

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.11399 of 2006

Research Employees Welfare Association,
Represented by its General Secretary
Central Research Institute Siddha,
Arumbakkam, Chennai - 600 106.

..Petitioner

Vs

1. Union of India,
Rep.by its Secretary to Government,
Department of Ayush,
Ministry of Health and Family Welfare,
Government of India, Red Cross Building,
Red Cross Road, New Delhi-1.
2. Joint Secretary (FI),
Internal Finance Desk,
Department of Ayush,
Ministry of Health & Family Welfare,
Government of India, Red Cross Building,
Red Cross Road, New Delhi-1.
3. Director,
Central Council for Research
in Ayurveda & Siddha,
No.61-65, Institutional Area,
Opposite D Block, Janagpura,
New Delhi -1.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus, to call for the records relating to the order of the 3rd respondent dated 21.4.2005 bearing Ref.No.F.No.135-1/2003-CCRAS/ESTT communicating the decision of the 1st and 2nd respondent and quash the same insofar as not extending the further revision of Hospital Patient Care Allowance/Patient Care Allowance to the Group C and D staffs and Nursing Allowance to the Nursing Staffs as illegal, arbitrary, contrary to law and in violation of principles of natural justice and consequently direct the respondents to follow the recommendation of the 5th Pay Commission and the earlier practice of extending the further revision of HPCA/PCA to the Group C and

D staffs and Nursing Allowance to the Nursing Staffs in tune with Bye-law 47 read with Bye-law 44 of the 3rd respondent Society.

For Petitioner : Mr.S.Parthasarathi
for Mr.Balan Haridas

For Respondents : No representation

O R D E R

The prayer made in this writ petition is to issue a Writ of Certiorarified Mandamus, to quash the order passed by the third respondent dated 21.04.2005 bearing Ref.No.F.No.135-1/2003-CCRAS/ESTT and for consequential relief.

2.At the threshold, it is pertinent to point out here that the Nursing allowance as per the recommendations of the VII Pay commission, has been extended to the Nursing staff working in the third respondent, which fact was mentioned in the reply affidavit filed by the petitioner on 16.07.2019. Hence, the learned counsel for the petitioner restricted the relief sought for in this writ petition only in respect of the Group C and D staff working in the third respondent.

3.The case in brief is as follows:

3.1 The petitioner Association is a recognised Association, representing Group C and D employees working in the third respondent, which is governed by the Bye-laws framed under the Societies Registration Act.

3.2 The third respondent was started in the year 1978, right from its inception, they have extended the pay scale as paid to the Central Government Employees to all its categories of staffs, in terms of Bye law 47 r/w 44 of the Memorandum of Association, Rules, Regulations and Bye-laws of the Central Council for Research in Ayurveda and Siddha (in short, 'the Council'). Even the recommendations of the IV pay commission was implemented to all the employees including Group C and D.

3.3 It is further submitted that Hospital Patient Care Allowance (HPCA)/Patient Care Allowance (PCA) from Rs.80/- to Rs.160/- to Group C staff and from Rs.75/- to Rs.150/- to Group D staff, were extended pursuant to the recommendations of the V Pay Commission and the same was followed by the third respondent in terms of its Bye laws. Unfortunately, further revision of HPCA/PCA to Rs.700/- for Group C and Rs.695/- for Group D staff, was not extended to the third respondent. Hence, the petitioner Association submitted a representation dated 31.01.2004 requesting to extend the said benefits to the Group C and D staff of the third respondent. However, the third respondent rejected the said request, by order dated 21.04.2005, which is

impugned herein.

4.The learned counsel for the petitioner submitted that though the respondents have implemented the V pay commission recommendations for the post of Stenographer, Head Clerk/Assistant, Physicians of Ayurvedha and Siddha etc., they failed to implement the same by granting revision of HPCA/PCA to Group C and D staff, which is arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution of India. According to the learned counsel, the third respondent ought to have implemented the pay commission recommendations, in respect of Group C and D staff, in terms of Bye-laws 47 r/w 44 of its Memorandum of Association and Rules, Regulations. The learned counsel further submitted that in the decision referred to by the respondents, the true spirit of Bye-laws 44 and 47 and the earlier practice of implementing the revision of HPCA/PCA to Group C and D staff, was not brought to the notice of the High Court of Karnataka and hence, the decision rendered by the same does not apply to the facts of the present case. Thus, the learned counsel sought to quash the order impugned herein and for consequential direction to the third respondent to extend the benefits as applicable to the Group C and D staff.

