

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2863 of 2009**

Dr. Mahidhar Dwivedi S/o Shri Mandhata Prasad Dwivedi, aged about 48 years, Assistant Director, Government Ayurvedic Pharmacy, Raipur (CG), R/o Government Ayurvedic College Colony, Qr. No. L-2, Raipur (CG)

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department of Public Health & Family Welfare, D. K. S. Bhawan, Raipur, Chhattisgarh
2. The Director, Ayurved, Yoga & Natural Medicine, Unani Siddha & Homeopathy (Ayush) Chhattisgarh, Raipur (CG)

---- **Respondents**

For Petitioner	:	Mr. Shantam Awasthi, Advocate
For State	:	Mr. Samir Behar, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

19.07.2019

1. The petition primarily has been filed seeking for a direction to the respondents to consider grant of pay scale of Rs. 2200 – 4000 to the petitioner in the light of the implementation of Madhya Pradesh Revision of Pay Rules, 1990 (in short “the Revision of Pay Rules, 1990”).
2. The facts of the case are that the petitioner got selected from the selection conducted by the Madhya Pradesh Public Service

Commission on the post of Assistant Superintendent Ayurved Pharmacy vide order dated 20.08.1992. Annexure P-1 is the order of appointment. The petitioner was appointed in the pay scale of Rs. 1640-2900. The service conditions of the petitioner are governed under the Madhya Pradesh/Chhattisgarh Public Health (Indian System of Medicine and Homoeopathy Gazetted Services) Recruitment Rules, 1987. (hereinafter referred as "the Rules of 1987"). In Schedule-1 of the Rules of 1987, the pay scale prescribed for the post of Assistant Superintendent Ayurved Pharmacy was Rs. 1540-2740.

3. The grievance of the petitioner is that the petitioner was appointed vide order dated 20.08.1992 and by that time the Revision of Pay Rules, 1990 had already been enacted and implemented and the said rules were published in the notification dated 04.02.1990. According to the petitioner, he was recruited from the recruitment process which had been initiated before the Revision of Pay Rules, 1990 came into force. The contention of the petitioner is that in the Revision of Pay Rules, 1990 Part-A of Annexure-2 provides the revised scales that would be applicable in respect of the common posts in different departments. Serial No.-7 of Part-A provides pay scale for Class-II gazetted posts i.e. 2200 – 4000.
4. Counsel for the petitioner referred to Rule 14 of the Revision of Pay Rules, 1990 which prescribes that where the pay scale is regulated by these Rules, the provisions of the Fundamental Rules and any other rules shall not apply which according to the petitioner means all the earlier existing pay scales which were awarded would automatically

become redundant and it would be the pay scale that is prescribed for the Class-II gazetted posts that would be payable which prescribes the revised pay scale of Rs. 2200-4000. Counsel for the petitioner referred to a judgment of the Madhya Pradesh High Court in the case of Dr. Pradeep Kumar Chaturvedi Vs. State of M.P. & others in WP No. 5332/2003 decided on 01.08.2006 in this regard.

5. Opposing the petition, the State counsel emphatically takes a stand that the service conditions of the petitioner undisputedly stands governed by the Rules of 1987. Schedule-1 of the said Rules provides for different posts and pay scales in the department. Serial No.10 of Schedule-1 prescribes the post of Assistant Superintendent Ayurved Pharmacy and the pay scale prescribed under the said rules is 1540-2740. He submits that at the time of appointment of the petitioner, the Revision of Pay Rules, 1990 had come into force and under the said rules the revised pay scale was 1640-2900 and therefore the petitioner's appointment order specifically had the pay scale of Rs.1640-2900. Thus, the petitioner would not be entitled for anything more than that has been prescribed under the Revision of Pay Rules, 1990. State counsel further submits that even otherwise the petitioner was appointed in the year 1992 in the pay scale of Rs. 1640-2900 and the writ petition was filed only in 2009 i.e. after about 17 years from the date of his appointment which too requires the petition to be rejected on the ground of delay. It was the further contention of the State counsel that serial No.7 of Part-A of Annexure-2 would be applicable only to those persons who were already drawing the pay scale of Rs.

