

Neutral Citation No. - 2024:AHC-LKO:62438

A.F.R.

Reserved on: 24.07.2024

Delivered on: 10.09.2024

Court No. - 5

Case :- WRIT - A No. - 13992 of 2019

Petitioner :- Dr. Vinod Chandra Jain And 3 Ors.

Respondent :- State Of U.P.Thru Addl.Chief Secy.Medical
Healthandfamilyandanr.

Counsel for Petitioner :- Hari Prasad Gupta

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 29588 of 2019

Petitioner :- Dr. Fareed Iqbal Zuberi And Ors.

Respondent :- The State Of U.P.Thro.Prin.Secy.Deptt.Medical
And Health And Ors

Counsel for Petitioner :- Ashok Shukla

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 24592 of 2020

Petitioner :- Dr. Mahesh Kumar Gupta And Ors.

Respondent :- State Of U.P.Thru.Addl.Chief Secy.Medical
Health And Anr.

Counsel for Petitioner :- Hari Prasad Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Irshad Ali,J.

01. Heard Sri Hari Prasad Shukla and Sri Ashok Shukla, learned counsel for the petitioners and Sri Shiv Ganesh Singh, learned Additional CSC for respondent - State.

02. This bunch of writ petitions is being decided by means of a common judgment and order as the controversy involved in the writ petitions is similar in nature treating Writ-A No.13992 of

2019 to be leading writ petition and the order passed thereon shall be equally applicable to all the connected matters.

03. The controversy involved in the present bunch of writ petitions arises due to denial of extension benefit granted by Hon'ble Supreme Court of India in Writ Petition No.43 of 1998; Dr. Chandra Prakash and others Vs. State of U.P. and others decided on 04.12.2002, reported in 2002 (10) SCC 710, the petitioners preferred present writ petitions with following prayer:

- i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 20.05.2005 upto extent of denial of promotion on higher post and denial of payment of arrears of salary and order dated 01.11.2018, whereby the respondents said that all the benefits have been given to the petitioners.
- ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to examine the case of the petitioners to grant the benefit of judgment and order passed by this Hon'ble Court and Hon'ble Supreme Court of India in respect of grant of promotion and position, selection grade and arrears of salary from the date of notional promotion as the same has been given by the respondents to other similarly situated persons.
- iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to promote and provide the position with all incidental and consequential benefits including selection grade of Rs.4500-5700 to the petitioners as per direction of Hon'ble Supreme Court of India.
- iv) Issue a writ, order or direction in the nature of mandamus commanding the respondents to fix and revise the pension of the

petitioners as per rules and pay the arrears of salary as well as arrears of pension with interest at market rate.

v) Issue a writ, order or direction in the nature of mandamus commanding the respondents to provide the selection grade for the post of Joint Director in the pay scale of Rs.4500-5700 as per Government Order dated 29.12.1997, as the same benefits have been given to other similarly situated persons.

vi) Any other writ, order or direction, as this Hon'ble Court may deem fit and proper and to award the cost of the petition to the petitioners.

04. There was a dispute in respect of determination of seniority and extension of benefit of promotion and position between the regularly selected and appointed medical officers and medical officers appointed by the Departmental Selection Committee (DSC) on adhoc basis finally deciding the case of Dr. Chandra Prakash (Supra) on 04.12.2002, wherein Hon'ble Supreme Court of India has held as under:

"We accordingly allow the writ petitions and declare that (1) the writ petitioners are not within the purview of Rules of 1979, (2) the State Government will fix the seniority of all doctors in PMHS Cadre from the date of orders of their initial appointment within a period of six weeks from the date of this order and give all consequential benefits including promotions and positions on the basis of such seniority list and, (3) those doctors, who were selected in year 1972 and 1977-78-79 by Principal Secretary and who were not issued orders of appointment and joined the service on the basis of Tandon's case, will be treated as having been appointed on the date they actually joined the service and their seniority will be counted from that date."

05. In compliance of judgment and order of Hon'ble Supreme Court of India dated 04.12.2002, on 05.06.2003 the respondents circulated the seniority list of medical officers of U.P. Medical

and Health Department and in the seniority list, name of petitioners finds place.

06. On the basis of seniority list, by adopting the procedure of pick and choose, several medical excluding the petitioners got promoted to the post of Joint Director, Additional Director, Director and Director General.

