

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 1007 OF 2013

Dr. Maruti Laxman Chougale ... Petitioner
Vs
1. The State of Maharashtra & Anr. ... Respondents

**WITH
WRIT PETITION NO. 1006 OF 2013**

1. Dr. Dilip Bapusaheb Chougale & Ors. ... Petitioners
Vs
1. The State of Maharashtra & Anr. ... Respondents

Mr. S.G. Deshmukh with Mr. Ramdas Shelke for the Petitioners in both the petitions.

Ms. Sushma Bhende, AGP, for the Respondent No.1 in both the petitions.

Mr. Ramesh D. Rane, for the Respondent No.2 in both the petitions.

Mrs. Shaila Yadav – Section Officer, Public Health Department, Mantralaya - present.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

THURSDAY, 16TH MARCH, 2017

P.C. :

1 By these writ petitions under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus or

any other writ, order or direction directing the respondents to pay to them salary at the scale, more particularly mentioned in prayer clause (b) of this writ petition. A further direction to the respondents to make payment of consequential arrears and interest, release the non-practising allowance and to refund the amounts in terms of the averments in paragraphs 13 and 14 of the Writ Petition No.1007 of 2013.

2 The petitioners before us were working as Junior Medical Officers, Extension Officers (Health), Technical Services, Class-III. Their respective qualifications, dates of joining the service of the Kolhapur Zilla Parishad-second respondent to the writ petition are set out. Some of the petitioners joined the services of the Sangli Zilla Parishad. The respective dates of retirements are also mentioned. The grievance raised in this writ petition was noted in great details by us while noting the stand of the State. On 10th February, 2017, this Court passed the following order :

*“ Mr. Deshmukh appearing for the Petitioners
has raised three contentions in this Petition.*

2 *The first contention is that the Petitioners having served the Government and the Zilla Parishad at the fag end of their career and upon retirement the pensionary and other benefits so also the increased pay scales are denied on the footing that they were not qualified to be appointed at all. The reliance placed on the affidavit in reply at page 125 on paragraph 6, is inaccurate in as much as in the Indian Medicine Central Council Act, 1970, there is a Schedule and referable to Section 14. Section 14 of that Act and this Schedule together sets out the recognized medical qualification in Indian Medicine granted by Universities, Board or other medical institutions In India. The institution at Item No.12 All India Aayurved Vidyaphith, Delhi is identical and same to the one mentioned in paragraph 6 page 125 of the affidavit in reply in Writ Petition No.1007 of 2013. Similarly, the institution and degree that is referred in Item 59 is also on par with this requirement and as stipulated.*

3 *The next argument of Mr. Deshmukh is that if the Aayurved Vidyaphith which is referred to in paragraph 6 is not a recognized medical qualification in Indian Medicine and granted by the Universities, Boards or other medical institutions set out in the Second Schedule, then, on the strength of that no registration could have been obtained under the Maharashtra Medical Practitioners Act, 1961. Inviting our attention to the provisions of that Act and particularly the Part-A, A-1 and Part-E to the Schedule to that Act, it is submitted that the degree obtained by the Petitioner from the Aayurved Vidyaphith is recognized qualification for registration under the Maharashtra Act.*

4 *The third argument is that if non practicing allowance is made admissible from 1st April, 1981 and to all such practitioners who are in the service of the Government, Zilla Parishads and rather in public Health Service, then, exclusion of the Petitioners therefrom and the entitlement thereto only on a strength of the letter or a clarification copy of which is at Exhibit-3 page 139 to the affidavit-in-reply is*

impermissible. No specific order or direction is required prohibiting private practice by such medical or health official. It is implicit in their appointment that they must be available at the primary / rural health centre or any public / civil hospital round the clock. They need not be specifically directed to stop a private practice or undertake it. Therefore, irrespective of such communication, as is warranted by page 139, the non practicing allowance is admissible and ought to be released.