1820-3300. Since the petitioner was never drawing pay scale of Rs. 1820-3300, he cannot claim for pay scale of Rs. 2200-4000 and thus, counsel for the State prayed for rejection of the writ petition.

6. Having heard the contentions put forth on either side and on perusal of the record, so far as the factual aspect as has been narrated by the petitioner is concerned, it is not in dispute that the petitioner was appointed on 20.08.1992. It is also not in dispute that in the order of appointment the pay scale provided for the petitioner to the post of Assistant Superintendent Ayurved Pharmacy was that of Rs.1640-2900. Another undisputed fact in the present case is that the service conditions of the petitioner are governed by the Rules of 1987 and Schedule-1 of the said Rules displays different posts in the department and the pay scales for each of the posts. The pay scale for Assistant Superintendent Ayurved Pharmacy under the Rules of 1987 prescribed was Rs.1540-2740. The Revision of Pay Rules, 1990 Annexure-1 provides for the existing scale and the revised scale in Annexure-1 of the said Rules of 1990. Serial No.12 shows existing pay scale of Rs.1540-2740 and the revised scale was 1640-2900 which has been given to the petitioner.
7. What cannot be lost sight of at this juncture is that Part-A of Annexure-2 Serial No.7 prescribes pay scale of Rs.2200-4000 for Class-II gazetted posts. In the Revision of Pay Rules, 1990 itself it has been specifically mentioned that the said revised pay scale of Rs.2200-4000 would be applicable to those Class-II gazetted posts which are filled up by direct recruitment wholly or partially made through the Public Service

Commission. It is here that the petitioner claims that since he has been appointed by way of direct recruitment conducted by the State PSC and the post which the petitioner is holding also being a Class-II gazetted post, he should be entitled for the pay scale of Rs.2200-4,000.

8. The fact which goes slightly in favour of the petitioner is the judgment of the Madhya Pradesh High Court in the case of Dr. Pradeep Kumar (supra) where a person in the same department holding the post of Aushadhi Nirman Vaidya whose initial appointment was also in the pay scale of Rs. 1540-2740 who had subsequently claimed for the pay scale of Rs.2200-4000 on the basis of recommendation made by the Madhya Pradesh Revision Rules, 1990 and the Madhya Pradesh High Court had allowed the same. It has been informed by the petitioner that the said order of the Madhya Pradesh High Court has since been implemented and in the process the persons similarly placed in the State of Madhya Pradesh are drawing more salary than his counterpart in the state of Chhattisgarh though both were appointed in the erstwhile state of MP and when the MP Revision of Rules, 1990 was in vogue.
9. Perusal of the MP High Court judgment reflects that the writ petition was allowed on the basis of recommendation made by a high level committee constituted by the General Administration Department to remove the anomaly of pay scale if any. It would be relevant at this juncture to mention that the relief further sought for by the petitioner is that he has also not been granted the benefit of Bhramswaroop Committee which had recommended the pay scale of Rs.10000-15200 w.e.f. 01.04.2006.

10. Taking into consideration the aforesaid facts and circumstances of the case, this Court is of the opinion that since it is a case of granting of a particular pay scale to a particular category of officers and which can have a far reaching repercussion as it would also affect the pay scale of all similarly placed persons, it would be better in the larger interest of justice if the present writ petition is disposed of with a direction to the State Govt. to immediately consider constituting of a high level committee as has been done by the state of Madhya Pradesh consisting of senior level Principal Secretaries and Secretaries of a few departments to ascertain whether the petitioner and the category to which the petitioner belongs would be entitled for the pay scale which has been recommended in Part-2 Annexure-2 of the Madhya Pradesh Revision Rules of 1990. Let the State Govt. take appropriate steps for constitution of a Committee in this regard at the earliest and finalize the proceeding at the earliest preferably within a period of 6 months. The Committee shall also consider whether the petitioner would also be entitled for recommendation of the pay scale of Rs. 10,000-15,200 as recommended by the Bhramswaroop Committee or not. The Committee shall also keep in mind the judgment of the Madhya Pradesh High Court while taking a decision.

11. The writ petition accordingly stands disposed of.

**Sd/-
(P. Sam Koshy)
JUDGE**