government and those serving under the Government of Arunachal Pradesh. The grievances was placed before the High Level Standing Committee (hereinafter referred to as HLSC), constituted for considering proposals for upgradation of pay scale/pay anomalies to various categories of employees. The HLSC recommended for removal of pay anomaly of the

Pharmacists of the Department of Health & Family Welfare by upgrading the scale of pay of the Pharmacist under the Department of Health & Family Welfare, Government of Arunachal Pradesh from the existing pay scale. Vide order dated 24.12.2014, issued by the Secretary (Health & Family Welfare), Government of Arunachal Pradesh, the scale pay of the Pharmacists of the Department of Health & Family Welfare was upgraded from the existing pay scale of Rs. 5200-20200+ GP Rs. 2800 to Rs. 9300-34,800 + GP Rs. 4200 under Pay Band-2 with effect from 18.12.2014. Vide another order dated 24.12.2014, in supersession of the earlier order was issued, which provided for removal of pay anomaly of Pharmacists under Health Department, Government of Arunachal Pradesh by introducing a new non-functional grade wherein, the entry grade "Grade Pay of Rs. 2800/- in PB-1, Rs. 5200-20,200/- will be upgraded to 'Grade pay of Rs. 4200/- in PB-2, Rs. 9300-34800/- after completion of 2(two) years of continuous service as Pharmacist and the upgradation to the non-functional grade pay of Rs. 4200/- was not to be treated as promotion for MACP purpose and that the Pharmacist shall be eligible for grant of MACP at a grade pay of Rs. 4600/-, Rs. 4800/- and Rs. 5400/- on completion of 10, 20 and 30 years of service.

7. It is the contention of the petitioner that pursuant to the order dated 24.12.2014, the pay anomaly of Pharmacists in the Department of Health & Family Welfare, Government of Arunachal Pradesh was removed by upgrading the scale of pay from the existing pay scale of Rs. 5200-20200 + GP Rs. 2800 to Rs. 9300 – 34,800 + GP Rs. 4200 under Pay Band – 2. However, the scale of pay of the petitioner, who is serving as a Compounder, which is analogous to the post of Pharmacist, under Arunachal Pradesh Police has not been upgraded and still is being granted the pay scale of Rs. 5200-20200 + GP Rs. 2800 under

Pay Band – 1. The petitioner placed his grievance before the Assistant Inspector General of Police (E), Police Headquarters, Itanagar by way of submitting a representation with a request to upgrade his pay scale from the existing pay scale to the upgraded pay scale.

8. It is contended that there is no longer any post of Compounder in India after coming into force of the 1948 Act and the use of nomenclature 'Compounder' in the Recruitment Rules and the nomenclature 'Compounder' ought to be replaced by the Pharmacist in terms of the 1948 Act. It is further contended that since the nomenclature 'Compounder' was being used in the Recruitment Rule for the post(s) of Compounder, Group-C, Non-Ministerial Rules, 2005 in the Police Department instead of 'Pharmacist', the Assistant Inspector General of Police wrote a letter dated 27.04.2015 to the Director of Health Service, Government of Arunachal Pradesh, seeking clarification whether the posts of Compounder and Pharmacist are analogous/similar and also to furnish a copy of the proposal for removal of pay anomaly submitted by the Office of Director of Health Service to the Government and also a copy of Recruitment Rule of Pharmacist.

9. In response to the said letter, the Director of Health Services, Government of Arunachal Pradesh through the Joint Director of Health Services (E), Arunachal Pradesh vide letter dated 27.05.2015 has clarified that the posts of Pharmacist and Compounder are similar and all Compounders are designated as Pharmacist which is regulated under the 1948 Act and as such, the post of Compounder is to be re-designated as Pharmacist along with upgradation of the pay scale as per 6th CPC.

