

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.7734 OF 2013

K.B.Pushparaj

.. Petitioner

- Vs -

1. Government of Tamil Nadu
rep. By Principal Secretary to Govt.
Health & Family Welfare Department
Secretariat, Chennai 600009.
2. The Principal Secretary & Commissioner
Indian medicine & Homeopathy
Arumbakkam, Chennai 600 106.
3. The Principal Secretary to Government
Finance (PC) Department
Chennai 600 009.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to G.O. Ms. No.289, Health & Family Welfare Department, dated 27.9.12 of the 1st respondent, quash the same and to direct respondents 1 and 3 to fix the scale of pay of Pharmacists of Indian Medicine System on par with their counterparts in Allopathy System with effect from 25.5.1985 and on that basis refix the pay of the petitioner in the Selection/Special Grades and consequently revise his pensionary benefits and grant all consequential monetary benefits and disburse the same to the petitioner with interest at 18% for delayed disbursement all within a limited time frame.

For Petitioner : Mr. M.Ravi

For Respondent : Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that he joined the services of the Government at Government Hospital, Kadayanallur, Tirunelveli District on 3.9.1976 as Siddha Pharmacist and superannuated voluntarily from service on 31.3.07. It is the further case of the petitioner that there are about 890

Pharmacists in the Indian System of Medicine working in the services of the Government with the further promotion avenue being Pharmacy Supervisor and, thereafter, as Chief Pharmacist. There are six post of Pharmacy Supervisor and 2 posts of Chief Pharmacists throughout the State as promotion opportunity for the total 890 Pharmacist. It is the case of the petitioner that though equal pay was given based on the IV Pay commission recommendation, however, the same was reversed, which was not communicated to the Indian Medicine Department. It is the further grievance of the petitioner that the Adhoc Rules of Indian Medicine were not changed in tune with Allopathy Medicine.

2. It is further averred by the petitioner that due to the lesser scope of promotion and to avoid stagnation of employees in a single post, the Government introduced Selection/Selection Grade scales of pay. Though Government Orders in G.O. Ms. No.555, Finance (PC) Department and G.O. Ms. No.304, Finance Department were issued fixing same scales of pay for the employees in the Indian System of Medicine and Allopathy stream of Medicine, however, the 1st respondent, in contravention of the said Government Orders, informed that the two cadre structures cannot be compared and held that the Selection Grade Pay of Pharmacist on the Siddha Side cannot be equivalent to the Allopathy side and the selection grade of pay in the Siddha side was restricted to the ordinary grade scale of pay and, consequently, vide letter dated 6.3.1992, recovery proceedings were initiated against all of them by the 2nd respondent by order dated 19.3.92.

3. In spite of the Government taking a policy decision way back on 25.5.1985 to grant equal scales of pay to the Pharmacists of Indian Medicine System as well as Pharmacists in Allopathy side, the same has been violated and the Pharmacists in the Indian System of Medicine were discriminated. Therefore, the petitioner submitted a representation dated 4.10.2010 to the 2nd respondent, which was forwarded by the 2nd respondent to the 1st respondent vide letter dated 2.12.10. However, no orders were passed on the said representation, which resulted in the filing of W.P. No.14728/11 and this Court, vide order dated 24.6.11 directed the 1st respondent to consider and pass orders on the proposal of the 2nd respondent within a period of four months. In spite of the said direction, as no orders were passed, Contempt Petition No.882/12 was filed pursuant to which the G.O. Ms. No.289, Health & Family Welfare (M2-1) Department dated 27.9.12 was passed, which resulted in the closure of the contempt petition.

4. It is further averred by the petitioner that G.O. No.289 reveals that accepting the proposal of the 2nd respondent, the 1st

respondent upgraded four posts of Pharmacy Supervisors in the Pay Band Rs.9300-34800 + GP 4300 in the Government Siddha Medical College, Palayamkottai, tirunelveli Distrit, as Chief Pharmacist in the Pay Band of Rs.9300-34800 + GP 4400.