5 *For all the three contentions to be met, it is stated by Ms.Vhatkar that she would obtain necessary instructions and verify the position as brought to the notice of this Court by Mr. Deshmukh by thoroughly studying and researching on the Schedules to both the Acts. She would also take instructions as to whether in Kolhapur Zilla Parishad was there any specific order or direction necessary and to be issued by the Rural Development Department of Government of Maharashtra directing the Doctors and Health Officers in Zilla Parishad Health Service not to undertake or stop private practice. For Ms. Vhatkar to obtain the above instructions and get ready to argue this case, we list this matter as part-heard on 22nd February, 2017.'*

3 On the three contentions noted in great details in this order, the State was directed to issue a clarification. On 22nd February, 2017, and on 2nd March, 2017, we granted time to Ms. Bhende appearing for the State in both the petitions.

4 We inquired from her specifically as to why the petitioners were disentitled and she would rely upon an affidavit-in-reply which has been filed on behalf of the State in both

matters. The affidavit is filed by the Administrative Officer, Grade-B, Health Department, Zilla Parishad, Kolhapur. In that affidavit in paragraphs 6 and 8, the following statements are made :

“6 I say that educational qualification possessed by the petitioners are not the same as mentioned and required for Junior Medical Officers / Extension Officers (Health) under District Technical Services and mentioned in para A and A-1 to the schedule to the said Act. Also certificates issued by Nikhil Bharatvesiy Ayurved Vidyaphith, New Delhi to the Petitioners are not recognized by any University.

... ..

8 As regards petitioners' claim for payment of non practicing allowance with effect from 1.4.1981, I say that the State Government addressed a letter dated 4.1.2008 to the Chief Executive Officer, Zilla Parishad, Kolhapur and mentioned therein that Junior Medical Officers / Extension Officers (Health) under District Technical Services falling in category III are not entitled for non practicing allowance for the reasons mentioned in the said report. The said letter is in force till date. Hereto annexed and marked Exhibit-3 is the letter dated 4.1.2008.”

5 It is precisely because of this understanding that we called upon the learned Assistant Government Pleader to clarify as to what is the understanding of the Public Health Department of the Government of Maharashtra with respect to the qualifications and registration of the petitioners. It is now claimed before us that the Registrar of the Maharashtra Council

of Indian Medicine who was approached by the state through this Department on 15th March, 2017, has clarified that each of the petitioners are holding recognized qualifications inasmuch as not only the qualifications, but the institutions from where the petitioners educated themselves and underwent training, are duly recognized and in terms of the Indian Medicine Central Council Act, 1970. The registration is obtained under the Maharashtra Medical Practitioners Act, 1961, which can also register the practitioners in the branch of Ayurved. The communication dated 15th March, 2017, from the Registrar is shown to us. We take a copy of the same on record in both the petitions and mark them as “X” and “X-1” for identification.

6 Overleaf, the main communication, the Registrar of Indian Medicine reproduces the extract of the second Schedule of the Indian Medicine Central Council Act, 1970. At Sr. No.12, the instructions in detail, including the Nikhil Bharatvarshiya Ayurved Vidyapeeth, New Delhi. It is in these circumstances that we inquired from Ms. Bhende as to what is now the position and what would be the position and stand of the State. On taking instructions from the official of the Department of Public Health,

Government of Maharashtra, present in Court, Ms. Bhende fairly states that the contents of paragraphs 6 and 8 of the affidavit-in-reply reproduced above and the entire affidavit be ignored. The stand of the Government is that the petitioners are holding recognized degrees / qualifications and from institutions which are equally recognized. Once the State has taken this fair stand before us, then, each of the writ petitions must succeed. They, accordingly, succeed.

7 All consequences in law will follow inasmuch as the pay scales of the period prayed would be admissible and if any arrears have to be released, they must be released, including any other benefits, such as terminal, retiral benefits, pension etc. The monetary entitlement in terms of the above shall be made as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order. We direct the Department of Public Health to instruct and inform all other Departments, including the Department of Finance and Directorate of Pay & Accounts so that the petitioners emoluments in terms of our directions would be released and within the time stipulated.

8 We have passed this order after informing Ms. Bhende and making aware the official present in Court that the position as emerging from the stand of the State before us would now be common to all Zilla Parishads and particularly in the services which have been referred by us in great details. If not these services in other Zilla Parishads such of the doctors and practitioners and on par with the petitioners have been appointed, then, needless to clarify that the State's position may benefit them depending upon the other facts and circumstances.

9 Both the petitions are, therefore, allowed. Rule is made absolute in both the petitions. However, there shall be no order as to costs.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.