5.Upon notice, the third respondent filed a detailed counter affidavit, wherein, it is inter alia stated that the Ministry of Health & Family Welfare, has not considered the proposal to grant enhanced HPCA/PCA Allowance to the employees of the third respondent on the ground that the work load of patient care in the hospitals attached to the third respondent is much less than the Central Government Hospitals; and the employees of the third respondent have only performed peripherals duties while handling the patients and the patient care is limited and the third respondent does not have full fledged hospital for treatment of patient. It is further stated therein that the High Court of Karnataka by order dated 25.01.2001, dismissed the writ petitions in W.P.Nos.42833 to 42843 of 1999 filed for the similar relief and hence, the Ministry has rejected the claim of the petitioner Association with respect to revision of HPCA/PCA. Stating to, the third respondent prayed to dismiss this writ petition.

6.Stoutly denying the averments made in the counter affidavit, the petitioner filed their reply affidavit, wherein, it is inter alia stated that the third respondent is a full fledged hospital and it has 50 beds and the number of patients treated by it, is increasing every year; the patient care allowance is extended to both inpatients and outpatients and the inpatients are treated for Hepatitis 'B', Leucoderma, Psoriasis, Eczema and other communicable diseases and further, the employees are handling blood / urine samples and they are thus,

in regular touch/exposing to patients, who come for treatment for several diseases. It is further stated therein that the third respondent had extended the revised Patient Care Allowance of Rs.2,100/- in the salary payable for the month of October 2017, based on the recommendation of the VI Central Pay Commission and Rs.4,100/- based on VII pay Commission recommendation, which was paid from November 2017 to April 2018, however, without any notice or hearing, they reverted back to pay the pre-revised Patient Care Allowance of Rs.480/- without any semblance of justification. It is also stated by the petitioner that as the Group C and D Hospital employees of the third respondent are similar to the employees of the Government of India employed in the hospitals, the Patient Care Allowance ought to have been extended to the employees of the third respondent, but the same has been rejected in respect of the members of the petitioner, by the order impugned herein, which is arbitrary and illegal.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. Despite several opportunities granted to the respondents, there is no representation for the respondents, which shows that they are not interested in proceeding with the case. However, due to efflux of time, this Court is inclined to proceed with the matter on merits.

9. It is not in dispute that the members of the petitioner Association are the Group C and D employees (non-ministerial) working in the third respondent, which is governed by the Bye-laws framed under the Societies Registration Act. For better appreciation, the relevant provisions of the Bye-laws of the third respondent are extracted hereunder:

''Bye-Law 44:

The Scale of pay and allowances applicable to the officers and establishment in the services of the Central Council shall be those prescribed by the Government of India for similar personnel employed under them.

Bye-Law 47:

In respect of matters not provided for in these regulations the rules as applicable to Central Government Servants regarding the general conditions of services, pay, allowances, T.A and daily allowances, foreign services terms, deputation in India and abroad etc. and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis

mutandis to the employees of the Central Council.'

The combined reading of the above provisions would make it clear that in respect of the matters not provided for in their regulations, the rules as applicable to the Central Government servants regarding the general conditions of service, pay allowance, etc., will be applicable to the employees of the third respondent.

10.It is the grievance of the petitioner that right from its inception, the third respondent has extended the pay scale as paid to the Central Government Employees to all its categories of staff viz., Group A, Group B, Group C and Group D, in terms of Bye-law 47 r/w 44 of the MOA, Rules, Regulations and Bye-laws of the Council. Even they have implemented the recommendations of the IV Pay Commission to all the employees. However, the third respondent has declined to grant the revised PCA/HPCA allowance of Rs.700/- and Rs.695/-, as per the recommendation of the V Pay Commission, to the Group C and Group D staff working in the third respondent. According to the learned counsel, the recommendation of the Pay Commission qua PCA/HPCA, was extended to all the employees and the denial of the same, that too, without any notice/ communication to the Group C and D employees alone, is arbitrary, illegal and violative of the Articles 14 and 16 of the Constitution of India.

11.Whereas, the sum and substance of the averments made in the counter affidavit filed by the respondents are that (i)the Ministry has not considered the proposal to grant enhanced patient care allowance to the employees of the third respondent on the ground that the work load of patient care in the hospitals attached to the third respondent is much less than the Central Government Hospitals; (ii)the employees of the third respondent only performed peripherals duties, while handling the patients and the patient care is limited and the third respondent does not have full fledged hospital for treatment of patient; and (iii)the High Court of Karnataka, by order dated 25.01.2001 has dismissed WP.Nos.42833 to 42843 of 1999 filed for the similar prayer and hence, the Ministry has rejected the claim for revision of PCA/HPCA to the members of the petitioner.