5. It is the averment of the petitioner that his prayer was for refixation of scale of pay of Pharmacists of Indian Medicine System in Selection/Special Grade on par with counterparts in the Allopathy System w.e.f. 1.6.1988 and to refix the pay consequent upon such refixation and grant the pensionary benefits based on such refixation. However, the order passed by the respondents is in no way relatable to the prayer of the petitioner and the upgradation of four posts will have prospective effect only and would in no way enure to the benefit of the petitioner. It is the further submission of the learned counsel that based on the recommendation of the Commissioner of Indian Medicine and Homeopathy dated 21.5.02, G.O. Ms. No.289 dated 27.9.12 was passed only to wriggle out of the contempt petition. The act of the respondents in not addressing the grievance of the petitioner, but passing a wholly different order, which was not sought for, clearly reveals the devious mind and intent of the respondent to defeat the legitimate claim of the petitioner and, therefore, left with no other alternative, the present petition has been filed for the relief supra.

6. Learned counsel appearing for the petitioner submits that not only the promotional avenues for the petitioner is limited, which, even by the present G.O. Ms. No.289, has been increased meagerly, which, though is not the relief sought for by the petitioner. The promotional avenues being very limited, the petitioner submitted representation to grant them selection grade/special grade and also refix their pay on the basis of the Pay Commissioner recommendation on par with the persons in the Allopathic System of Medicine, which prompted this Court to issue directions to pass orders on the said recommendation forwarded by the 2nd respondent, however, with callous attitude and ignoring the crux of the petitioner's representation, which was directed to be considered by the respondent, merely four posts of Pharmacy Supervisor alone was upgraded as Chief Pharmacist, which in no way redress the grievance expressed by the petitioners. It is the further submission of the learned counsel that the primary request of the petitioner being refixation of scale of pay, which was in tune with the Cabinet decision of 25.5.1985, however, without scant regard to the said decision, the representation, which was in line with the said decision was rejected. It is the further submission that though the petitioners, who are under the Indian Medicinal System are rendering equivalent services to those of their counterparts in the Allopathic System of Medicine, however, they are

discriminated and are not being paid equivalent scales of pay, which is in total violation of Article 14 of the Constitution. It is the further submission of the learned counsel for the petitioner that the cadre strength of the different systems of medicine are different and the cadre strength in the Indian Medicine System being negligible compared to the Allopathy System, there would be no impediment or difficulty for the respondents to grant equivalent scales of pay. It is the submission of the learned counsel for the petitioner that the act of the respondents in passing an order divergent to the representation submitted by the petitioner clearly reveals that the respondents are just trying to dilute the issue by not giving the benefit to which the petitioners are legally entitled and, therefore, necessary orders should be passed directing the respondents to refix the scale of pay of the Pharmacists in Indian Medicine System on par with their counterparts in the Allopathy System w.e.f. 25.5.1985.

7. Per contra, learned Special Government Pleader appearing for the respondents, while stoutly denied the stand taken by the petitioner, submitted that on and from the implementation of the recommendations of the VII Pay Commission, the Pharmacist in both categories are being paid equivalent scales of pay and that promotions are also being effected in the Indian Medicine System periodically. Further, It is the submission of the learned Special Government Pleader that prior to 1.1.1996, the implementation of equivalent scales of pay to both the system of medicine is not feasible on account of the different nature of duties and responsibilities attached with the said posts. The duties and responsibilities being different, equating one class as equivalent to another class is per se impermissible and is in no way a violation of Article 14 of the Constitution. Further, on and from the implementation of the VII Pay Commission recommendation, the selection grade/special grade given to both categories of Pharmacists are one and same and, therefore, the stand of the petitioner that the Indian Medicine System is given a step-motherly treatment is not borne out by records. It is the further submission of the learned Special Government Pleader that the cadre strength of the different types of Medicine, viz., Siddha, Ayurveda, Homeopathy and Unani are based on orders issued by the Government and comparison of cadre strength of one system with another system is wholly unacceptable. In fine, it is the submission of the learned Special Government Pleader that the whole gamut of the argument of the petitioner that the Indian Medicine System is not given uniform pay scale and that the Selection Grade/Special Grade are also not equivalent is not on the basis of any materials available on record and mere assertions without there being any iota of evidence cannot be a ground to accede to the prayer as made by the petitioner and, therefore, prays for dismissal of the present petition.

