

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.1919 of 2004**

1. Dr.Naval Singh Chandel S/o. Shri F.N. Chandel, aged about 49 years, Occupation-Service, posted as Assistant Surgeon at District Hospital, Bilaspur, District Bilaspur (CG)
2. Dr. Arvind Sawant, Occupation-Service, posted as Assistant Surgeon at District Hospital, Durg (Chhattisgarh)
3. Dr.S.P. Dehariya, Occupation-Service, posted as Assistant Surgeon at Primary Health Masturi, Dist.Bilaspur (CG)
4. Dr.Gopal Singh Kanwar, Occupation-Service, posted as Assistant Surgeon at S.P. Hospital (CIMS), Bilaspur, District Bilaspur (CG)
5. Dr.Pramod Mahajan, Occupation-Service, posted as Assistant Surgeon at S.P. Hospital Bilaspur (CG)
6. Dr.Bhagya Ravi Nanda, Occupation-Service, posted as Assistant Surgeon at District Hospital, Bilaspur, District Bilaspur (CG)
7. Dr.Sudhakar Kashinath Damle, Occupation-Service, posted as Assistant Surgeon at F.P. Training Centre Rajnandgaon (CG)
8. Dr.Prawar Mitra, Occupation-Service, posted as Assistant Surgeon, P H C Tenganmada, District Bilaspur (CG)
9. Dr. Arvind Gupta, Occupation-Service, posted as Assistant Surgeon at PHC Dongargaon District Rajnandgaon (CG)
10. Dr.Ratiram Mandle, Occupation-Service, posted as Assistant Surgeon at District Hospital, Rajnandgaon (CG)
- 11.Dr.Bhagchand Jain, Occupation-Service, posted as Assistant Surgeon at Distt.Hospital, Rajnandgaon, Rajnandgaon (CG)
12. Dr.Soman Singh Devdas, Occupation-Service, posted as Assistant Surgeon at PHC Dongargaon, District Rajnandgaon (CG)
13. Dr. Raj Kumar Agrawal, Occupation-Service, posted as Assistant Surgeon at High Court Dispensary, Bilaspur, District Bilaspur (Chhattisgarh)
14. Dr.Sudhir Chandel, Occupation-Service, posted as Assistant Surgeon at City Dispensary, Chingarajpara, Bilaspur (Chhattisgarh)

15. Dr.Sanjay Mukherjee, Occupation-Service, posted as Assistant Surgeon at District Hospital, Bilaspur, District Bilaspur (CG)
16. Dr.Suresh Tiwari, Occupation-Service, posted as Assistant Surgeon at I C D S, Bilaspur (CG)
17. Dr.Illa Chandel, Occupation-Service, posted as Assistant Surgeon, District Hospital, District Bilaspur (CG)
18. Dr.B.R. Hotchandani, Occupation-Service, posted as Assistant Surgeon at District Hospital, Bilaspur, District Bilaspur (CG)
19. Dr.Pradeep Kumar Ghosh, Occupation-Service, posted as Assistant Surgeon, PHC Malhar, Bilaspur (CG)
20. Dr.Nilima Sharma, Occupation-Service, posted as Assistant Surgeon at S P Hospital, Bilaspur (CG)
21. Dr.K.K. Jaiswal, Occupation-Service, posted as Assistant Surgeon at City Dispensary Bandhwapara, Bilaspur (CG)
22. Dr.Rajesh Shukla, Occupation-Service, posted as Assistant Surgeon at City Dispensary, Sakri, District Bilaspur (Chhattisgarh)
23. Dr.Ashok Kumar Tiwari, Occupation-Service, posted as Assistant Surgeon at CHC Bhatapara, Dist. Raipur (CG)
24. Dr. (Smt.) Subhadra Thakur, Occupation-Service, posted as Assistant Surgeon at Distt.Hospital Bilaspur (CG)
25. Dr.Shekhar Chatterjee, Occupation-Service, posted as Assistant Surgeon at Distt.Hospital Bilaspur (CG)
26. Dr.Ashok Sanyal, Occupation-Service, posted as Assistant Surgeon at C H C Bilha, District Bilaspur (CG)
27. Dr.Prabhat Shrivastava, Occupation-Service, posted as Assistant Surgeon at M.L.C.U. Bilaspur (Chhattisgarh)
28. Dr.M.P. Maheshwar, Occupation-Service, posted as Assistant Surgeon at Ambagarh Chowki, District Rajnandgaon (CG)
29. Dr.Bhuwan Lal Kamhare, Occupation-Service, posted as Assistant Surgeon at Distt.Hospital, Rajnandgaon, District Rajnandgaon (CG)