10. It is further contended that the Director General of Police, Arunachal

Pradesh was kind enough to submit a proposal to the Home Department, Government of Arunachal Pradesh, expressing the need to re-designate the Compounder post to Pharmacist and to upgrade the pay scale of Compounder/Pharmacist from Rs. 5000-20,200 + GP Rs.2800/- to Rs. 9300-34800+ GP Rs. 4200/- of the Police Department. In response to the said proposal, the Under Secretary (Home), Government of Arunachal Pradesh vide letter dated 18.02.2016, wrote a letter to the Director General of Police, Arunachal Pradesh stating that due to austerity measures, upgradation of pay band and grade pay is banned till implementation of 7th CPC and requested that the same proposal be submitted after implementation of the 7th CPC for Government's consideration.

11. The petitioner approached the respondent authorities for removal of pay anomaly in his pay scale. The respondent authority, vide letter dated 20.09.2016 wrote back to the Principal, PTC, Banderdewa that the matter of re-designation of Compounder post to Pharmacist and upgradation of pay scale of Compounder/Pharmacist from Rs. 5000-20,200 + GP Rs.2800/- to Rs. 9300-34800+ GP Rs. 4200/- of Police Department will be placed before the State Government once the 7th CPC is implemented.

12. In the year 2016, the recommendation of the 7th Central Pay Commission was accepted by the Government of Arunachal Pradesh and in terms of the recommendations of the 7th CPC, the basic pay and grade pay had been merged, and in terms of the revised pay as per recommendations of the 7th CPC, the petitioner is entitled to a basic pay of Rs. 35,400/-. However, the pay of the petitioner has been fixed on the basis of calculation of basic pay of Rs. 29,200/-.

13. It is the contention of the petitioner that the meetings of the HLSC were fixed on many occasions and thereafter, have been postponed/cancelled, the last being dated 21.10.2019. According to the petitioner, after postponing and deferring the meetings, no meeting of HLSC has been convened to consider the matter of upgradation of scale of pay of various posts under various Departments under the Government of Arunachal Pradesh.

14. It is also contended by the petitioner that the pay scale of one *Shri Gejum Ingo*, who has been serving as Pharmacist in the Directorate of Prison, Government of Arunachal Pradesh, has been up-graded from the pay band of Rs. 5200-20,200 + 2800 GP to pay band of Rs. 9300-34,800 + 4200 GP w.e.f from 18.12.2014 and he has been receiving a scale pay at par with his counterpart working in the Health & Family Welfare Department under Government of Arunachal Pradesh. However, the grievance of the petitioner has not been considered till date.

15. Mr. D. Panging, learned counsel for the petitioner, submits that after the implementation of the 7th CPC, with effect from 01.01.2016, the respondent authorities ought to have upgraded the scale of pay of the petitioner at par with the Pharmacists working in the Health Department of Arunachal Pradesh, as the reason cited by the respondent authorities in non-recommendation/consideration for up-gradation of pay band and grade pay of the petitioner was that the same was banned till implementation of 7th CPC. He further submits that after the implementation of the 7th CPC, the petitioner is entitled to a basic pay of Rs. 35,400/-, however, the pay of the petitioner has been fixed on the basis of calculation of basic pay of Rs. 29,200/- which one is entitled on having a grade pay of Rs.2800/-, as such the anomaly in scale of

pay of the petitioner vis-à-vis his counterpart, continues and has become more prominent and discriminatory.

16. Mr. Panging, learned counsel submits that the Pharmacists of the Health & Family Welfare Department, Arunachal Pradesh as well as the Pharmacist working in the Directorate of Prison, Government of Arunachal Pradesh have been granted the grade pay of Rs.4200/- while the petitioner serving as Pharmacist under the nomenclature of 'Compounder' in the PTC, Health Unit, Banderdewa has been granted the grade pay of Rs.2800/- despite the clarification that the posts of Pharmacist and Compounder are similar and the term compounder is a misnomer as all Compounders have been designated as Pharmacists which is regulated under the Pharmacy Act, 1948. As such, the petitioner has been granted lesser grade pay than his counterparts in the most discriminatory manner and the petitioner has been subjected to a discriminatory treatment in respect of scale of pay. It is further submitted that such action of the respondent authorities in granting higher scale of pay to other Pharmacists not only causes heartburning but also has an adverse effect on the working moral of the petitioner.