07. In violation of order of Hon'ble Supreme Court, instead of extending the benefits of promotion and position to all on the basis of seniority list, vide impugned order dated 20.05.2005, the respondents notionally promoted the medical officers from senior grade to Joint Director grade in the pay scale applicable on the date and denied to pay the arrears of salary ignoring the fact that on the basis of seniority, they have already promoted several medical officers upto the post of Director General & Director and paid them arrears of salary.

08. The petitioners have been promoted on the post of Joint Director w.e.f. 10.05.1990, thus, as per Government Order dated 29.12.1997 and 31.07.2008, they are entitled for selection grade pay scale of Rs.4500-5700 w.e.f. 10.05.1990 but respondents are not extending the benefits to them.

09. Being aggrieved with the discriminatory action of the respondents, several writ petitions have been filed by medical officers of U.P. Medical and Health Department. In Writ Petition No.1543 (S/B) of 2004 vide judgment and order dated 18.09.2007, this Court has been pleased to dispose of the writ petition directing the respondent No.1 to grant all consequential benefits including notional promotion etc to the petitioners within two months from the date of production of a certified copy of the order.

10. Against judgment and order dated 18.09.2007; Writ Petition No.1543 (S/B) of 2004; Dr. Raghubeer Prasad Dixit and others Vs. State of U.P. and others, the State of U.P. preferred Review Petition NO.100 of 2008; State of U.P. and others Vs. Dr. Raghubeer Prasad Dixit and others, which was dismissed by this Court on 31.07.2008.

11. Due to discretionary action of the State Government, several medical officers of U.P. Medical and Health Department preferred writ petitions before this Court at Lucknow and Allahabad. The writ petitions filed at Lucknow Bench have been allowed but Writ-A No.7742 of 2004; Dr. Chandra Prakash and others Vs. State of U.P. and others, filed at Allahabad was dismissed on 10.11.2005.

12. Being aggrieved with the judgments of this Court, State Government preferred SLP (Civil), which was converted as Civil Appeal Nos.3041, 3043, 3044, 3045, 3046 of 2010 and Dr. Chandra Prakash filed SLP (Civil), which has been converted as Civil Appeal NO.3042 of 2010. All the civil appeals were connected on 05.09.2011 and Hon'ble the Supreme Court of India has held as under:

"On the facts and circumstances, particularly having regard to the fact that most of the contesting respondents are retired, we do not propose to stay the impugned order of the High Court. If appellants succeeds ultimately, it will be entitled to recover the amount paid in pursuance of the order of the High Court."

13. Subsequently, all the civil appeals were listed on 24.07.2024 and the civil appeal filed by the State of U.P. has been dismissed while the civil appeal NO.3042 of 2010; Dr. Chandra Prakash and others Vs. State of U.P. and others was allowed with following order:

"In view of the observation made above, we have no option but to set aside the part of the impugned order dated 10th November, 2005 passed by the High Court of Judicature at Allahabad in CMWP 7742/2004, whereby High Court refuse to grant arrear of salary in favour of the appellant.

The respondents are directed to pay the appellant the consequential benefits of arrears of pay pursuant to the said order in view of the notional promotion granted in favour of the appellant.

Impugned order passed by the High Court stands modified to the extent above.

The appeal is allowed with direction to the State to pay arrears of salary if it not yet paid within three months. On failure, the State of U.P. will be liable to pay interest @6% from the date of judgment of this Court."

14. In Compliance of judgment and order dated 24.07.2014 vide office order dated 21.10.2015, respondents extended all the benefits including arrears of salary with interest to Dr. Chandra Prakash and others.

15. Due to denial of benefit of judgment of Hon'ble Supreme Court of India, Dr. Virendra Singh Pachahara filed Writ Petition No.1461 (S/B) of 2009 and vide judgment and order dated 15.07.2013, this Court has observed as under:

"In view of above, the writ petition deserves to be allowed and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 12.05.2009 commanding the State Government to provide promotion and pay scale and promotional avenues under the judgment of Hon'ble Supreme Court of India in case of Dr. Chandra Prakash (Supra) expeditiously, say within a period of three months from the date of production of a certified copy of the order."

16. In compliance of the order dated 15.07.2013, vide office memo dated 18.02.2014 respondents extended the benefits including pay scale of Rs.4500-5700 with arrears subject to outcome of Civil Appeal No.3041 of 2010. In the said order, it has been said that the case of Virendra Singh Pachahara is same as of case of Dr. Raghubeer Prasad Dixit, even then respondents

are not extending the benefits. The civil appeal was dismissed on 24.07.2014.

17. Due to discriminatory action of respondents, Dr. Ramji Pandey preferred Writ-A No.3334 of 2009, which was allowed by this Court on 31.08.2017 with following observation:

"Consequently, the writ petition is allowed. A direction is issued to the respondents to grant notional benefits of promotion to the petitioner as Additional Director as Director as and when it falls due in accordance with the rules as notified on 11th August, 2004 and the pay scale shall be re-fixed, which shall be complied with by making payment of arrears of salary of such re-calculation as expeditiously as possible preferably within three months from today. The consequential benefits of pension, gratuity and other retiral dues shall also be available to the petitioner to that effect. In the event, the payment is delayed beyond three months, the same shall carry 6% simple interest from the date of judgment to the date of payment."

18. Against the judgment and order dated 31.08.2017 passed in Writ-A No.3334 of 2009, State of U.P. preferred SLP with Diary No.33951 of 2010 before the Apex Court and in the said SLP no order for stay has been granted and the SLP is pending.

19. Vide order dated 05.05.2015, the respondents rejected the claim of Dr. J.P. Gupta (Jagannath Prasad Gupta), who was petitioner of Writ Petition No.04 (S/B) of 2004, preferred writ petition No.2229 (S/B) of 2015, wherein vide judgment and order dated 01.07.2021, this Court allowed the writ petition with following observation:

"16. This writ petition is allowed in the same terms as the decision by this Court on 31.08.2017 in Writ-A No.3334 of 2009 (Ramji Pandey Vs. State of U.P.).

17. Let appropriate order be passed by opposite party No.2 making them subject to decision in SLP with Diary No.33951 of 2018 (State of U.P. Vs. Ram Ji Pandey).

18. A direction is issued to the respondents to grant notional benefits of promotion to the petitioner as Additional Director and Director as and when it falls due in accordance with the Rules as notified on 11th August,

2004 and the pay shall be re-fixed and payment of arrears of salary on such re-calculation shall be made as expeditiously as possible, preferably within three months from today. The consequential benefits of pension, gratuity and other retiral dues shall also be available to the petitioner. In the event the payment is delayed beyond three months, the same shall carry 6% simple interest from the date of this judgment to the date of payment."

20. Learned counsel for the petitioners submitted that there is no iota of difference between the petitioner and other such medical officers to whom the benefit has been extended by the respondents.

21. He further submitted that the effect of the judgment dated 04.12.2002 passed in the case of Dr. Chandra Prakash ;(2002) 10 SCC 710 is rem in nature while the judgment passed in Writ-A No.3334 of 2009; Ramji Pandey (Supra), against which the State of U.P. has preferred SLP No.33951 of 2010 is personam in nature.

22. He next submitted that since denial to extend the benefit of promotion, position and pay scale with arrears and revision of pension at par with junior is discriminatory, illegal and arbitrary, thus, the impugned order dated 20.05.2005 and 01.11.2018 annexed as Annexure No.1 to the writ petition are liable to be quashed and the writ petition is liable to be allowed.

23. On the other hand, learned Additional CSC appearing for respondent - State opposed the submission advanced by learned counsel for the petitioners and submitted that the seniority list was prepared in compliance of Hon'ble Supreme Court's order in Dr. Chandra Prakash case on 05.06.2003. On the basis of seniority, notional promotion was granted on senior grade. There was no basis for granting notional promotion to the post higher than that of Joint Director i.e. Additional Director and Director Grade, as there were selection posts. He submitted that

consequential order for revision of pension was also issued thereafter. The representation of the petitioners was disposed of and as such, the order impugned is just and valid.

24. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

25. Learned counsel for the petitioners have submitted written submissions, wherein charts have been prepared reflecting the service details of the date from which the petitioners were granted notional promotion, which is being extracted below:

Writ-A No.13990 of 2019:

S. No.	Name of Petitioners	Source of Appointment	Date of appointment / Joining	Seniority No.	Date of Notional Promotion	Date of Retirement	Remark
1.	Dr. Vinod Chandra Jain	DSC	28.01/1973 / 01.03.1973	1599	10.05.1990	30.04.2005	Juniors were promoted upto the post of Addl. Director with pay scale of Rs.4500-5700 with arrears of salary and revision pension but the petitioners are being deprived of.
2.	Dr. Shamsher Singh	DSC	14.06.1973 / 20.06.1973	1796	10.05.1990	31.08.2007	Do
3.	Dr. Ramesh Chandra Srivastava	DSC	14.11.1973 / 01.12.1973	2061	10.05.1990	31.07.2007	Do
4.	Dr. Anand Kumar Bhardwaj	DSC	11.02.1974 / 14.02.1974	2306	10.05.1990	30.06.2008	Do

Writ-A No.29588 of 2019:

Petitioner No.	S.No. in Representation	Name of Petitioner	Seniority No. in Seniority List dated 05.06.2003	Date on which notional promotion granted in Senior Grade	Date on which Notional Promotion is granted on the post of Joint Director	Date of order granting promotion
2	24	Dr. Jagdish Kumar Gupta	839	16.3.1979	10.3.1979	02.2.2005

3	2	Dr. Irshad Ali	1221	13.3.1973	01.1.1986	20.5.2005
4.	23	Dr. Govind Mohan Garg	1263	10.3.1979	01.1.1986	02.2.2005
5	1	Dr. Durga Shankar Shukla	1512	04.1.1982	10.05.1990	20.05.2005
6	22	Dr. Rajesh Kumar Mishra	1589	27.5.1982	.10.5.1990	20.5.2005
7	3	Dr. Obaidar Rehman	1956	27.5.1982	10.5.1990	20.5.2005
8	4	Dr. Subhash Chandra Gurudeo	2058	27.5.1982	.10.5.1990	20.5.2005
9	6	Dr. Rajendra Kumar Srivastava	2191	27.5.1982	.10.5.1990	20.5.2005
1	7	Dr. F.I. Zuberi	2250	27.5.1982	10.5.1990	20.5.2005
10	8	Dr. Bal Krishna Jaju	2398	09.12.1982	10.05.1990	20.05.2005
11	9	Dr. Ramesh Chandra Chadha	2503	09.12.1982	10.05.1990	20.05.2005
12	21	Dr. Vishesh Kumar Virmani	2525	29.05.1985	27.04.1995	20.05.2005
13	12	Dr. Mirza Manssor Murtaza	2852	15.2.1985	10.5.1990	20.5.2005
14	13	Dr. Veerendra Pratap Singh	2961	15.2.1985	10.5.1990	20.5.2005
15	14	Dr. Ratan Kumar	2974	15.2.1985	10.5.1990	20.5.2005
16	15	Dr. Madhukar Nath Kapoor	3117	24.5.1985	10.5.1990	20.5.2005
17	16	Dr. Veerendra Pratap Singh	3125	24.5.1985	10.5.1990	20.5.2005
18	5	Dr. Ram Kumar Saxena	3207	24.5.1985	10.5.1990	20.5.2005
19	18	Dr. Vijay Pal Singh	3243	29.5.1985	27.4.1995	20.05.2005
21	19	Dr. Anil Kumar	3282	24.5.1985	10.9.1990	20.05.2005 read with 10.12.2010

Chart 'B'

Petitioner No.	S.No. in Representation	Name of Petitioner	Seniority No. in Seniority List dated 05.06.2003	Date on which notional promotion granted in Senior Grade	Date on which Notional Pormotion is granted on the post of Joint Director	Date of order granting promotion
22	Separate	Dr. Dr. P.K Bhatnagar	2366	09.12.1982	10.05.1990	20.05.2005

Writ-A No.24592 of 2020:

Sr. No.	Name of Petitioners	Source of Appoint - ment	Date of appoint - ment / Joining	Seniority No.	Date of Notional Promotion on the post of Joint	Date of Retirement	Remark
---------	---------------------	--------------------------	----------------------------------	---------------	---	--------------------	--------

					Director		
1.	Dr. Mahesh Kumar Gupta	DSC	31.07.1971 / 30.08.1971	1178	01.01.1986	30.06.2006	Juniors were promoted upto the post of Director General with selection grade of Rs.4500-5700
2.	Dr. Pancham Singh	DSC	14.08.1972 / 22.08.1972	1381	01.01.1986	31.12.2003	DO
3.	Dr. Lakshman Jee Kesari	DSC	14.08.1972 / 18.08.1972	1386	10.05.1990	31.01.2006	Do
4.	Dr. Ram Pratap Singh Chauhan	DSC	28.10.1972 / 04.11.1972	1494	10.05.1990	31.10.2005	Do
5.	Dr. Sabhajeet Singh	DSC	28.10.1972 / 03.11.1972	1503	10.05.1990	31.01.2008	Do
6.	Dr. Kewala Nand Patani	DSC	07.09.1973 / 10.09.1973	1935	10.05.1990	31.07.2007	Juniors promoted upto the post of Director with selection grade of Rs.4500-5700
7.	Dr. Ram Shringar Dubey	DSC	18.07.1975 / 22.07.1975	2949	10.05.1990	31.01.2009	Juniors promoted upto the post of Addl. Director with selection grade of Rs.4500-5700