8. A rejoinder has been filed by the petitioner, wherein it is reiterated that the Cabinet decision to give uniform scales of pay to the Pharmacists of Indian System of Medicine as also Allopathy System of Medicine was given a go-by, by the Government and in utter disregard to the above decision, the pay scales of the Pharmacists in both the forms of Medicine were not made uniform. In essence, it is submitted that the Siddha Pharmacists have been denied of their rightful scales of pay by the respondents in utter disregard to the Cabinet decision of the year 1985.

9. This Court paid its undivided attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

10. The sum and substance of the contention of the petitioner is that the two forms of Medicine, viz., Indian System of Medicine and Allopathy System of Medicine, the Pharmacists, though discharging same work/duties and responsibilities, are not being paid equivalent scales of pay and other monetary benefits. The further submission that the cadre strength of the Pharmacists in the Indian System of Medicine not being not high in comparison to the volume of the Pharmacists in the Allopathy System of Medicine, extending similar monetary benefits, as above, would not be in detriment to the respondents.

11. A perusal of the materials available on record, to which the attention of this Court was drawn reveals that though the petitioner makes a vehement submission on the cadre strength of the Pharmacists in the Indian System of Medicine in comparison to the Pharmacists in the Allopathy System of Medicine, however, it is seen that there is no material placed with regard to the cadre strength in the two different types of Medicine Systems. Except for speaking about the strength of the Pharmacists in the Indian System of Medicine and the promotional opportunities available higher up the ladder in the said system, there is no material available to speak about the actual cadre strength of the Pharmacists in the Allopathy System of Medicine. When drawing equivalence, it is incumbent upon the petitioner to table materials on which a reasonable inference could be drawn that the argument put forth by the petitioner is acceptable. But in the case on hand, there is no material, which speaks about the actual cadre strength in the two system of medicine, as also the other systems of medicine is available on record from which the petitioner could draw a presumption as to the violation of equality. In the absence of the same, the contention advanced by the petitioner does not deserve acceptance.

12. Coming to the other contention relating to scale of pay provided to the Pharmacists in the Indian System of Medicine and the Pharmacists in the Allopathy System of Medicine, a cursory look at the affidavit filed by the petitioner together with the writ petition reveals that though anomaly existed as to the scales of pay during the 2nd Pay Commission to 4th Pay Commission, however, in the 5th Pay Commission, the said anomaly was set right by providing equivalent scales of pay in the ordinary grade for both the Pharmacists in the Indian System of Medicine as also Allopathy System of Medicine. Even in the 6th Pay Commission, in the ordinary grade, the Pharmacists in the Indian System of Medicine as also Allopathy System of Medicine were provided with identical scales of pay. Therefore, parity in the scales of pay has been set right in the ordinary grade between the Pharmacists in the Indian System of Medicine as also Allopathy System of Medicine on and from 5th Pay Commission.