17. Mr. Panging, learned counsel, submits that the action of the respondent authorities in granting lesser scale of pay/grade pay than his counterpart i.e., Pharmacist is totally arbitrary and unfair. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of state action and as a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. He further submits that the respondent authorities have acted in a most biased and discriminatory manner by granting lesser scale

of pay/grade pay to the petitioner than his counterpart without taking any action for upgrading/enhancing the scale of pay of the petitioner at par with the Pharmacists working in the Health Department of Arunachal Pradesh.

18. Mr. Panging, learned counsel submits that the petitioner has been subjected to unfair and discriminatory treatment by the respondent authorities inasmuch that respondent authorities have upgraded the scale of pay with grade pay of other similarly situated person who is employed in service of the Directorate of Prison, Government of Arunachal Pradesh at par with their counterparts/equivalent grade working in the Health Department of Arunachal Pradesh and had deferred upgradation of the scale of pay of the petitioner from Grade Pay of Rs.2800 in PB-1 Rs.5200-20200 to Grade pay of 4200 in PB-2 Rs.9300-34800 at par with the post of Pharmacists in the Health Department of Arunachal Pradesh on the ground that the upgradation of scale of pay/grade pay would not be considered till 7th CPC is not implemented. He submits, therefore, that a direction may be issued to the respondent authorities to upgrade the scale of pay with grade pay of the petitioner with similarly situated person who is employed in service of the Directorate of Prison, Government of Arunachal Pradesh at par with their counterparts/equivalent grade working in the Health Department of Arunachal Pradesh

19. Mr. I. Riram, learned Additional Senior Government Advocate, by referring to the statements made in the affidavit-in-opposition filed on behalf of the respondent no. 4, submits that the meetings of HLSC had to be postponed or deferred due to administrative reasons. He submits that the HLSC on pay anomaly/grade pay matter is yet to examine the proposal submitted by 17 (seventeen) Departments for upgradation of Grade pay including present

petitioner's proposal. Due to current fiscal situation arising out of outbreak of COVID-19, to rationalize, examine and optimize available resources, austerity measures had been imposed. He submits that in the next meeting, the HLSC will take up the cases of pay anomaly/grade pay matters including the case of the petitioner on a convenient date.

20. Mr. Riram, learned Additional Senior Government Advocate by referring to the affidavit-in-opposition filed on behalf of the respondent no. 6, submits that the Police Department has already submitted a proposal vide order dated 25.09.2017 for re-designation of compounder post to Pharmacist and for upgradation of Pay scale of Compounder/Pharmacist from Rs. 5200-2000 + GP 2800/- to Rs. 9300-34800 + GP Rs. 4200/- (6th CPC)/Level 6, Rs. 35400-112400/- (7th CPC) of Police Department. He submits that in view of the categorical stands taken in the affidavit-in-opposition filed on behalf of the State respondents, the case of the petitioner shall be considered by the HLSC for Pay anomaly/grade pay matters as and when the meeting is convened.

21. I have considered the submissions of the learned counsels for the parties and also perused the materials available on record.

22. Admittedly, the petitioner is serving as a Compounder in the Arunachal Pradesh Police, at PTC, Banderdewa, after his appointment vide order dated 05.10.2007 in the scale pay of Rs. 4500-125-7000/- per month after due selection process pursuant to the advertisement dated 20.11.2006.

23. It is noticed that the Recruitment Rule framed under the proviso to Article 309 of the Constitution of India provided for the post of 'Compounder' vide notification dated 05.11.2005 issued by the Chief Secretary, Government of Arunachal Pradesh, although after coming into force of the Pharmacy Act, 1948,

the nomenclature of 'Compounder' is required to be changed to 'Pharmacist'.