26. This Court having considered the two judgments passed by Division Benches in the case of Gulab Chandra and Dr. Ramji Pandey, the arguments as raised by learned counsel for the petitioners and on perusal of judgment of Single Bench of this Court in the case of **Dr. Jagannath Prasad Gupta Vs. State of U.P. and others; Service Bench No.2029 of 2015** order dated **01.07.2021**, found that the same reason for rejecting the case of the petitioners have been mentioned in the impugned order dated 05.08.2018, as have been mentioned in the counter affidavit filed by the respondents. The impugned order also considers the case of Dr. Sumati Sheel Sharma and mentions that Dr. Sumati Sheel Sharma was placed at the serial No.1099 of the seniority list and 21 other doctors, who were senior to her including those who had retired from service or died, had been given notional promotion as Additional Director w.e.f. 21.06.2009 and the notional

promotion on the post of Director in the pay scale of Rs.5900-6300 w.e.f. the date that Dr. Sumati Sheel Sharma was given such promotion. This fact mentioned in the order dated 05.05.2015, as also the fact that petitioners were placed at serial numbers indicated in the chart narrated above of the seniority list, has convinced the Court that the impugned order is liable to be set aside.

27. Cases of the petitioners have been rejected only on the ground that Dr. Sumati Sheel Sharma had been given promotion on 21.06.1990 and 22.05.1996 on the basis of earlier seniority list and the petitioner were at that time junior to Dr. Sumati Sheel Sharma, therefore, they cannot claim the same benefit. Additionally, a reference has been made of pension, re-fixation having been done by the Government Order dated 30.12.2005 and 13.06.2006 and of Writ petition No.2811 of 2004 (Dr. Rajendra and others Vs. State of U.P. and others) having been decided by Hihg Court on 10.11.2005 with the observation that only notional promotion can be given and pension refixation can be done alongwith other retiral benefits but arrears of salary cannot be given on the principle of "No work No pay."

28. The reasons given in the impugned order for rejecting the case of the petitioners for grant of notional promotion are arbitrary in the face of observations made by Division Benches of this Court in the case of Gulab Chandra and Dr. Ramji Pandey (Supra).

29. The Division Benches of this Court in the aforesaid two judgments have allowed the writ petitions with the direction to the respondents to grant benefit of notional promotion to the writ petitioners to the post of Additional Director and Director as and when it fell due in accordance with rules as notified in August,

2004 and the pay scale was to be refixed and the arrears of salary were to be recalculated and to be paid within three months from the date of passing of the order. Consequential benefits of refixation of pension, gratuity and other post retiral benefits were also to be made available to the writ petitioners and if such payment was delayed beyond three months, the same was to accrue 6% simple interest from the date of judgment to the date of payment.

30. Similar orders have been passed by Hon'ble the Supreme Court in Civil Appeal No.3041 of 2010 as have been mentioned above.

31. In view of the above, these writ petitions are **allowed** in same terms as the decision taken by this Court on 31.08.2017 in Writ-A No.3334 of 2009; Ramji Pandey Vs. State of U.P.

32. Let appropriate order be passed by opposite parties making them subject to decision in S.L.P. with Diary No.33951 of 2018; State of U.P. Vs. Ramji Pandey.

33. A direction is issued to the respondents to grant notional benefits of promotion to the petitioners as Additional Director and Director as and when it falls due in accordance with rules as notified on 11.08.2004 and the pay shall be refixed and payment of arrears of salary on such recalculation shall be made as expeditiously as possible, preferably within three months from today. The consequential benefits of pension, gratuity and other retiral dues shall also be available to the petitioners. In the event the payment is delayed beyond three months, the same shall carry 6% simple interest from the date of this judgment to the date of payment.

Order Date :- 10.09.2024

Adarsh K Singh