13. The second limb of the grievance of the petitioner pertains to the grant of selection grade/special grade, which scale is not identical to the Pharmacists in the Indian System of Medicine vis-a-vis the Pharmacists in the Allopathy System of Medicine. True it is, the affidavit of the petitioner itself reveals that there is a miniscule difference in the selection grade/special grade scale between the Pharmacists in the two forms of Medicine. The affidavit reveals that the said anomaly exists as of the 6th Pay Commission. However, a perusal of the counter of the respondents reveal that the said anomaly has been set right in the 7th Pay Commission in which the Selection Grade/Special Grade scales of pay of the Pharmacists in the Indian System of Medicine as also Allopathy System of Medicine are given uniformly to all categories of employees. With reference to the said averment in the counter, there is no whisper about the same by the petitioner. Further, it is to be pointed out that the grant of scales of pay between two sets of posts is clearly within the domain of the employer, who, on the basis of the work discharged, the duties and responsibilities attached with the said post, fixes the scales of pay for the said posts. This Court, sitting under Article 226 of the Constitution, cannot substitute its views to grant identical scales of pay to two different posts, as the duties and responsibilities as also the work discharged by the employees in the said post has not been codified and tabled before this Court to come to a positive conclusion that the two posts are identical. The grant of scales of pay being within the domain of the employer, viz., the Government herein, it is a policy decision that is being taken by the Government to grant scales of pay to two different posts based on the work discharged, the duties and responsibilities attached with the said posts as also the various other ancillary works performed by the employees in

the said post and this Court would not be justified in interfering with the policy decision of the Government to award the scales of pay to the said posts based on various metrics which have gone into fixation of the said scale of pay. Therefore, the stand of the respondents being that on and from the VII Pay Commission, the Pharmacists in the Indian System of Medicine as also Allopathy System of Medicine being awarded identical selection grade/special grade scale of pay and in the absence of any material to the contra disputing the same, this Court would not be justified in entering into the realm of the said policy decision of the respondents to give any positive direction.

14. Further, it is to be pointed out that the four posts of Pharmacy Supervisors have been upgraded as Chief Pharmacists on and from the year 2012. Though it is the contention of the petitioner that the proposal emanated from the 2nd respondent in the year 2002 culminated in the passing of the Government Order in the year 2012, much detriment has been caused to him, as the shortage of promotional posts deprived him of an opportunity to get a higher post and along with it higher scales of pay and consequential higher pensionary benefits, however, it is to be pointed out that the petitioner retired from the service of the respondents on 31.3.2007. Though the petitioner highlights various events that had occurred, including the cabinet decision of the year 1985 for grant of uniform scales of pay and also for upgradation of posts of which applications were filed before the Tribunal, however, it is evident from the affidavit filed in support of the said petition that representation was submitted by the petitioner only on 4.10.2010 seeking the benefit of uniform scale of pay, selection grade/special grade as also promotional benefits. The petitioner having kept silent all through his career till 31.3.2007, and even kept silent for a further period of three years, has taken up the issue only in the year 2010 by submitting a representation, based on which in the year 2012, the Government Order in G.O. Ms. No.289 has been passed upgrading the posts. The petitioner having retired way back before the issuance of the Government Order, cannot come before this Court and say that the proposal which emanated from the 2nd respondent in the year 2002 ought to have been considered by the 1st respondent before his retirement, which would have given him the benefits. Had the petitioner been vigilant, he ought to have knocked the doors of the 1st respondent as also this Court immediately after the proposal of the 2nd respondent in the year 2002. The Association having taken up the cause of the Pharmacists in the Indian System of Medicine by filing original application before the Tribunal as also writ petition before this Court, which ultimately led to the upgradation of certain posts in the year 2012 by issuance of G.O. Ms. No.289, the petitioner cannot try to rewind the pendulum to suit his

needs by seeking a direction for retrospective relief when such posts were not even in existence on the said date. In the above backdrop of the events, this Court is of the considered view that the relief of refixation of scale of pay as also consequential monetary benefit in pension and other benefits with retrospective effect cannot be granted and the said prayer deserves to be rejected.

15. For the reasons aforesaid, the prayer as sought for by the petitioner, cannot be granted and, accordingly, the writ petition is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

GLN

To

1. The Principal Secretary to Govt.
Health & Family Welfare Department
Government of Tamil Nadu
Secretariat, Chennai 600009.
2. The Principal Secretary & Commissioner
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RMP (07/12/2020)

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