24. It is taken note that before coming into force of the Pharmacy Act, 1948, the Doctor's Assistant who used to combine various medicines at the Doctor's prescription was known as Compounder. However, after coming into force of the 1948 Act, all Compounders were required to be registered under Section 29 of the 1948 Act and the nomenclature of 'Compounder' was required to be changed to 'Pharmacist'. The Government of India from time to time has issued advisories to all Ministries/Departments of Central Government as well as State Governments to change the designation of Compounders to Pharmacists. It appears that even after coming into force of the Pharmacy Act, 1948 and after various advisories issued by the Central Government, the Arunachal Pradesh Police has framed the Recruitment Rule in 2005 for the post of Compounder without any re-designation to Pharmacist, which may be due to sheer ignorance.

25. It is noticed that the Department of Health and Family Welfare, Government of Arunachal Pradesh has already framed a Recruitment Rule to the post of Pharmacist for the Medical Department way back in 1979, which provides that the educational qualification required for direct recruits is Diploma in Pharmacy and registration with Pharmacy Council of India or any of its State Branch.

26. It is taken note that even after coming into force of the Pharmacy Act, 1948, which requires the designation of 'Compounder' to be changed to 'Pharmacist' and there is no recognition of Compounder anymore, the Home Department of Government of Arunachal Pradesh has framed the Recruitment Rules for regulating the method of recruitment to the post of 'Compounder' in

the Police Department, namely, 'the Recruitment Rule for the post(s) of Compounder, Group-C, Non-Ministerial Rules, 2005'. A comparative reading of the Recruitment Rules for the recruitment to the post of Pharmacist of the Health Department, Government of Arunachal Pradesh reflects that educational qualification required for direct recruits is same as that of the recruitment of Compounder in the Police Department . It is also taken note that the pay scale of the Pharmacist of the Health Department and Compounder of the Police Department were also same, till the 6th CPC. The Compounders of the Police Department and Pharmacists of the Health Department, Government of Arunachal Pradesh were enjoying the same scale of pay. The Department of Home, while framing 'the Recruitment Rule' for the post(s) of Compounder, Group-C, Non- Ministerial Rules, 2005' appears to be unaware that the nomenclature of 'Compounder' which was no longer in use in India, is to be redesignated as 'Pharmacist'. It is seen that there is no educational course available for the post of Compounder in India and it is only the Diploma and Degree Courses in Pharmacy which can be undertaken in India.

27. The records reveal that the State authorities has removed the pay anomaly by upgradation of the scale pay of the Pharmacist of Health and Family Welfare Department from existing pay scale of Rs. 5200-20200+ GP Rs. 2800 to Rs. 9300-34,800 + GP Rs. 4200 under Pay Band-2 with effect from 18.12.2014 as recommended by HLSC on pay anomalies and as approved by the cabinet decision dated 18th December, 2014.

28. Vide another order dated 24.12.2014, in supersession of the earlier order was issued, which provided for removal of pay anomaly of Pharmacists under Health Department, Government of Arunachal Pradesh by introducing a new

non-functional grade wherein, the entry grade 'Grade Pay of Rs. 2800/- in PB-1, Rs. 5200-20,200/-' will be upgraded to 'Grade pay of Rs. 4200/- in PB-2, Rs. 9300-34800/-' after completion of 2(two) years of continuous service as Pharmacist and the upgradation to the non-functional grade pay of Rs. 4200/- was not to be treated as promotion for MACP purpose and that the Pharmacist shall be eligible for grant of MACP at a grade pay of Rs. 4600/-, Rs. 4800/- and Rs. 5400/- on completion of 10, 20 and 30 years of service with effect from 18.12.2014 as recommended by HLSC and as approved by the cabinet decision dated 18th December, 2014.