12.This Court does not find any substance in the averments so made in the counter affidavit. According to the third respondent, viz., Central Council for Research in Ayurveda and Siddha, it was instituted, with a mission to meet the national as well as global needs in health care through evidence based research in Siddha system of medicine and also to find the new interventions for excellence and global leadership in the field of diagnosis, prevention and management of diseases by Siddha

research activities. Its research activities include research on clinical, drug, literary, ethno medical survey through their peripheral institutes. It is also providing medical care to patients seeking Siddha medicines through its outpatients and inpatients departments.

13.It is seen from the reply affidavit filed by the petitioner that the third respondent is a full fledged hospital and it has 50 beds; and the number of patients treated by the third respondent is about 1,55,112 during the year 2016-17 and 1,68,497 for the year 2017-18 and is increasing every year. That apart, the employees are handling the patients, who come for treatment for several diseases including communicable diseases. Such being the actual position, the contentions raised by the respondents that the Group C and D staff working in the third respondent are doing light work and they performed peripheral duties, cannot be accepted by this Court.

14.As already stated above, in terms of the Bye-laws of the third respondent, all the benefits extended to the employees of the Central Government, have to be extended to the employees of the third respondent. It is also significant to mention herein that after filing of this writ petition, the Nursing Care Allowance was extended to the Nurses from the year 1986 onwards and the Nursing Allowance as fixed in the VII Pay Commission was also extended to the Nurses working in the third respondent. In such circumstances, the denial of PCA/HPCA allowance to the Group C and D staff working in the third respondent alone, is violative of the Articles 14 and 16 of the Constitution of India.

15.It is to be noted that as per the guidelines contained in Government of India, the eligibility condition has been prescribed for sanctioning HPCA or PCA viz., the employees should be working in a Hospital having more than 30 beds; and the employees should have continuous and routine contact with infected patients of communicable diseases or should have handled infected materials or instruments as their primary duty, which can spread infection etc. The intention for the grant of PCA is that the patient infected with communicable diseases should not be neglected from society and they should get proper care and attendance in respective hospitals. As mentioned in the preceding paragraph, the third respondent is a full fledged hospital and it has 50 beds. As such, the members of the petitioner are entitled to PCA/HPCA allowances as fixed by the recommendations of the Pay Commission. However, the third respondent, after extending the said benefit, subsequently, reversing the same from the salary payable to those employees, that too, without any notice / communication, is arbitrary, illegal and contrary to the principles of natural justice. Such course adopted by the third respondent, in the opinion of this Court, cannot be countenanced.

16.Though the respondents in their counter affidavit, placed reliance on the order dated 25.01.2001, passed by the Karnataka High Court in WP.Nos.42833-43 of 1999 in support of their stand, this Court is not inclined to accept the same, as the facts and circumstances of the present case are distinct and different. In that case, the petitioners sought HPCA to Group C and D employees, comparing with the employees working in NIMHANS and the same was rejected on the ground that Article 14 would come into play only if the rules governing the employees of third and fourth respondents are the same. On the other hand, in the present case, the petitioner Association claimed their right by virtue of the Bye-laws of the third respondent, which specifically state that the rules as applicable to the Central Government servants regarding the general conditions of service, pay allowance, etc., will be applicable to all the employees working in the third respondent.

17.It is settled law that all the employees, who fulfill the eligibility conditions, as per the rules, form a homogeneous class [Refer: Union of India vs S.R. Dhingra, (2008) 2 SCC 229]; and identically situated individuals cannot be discriminated with reference to the admissibility of quantum of pay and allowances or the date from which such pay and allowances are admissible [Refer: Union of India v. Dineshan K.K., (2008) 1 SCC 586].

18.Thus, viewing from any perspective, the order impugned herein cannot be allowed to sustain and the same is accordingly, quashed. Consequently, the third respondent is directed to pay the amount with retrospective effect, to the member of the petitioner, within a period of three months from the date of receipt of a copy of this order.

19.Accordingly, this Writ Petition stands allowed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government,
Union of India,
Department of Ayush,
Ministry of Health and Family Welfare,
Government of India,

Red Cross Building,
Red Cross Road, New Delhi-1.

2. The Joint Secretary (FI),
Internal Finance Desk,
Department of Ayush,
Ministry of Health & Family Welfare,
Government of India,
Red Cross Building,
Red Cross Road, New Delhi-1.

3. The Director,
Central Council for Research
in Ayurveda & Siddha,
No.61-65, Institutional Area,
Opposite D Block, Janagpura,
New Delhi -1.

+1 CC to Mr.Balan Haridas, Advocate sr 36398.

W.P.No.11399 of 2006

RSV(CO)
SP(31/12/2020)