-----Petitioners

Versus

State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (CG)

----- Respondent

For Petitioners	:	Mr.Ashish Shrivastava, Advocate
For Respondent	:	Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02/11/2016

1. The petitioners by way of the present writ petition are seeking a writ in the nature of mandamus commanding the respondent to grant senior pay scale with effect from the date immediately after completion of six years service as indicated in chart Annexure P/1 with consequent revision thereof under revision of pay Rules of 1990 with effect from the due date.
2. As per writ filed by the petitioners jointly, they have completed six years of qualifying service in between 1.1.1990 to 17.6.93 and as such, they are entitled for senior pay scale, which has not been granted to them. It has also been pleaded that Medical Specialists have already been granted benefit of senior pay scale w.e.f. 1.2.1997 by an order dated 20.2.2004, whereas the present petitioners have been granted senior pay scale w.e.f. 20.2.2004 and as such, such a course is suffered bias of discrimination and the respondent be directed to

grant senior pay scale from the date on which they have completed six years of qualifying service.

3. The respondent/State has filed its return that in the new State of Chhattisgarh, the total cadre strength of Assistant Surgeons allocated to it was 1455 and 25% of the said cadre comes to 364 and out of Assistant Surgeons allocated to the State of Chhattisgarh, 170 were already getting benefits of senior pay scale and to make up deficiency 198 more Assistant Surgeons have been granted benefit of that scale w.e.f. 1.1.2001 by order dated 6.7.2006. It was also pleaded that vide Annexure R/2, 5 more Assistant Surgeons were granted benefit of senior scale of pay w.e.f. 1.1.2002 because out of total strength of 1455, 5 posts fell vacant during the year 2001 and by the same order 6 Assistant Surgeons were given benefit of senior scale of pay w.e.f. 1.1.2003 as a result of 6 posts falling vacant during the year 2002 and similarly by the same order 4 Assistant Surgeons were given benefit of senior scale of pay w.e.f. 1.1.2004 as a result of 4 posts falling vacant during the year 2003. Thus, w.e.f. 1.1.2001, 25% of the total cadre strength of Assistant Surgeons are getting benefit of Senior Scale. Similarly, w.e.f. 1.1.2001, 15% cadre strength of Assistant Surgeons have been granted benefit of selection grade from time to time so as to maintain the total 15% of cadre strength of

Assistant Surgeons getting benefit of selection grade. It has also been pleaded that prior to reorganization of the State of Chhattisgarh if the petitioners were entitled to senior scale of pay prior to 1.11.2000, that can be granted only by the State of Madhya Pradesh and the State of Madhya Pradesh has not been impleaded as party respondent, therefore, they are not entitled for any benefit for that period in absence of impleadment of the party i.e. State of Madhya Pradesh.

4. Mr.Ashish Shrivastava, learned counsel appearing for the petitioners would submit that the State has treated the petitioners with discrimination as they have been treated equal with Medical Specialists as they have completed six years of qualifying service on the post of Assistant Surgeons, therefore, they are entitled for senior scale of pay from the date they have completed six years of service.
5. Mr.Avinash Singh, learned Panel Lawyer appearing for the respondent/State would submit that initially the petitioners were granted benefit of senior scale of pay w.e.f. 20.2.2004, thereafter order has been amended and they have granted senior scale of pay w.e.f. 1.1.2001 and in absence of State of Madhya Pradesh as party respondent in the present writ petition, no relief can be granted to the petitioners.

6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the documents appended with the petition.
7. It is established that benefit of senior scale of pay were granted w.e.f. 20.2.2004 vide Annexure P/6 and additional affidavit of the Additional Secretary, Government of Chhattisgarh, Health and Family Welfare Department was filed on 10.7.2006, however, order was passed on 6.7.2006 in which it has been held that Assistant Surgeons/petitioners are entitled to senior pay scale w.e.f. 1.1.2001 as per schedule annexed except petitioners No.27, 28 and 29 who became entitled w.e.f. 1.1.2002 and 1.1.2003 as they are qualified for higher pay scale later on as per vacancy. Thus, most of the petitioners have already been granted benefit of higher pay scale w.e.f. 1.1.2001 except petitioners No.27, 28 and 29 who were granted from later date as per vacancy and as such, the petitioners grievance has been redressed substantially by granting benefit w.e.f. 1.1.2001.
8. Learned counsel for the petitioners would submit that the petitioners are entitled for higher pay scale after completion of six years as indicated in the chart Annexure P-1 i.e. prior to formation of this State of Chhattisgarh.
9. This writ petition came up before this Court for hearing on

3.7.2006. This Court directed the presence of the Secretary, Health & Family Welfare Department on 7th July, 2006. On 7.7.2006, the Secretary did not appear. The Court directed the presence of officer on 17.7.2006 and on 17.7.2006 the following order was passed by this Court, which reads as under:-

“Learned counsel appearing for the respondent/State has filed the return dated 10.5.2006 stating that the petitioners, as per policy, have become entitled to grant of senior pay scale w.e.f. 1.1.2001. The petitioners in present petition are claiming senior pay scale w.e.f. the date on which they completed six years of their services. According to learned counsel for the petitioner, the period varies from the year 91 to 93. In that event, it is not possible to decide as to whether the petitioners were entitled on that day for grant of senior pay scale in view of the policy that 25% of total cadre strength of the Assistant Surgeons would be entitled to senior pay scale. This relief cannot be granted for want of materials on record. Learned counsel appearing for the petitioners prays for some time to take necessary steps in the matter. Time is granted.”

10. Despite this Court clear-cut order/ordersheet dated 17.7.2006 the petitioners did not bring any material on record to establish the petitioners were entitled for senior

pay scale on completion of six years in view of policy that only 25% of total cadre strength of Assistant Surgeons are entitled to senior pay scale. The order of this Court dated 17.7.2006 is unambiguous and clearly states that in absence of materials, relief of higher pay scale cannot be granted. That order has become final as the petitioners have not taken steps either to bring material on record to establish their claim or to challenge that order. Therefore, that order (dated 17.7.2006) cannot be ignored by this Court and no relief ignoring and overlooking the order dated 7.7.2006 can be granted to the writ petitioners.

11. According to the petitioners, they have completed six years of service in between 1.1.1990 to 17.6.1993 and as such, they have completed six years of service prior to 1.11.2000. The State of Chhattisgarh has already granted benefit of senior pay scale w.e.f. 1.1.2001. This writ petition was filed on 6.7.2004 after formation of new State of Chhattisgarh. Despite taking plea of non-impleadment of State of Madhya Pradesh as party respondent and denying any responsibility prior to formation of this State in the return filed by the State of Chhattisgarh, the petitioners have neither been amended the writ petition nor the State of Madhya Pradesh has been impleaded as party respondent in the writ petition and as such, in absence of State of Madhya Pradesh as party respondent

no writ can be issued in favour of the petitioners directing the State of Chhattisgarh to grant senior pay scale to the petitioners with effect from the date on which they have completed six years of service admittedly prior to formation of State of Chhattisgarh and when erstwhile undivided State of Madhya Pradesh was in existence.

12. Learned counsel for the petitioners would submit that Medical Specialists have been granted benefit of senior pay scale w.e.f. 1.2.1997. No material has been placed on record to establish on what circumstance and on what ground such benefit was granted to the Medical Specialists by the State of Chhattisgarh.
13. In view of the aforesaid discussion, I do not find any merit in the writ petition warranting issuance of writ in favour of the petitioners for grant of senior pay scale w.e.f. the date on which they have completed six years of service i.e. prior to formation of the State of Chhattisgarh. Accordingly, the writ petition deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-