

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 1977 of 2005

Dr. A.R. Rathore, S/o. D.N. Rathore, Aged about 59 years, Presently posted as Ayurvedic Medical Officer, Madanpur, District Korba, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through: Medical Education Department, D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh.
2. Director, Bharatiya Chikitsa Paddhati Evam Homeopathic, Raipur, D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh.
3. State of Madhya Pradesh, through: Medical Education Department, Secretariat, Bhopal, Madhya Pradesh
4. Director, Bharatiya Chikitsa Paddhati Evam Homeopathic, Madhya Pradesh, Bhopal.

---Respondents

For Petitioner	:	Ms. Anju Ahuja, Advocate
For State/Respondents No.1 & 2	:	Ms. Sunita Jain, G.A.
For State/Respondents No.3 & 4	:	Mr. S.S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/02/2019

1. Though the present writ petition has been filed seeking a relief of promotion on the post of Ayurved Medical Officer, but during the course of the arguments, the counsel for the petitioner submits that in fact it is a case where the petitioner has been denied the benefits of an absorption on the post of Ayurved Medical Officer and which he is claiming for from the date his service has been absorbed with the State Government.
2. The facts of the case is that the petitioner was initially appointed on the post of Vaidya Grade-II on 01.07.1969. The petitioner was

subsequently promoted on the post of Vaidya Grade-I w.e.f. 21.05.1985 in the pay-scale of Rs.350-650/-. The petitioner's appointment and the initial promotion, which the petitioner had got was when the services of the Department was under the Janpad Panchayat. In the year 1989, the State Government took a policy decision of merging the Ayurvedic Dispensaries run by the Janpad Panchayat with the State Government. The formal order was passed in this regard on 23/31.03.1989 (Annexure P/11). Clause (2) of the said order of absorption clearly reflected that the service condition of the employee who should get absorbed to the State Government, would remain the same as that was prior to their absorption.

3. According to the petitioner, the post on which the petitioner initially was working i.e. Vaidya Grade-I was to be treated as an Ayurved Medical Officer under the State Government. However, the respondent/State had absorbed the services of the petitioner as Assistant Ayurved Medical Officer. According to the petitioner, he was a degree holder and was thus entitled to be absorbed on the post of Ayurved Medical Officer.
4. It is the further contention of the petitioner that a large number of persons similarly placed had filed a writ petition before the Madhya Pradesh High Court, the leading of which being WP No. 5287/1997, which got disposed of along with other connected matters on 01.07.1999. All these writ petitions were allowed by the Madhya Pradesh High Court directing the State Government to observe all

degree holders on the post of Ayurved Medical Officer and non-degree holders as Assistant Ayurved Medical Officer.

5. The petitioner in the instant case as has been mentioned earlier was a degree holder, therefore he was entitled to be observed on the post of Ayurved Medical Officer. Pursuant to the order of Madhya Pradesh High Court dated 01.07.1999, the State Government as a consequence had passed an order implementing the same vide order dated 03.05.2001. In the said order, the State Government had passed an order for treating all such persons, who were absorbed initially as Assistant Ayurved Medical Officer to be absorbed as Ayurved Medical Officer from the date of absorption.
6. On the creation of State of Chhattisgarh w.e.f. 01.11.2000, the services of the petitioner stood allocated to the State of Chhattisgarh. In the State of Chhattisgarh also there were other similarly placed persons, who were also initially absorbed as an Assistant Ayurved Medical Officer and all of whom were also degree holders. Such similarly placed persons in the State of Chhattisgarh filed separate writ petitions before the Chhattisgarh High Court, leading of which being WPS No. 4441/2009 (Dr. Ramesh Chandra Pathak v. State of Chhattisgarh & Others) and other analogous petitions. All these writ petitions were again decided and allowed vide order dated 16.07.2013, wherein while allowing the writ petition, the High Court had directed the respondent/State to consider absorption of those petitioners with effect from the date, the other similarly placed Vaidya have been absorbed as an

Ayurved Medical Officer with consequential notional seniority for pension and other benefits.