29. The Director of Health Services, Government of Arunachal Pradesh, on the clarification sought by the Assistant Inspector General of Police, Headquarter, Itanagar, Arunachal Pradesh, has clarified that the posts of Pharmacist and Compounder are similar and all Compounders are to be redesignated as Pharmacists which is regulated under the Pharmacy Act, 1948. Accordingly, the post of Compounder has been re-designated as Pharmacist along with upgradation of the pay scale as per the 6th CPC.

30. On careful consideration of the materials available on record, the petitioner though appointed as Compounder, which is analogous/ similar to the Pharmacist, in fact ought to have been re-designated as Pharmacist, is entitled to upgradation of his scale of pay at par with that of the counter-part Pharmacist of the Health & Family Welfare Department as well as the Director of Prison, Govt. of Arunachal Pradesh whose scale of pay and grade pay have been upgraded by the State Government after implementation of 6th and 7th CPC committee recommendation by the State.

31. In my considered view, non consideration of the grievance of the

petitioner for upgradation of his scale of pay and grade pay at par with the Pharmacists of Health and Family Welfare Department as well as Director of Prison, which is uncontrovertibly same and analogous, has deprived the entitlement of the petitioner. The non-redesignation of the post of Compounder to Pharmacist as required after coming into force of the Pharmacy Act, 1948 and in terms of the various advisories issued by the Central Government from time to time by the State Government, has resulted in deprivation of the entitlement of the petitioner. Since the authorities in the Police Department have submitted a proposal for re-designation of the Compounder as Pharmacist in terms of the law and also for upgradation of scale of pay at par with the Pharmacist of the Health and Family Welfare Department and Director of Prison of the Government of Arunachal Pradesh, same requires immediate consideration.

32. It is trite that the gravamen of Article 14 is equality of treatment. Article 14 confers a personal right by enacting a prohibition which is absolute. Equality of treatment under Article 14 is a objective test and it is not the test of intention and therefore, the basic principle underlying Article 14 is that law operate equally on all persons under like circumstances and it cannot be arbitrarily exercised by those on whom powers are conferred. The scheme of Article 14 of the Constitution prohibits the unequal treatment of equally situated persons. The Article 14 of the Constitution requires that the State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory and it must not be guided by any extraneous or irrelevant consideration, as that would be denial of equality. The constitutional principle of equality is inherent in the rule of law. Rule of law is satisfied where laws are applied or enforced equally, that is, even-handedly, free from bias and without

irrational distinction.

33. It has been held in a catena of decisions that where decision/action is vitiated by arbitrariness, unfairness, illegality, irrationality, it will require judicial intervention and the Courts will set right the decision making process. The State, in exercise of its various functions, is governed by the mandate of Article 14 of the Constitution which excludes arbitrariness in State action and requires the State to act fairly and reasonably. In the instant case, the respondent authorities cannot act arbitrarily and chose to not upgrade the scale of pay of the petitioner at par with the Pharmacists of Health Department and Directorate of Prison of Arunachal Pradesh.

34. In view of the discussions and conclusion arrived at hereinabove and considering the categorical statement of the State respondents that the case of the petitioner along with other cases, with regard to pay anomalies/upgradation of pay scale shall be considered by the HLSC as and when the meeting is convened, I deem it appropriate to direct the State authorities to place the case of the petitioner before the High Level Standing Committee. Accordingly, the respondent authorities are directed to place the case of the petitioner for upgradation of scale of pay at par with the Pharmacist of Department of Health and Family Welfare and the Director of Prison , Government of Arunachal Pradesh before the HLSC within 1 (one) month from the date of receipt of certified copy of this order. Thereafter, the HLSC shall consider the case of the petitioner for upgradation of his pay scale, in terms of the 6th and 7th CPC and shall recommend it to the appropriate authority for upgrading the pay scale of the petitioner at par with the Pharmacist of Department of Health and Family Welfare and the Director of Prison, Government of Arunachal Pradesh. The

entire exercise shall be completed within a period of 5 (five) months from today.

35. With the above observations and directions, the writ petition stands allowed and disposed of. No order as to costs.

JUDGE

Comparing Assistant