7. It has been informed by the counsel for the petitioner that the petitioner herein has attained the age of superannuation in October, 2005. The present writ petition was filed in April, 2005 i.e. just a few months before his retirement. The grievance of the petitioner dates back from 1989 onwards, when his services were absorbed with the State Government. There appears to be a clear inordinate delay on the part of the petitioner in approaching the Court for redressal of his grievance or for seeking the relief, that he has sought for through the present writ petition.
8. Considering the fact that there were series of writ petitions filed before the Madhya Pradesh High Court as also before the Chhattisgarh High Court in respect of identically placed persons and in all those cases, there have been orders passed by the Madhya Pradesh High Court as also by the State Administrative Tribunal of Madhya Pradesh and subsequently, the State of Chhattisgarh also, wherein the relief granted was to treat the persons, who were degree holders as "Vaidya" under the Janpad Panchayat to be absorbed on the post of Ayurved Medical Officer.
9. Though the relief sought for by the petitioner was for promotion, but undisputedly, the petitioner's services have been absorbed by the State Government initially in the year 1989 as an Assistant Ayurved Medical Officer. No reason is reflected in the return or in the

submissions of the respondents to show that the petitioner is not entitled for absorption on the post of Ayurved Medical Officer as has been granted or provided in the case of all those persons, who had gone to the Court and have got an order in their favour.

10. This Court is of the opinion that once when on a matter of policy, the judicial Courts make a pronouncement and if those judgments of the Courts it the Madhya Pradesh High Court or for that matter the State Administrative Tribunal of Madhya Pradesh or even the Chhattisgarh High Court, unless those orders are challenged and have got set-aside by a higher Court, the State Government when it implements the order, it is usually expected that the implementation would be done in respect of all similarly placed persons. The respondents should accept the decision of the Courts in such matter to be judgment passed in rem not judgment in person, and if it is being implemented, the respondents are duty bound to consider whether there are other identically placed persons or not, and if there are identically placed persons, the same benefits ought to have been extended to all other similarly placed persons without compelling them also to approach the Court for ventilating their grievance.
11. Given the aforesaid facts the order of the State Government of Madhya Pradesh dated 03.05.2001 shows implementation of the judgment passed by the Madhya Pradesh High Court in WP No. 5287/1997 and other 22 similarly placed writ petitions. That along with the writ petitions the record also shows the order of the State

Administrative Tribunal dated 06.11.2003, passed in two O.As. i.e. O.A. No. 1791/2002 in the case of “Dr. B.D. Ramte” and O.A. No. 1792/2002, which was in the case of “Dr. Indrabhanu Patel” similar benefits have been ordered in favour of these employees.

12. A similar relief has also been extended as has been mentioned in the preceding paragraphs by the State of Chhattisgarh also in a bunch of writ petitions decided on 16.07.2013, in WPS No. 4441/2009 and other analogous writ petitions.
13. Given the said facts and circumstances, the petitioner also in the instant case would be entitled for being absorbed on the post of Ayurved Medical Officer from the date of his absorption i.e. in the year 1989 of course subject to verification of the fact, whether the petitioner is similarly placed like the petitioners in whose favour there were the orders of the High Courts and Administrative Tribunals.
14. For the reason that the petitioner has approached the Court only in the year 2005 i.e. just a few months before his retiring, this Court is compelled to pass an order that the benefit that would be granted to the petitioner would be notionally fixed, and the actual benefit would be given from the date he has filed the present writ petition before this Court i.e. 29.04.2005, from which date the petitioner would be entitled for all actual monetary benefits attached to the post of an Ayurved Medical Officer and the petitioner's retiral benefits also

would be calculated and released based on the aforesaid implementation of the order with periodical revision, if any.

15. With the aforesaid observations, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved