

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 25 of 2020****Judgment reserved on 06.04.2021****Judgment delivered on 07/05/2021**

{Arising out of Order dated 21/06/2019 passed in Writ Petition(S) No. 6597 /2008 by the learned Single Judge}

1. State of Chhattisgarh through its Principal Secretary, Government of Chhattisgarh, Department of Health and Family Welfare, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District Raipur Chhattisgarh
2. The Director, Indian System of Medical and Homeopathy, DKS Bhawan, Raipur Chhattisgarh
3. The Principal, Government Ayurvedic College, Raipur Chhattisgarh
4. The Secretary Pension Nirakaran Samiti, General Administration Department, Raipur, Chhattisgarh

-----Appellants/ Respondents 1 to 4.**VERSUS**

1. Dr. A.P. Sharma, S/o Shri D.P. Sharma, aged about 67 years, Resident of Sunder Nagar, Quarter No. 25, Raipur Chhattisgarh
2. Dr. R.K. Tiwari, S/o late Shri Ramlal Tiwari, aged about 67 years, Resident of Ward No. 32, Brahmanpara, Rajnandgaon, Chhattisgarh
3. Dr. K.L. Tikariha, S/o late Shri Ramnath Tikariha, aged about 67 years, Resident of D-2, Ram Niwas, Behind Ayurvedic Colony, Rohipuram Raipur Chhattisgarh
4. Smt. Kunti Devi Katzhare, W/o late Shri Dr. P.L. Katzhare, aged about 61 years, Resident of Village & Post Kherthabazar, Tahsil Daundilohara, District Durg Chhattisgarh

-----Respondents

For Appellants : Mr. Chandresh Shrivastava, Dy. Adv. General
 For Respondents : Mr. Ashish Shrivastava, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Order**Per Parth Prateem Sahu, J.**

1. Correctness and sustainability of the order dated 21.06.2019 passed in WPS No. 6597/2008 is put to challenge in this appeal, whereby learned

Single Judge while allowing the writ petition has held that the petitioners/ respondents would be entitled for the revised pension taking Non Practising Allowance (in short "NPA") as part of wages for the purpose of computing pension.

2. Facts relevant for disposal of this appeal are that Respondents 1 to 3 and husband of Respondent 4 were appointed as Ayurved Chikitsa Adhikari (Ayurved Medical Officer) and working on their respective posts. On 28.06.1999, Appellant 2 had issued an order directing the Ayurved Medical Officers to work as in-charge, Superintendent-cum- District Ayurved Officer. Names of Respondents 1 to 3 and husband of Respondent 4, find place at serial no. 13, 18, 21 and 42 respectively in the list of In-charge District Ayurved Officer dated 28.06.1999 (Annexure P-1). During the period for which they worked as In-charge District Ayurved Officer, they were given NPA as per the order/ circular dated 08.03.2000/20.04.2000. Respondents 1 to 3 and husband of Respondent 4 retired from their services after attaining the age of superannuation on 31.11.2001, 31.12.2001, 31.08.2001 and 28.02.2002 respectively. While calculating the monthly pension amount, NPA was not added as their salary / pay, hence, they made representation before the authorities which was not considered. Respondents, thereafter, filed writ petition as WP No. 1019/2003, raising their grievance to which the appellants-authority filed reply resisting their claim. When the aforesaid matter came up for hearing on 17.03.2008, learned Judge forwarded the case to the High Power Committee constituted by the State for deciding the dispute of retiral dues of government employees. Learned Judge further directed the Committee to pass orders in accordance with law after affording proper opportunity of hearing to the petitioners, granted liberty to the petitioners to file additional documents in support of their case. The Committee considered the claim of the respondents and arrived at a finding

that the NPA is to be added in the pay for calculating the pension for the employees holding the post of District Ayurved Officer, respondents were not holding the substantive post of District Ayurved Officer but were working as in-charge on the said post, as such, NPA is not to be added for calculating pension. Aggrieved by the order passed by the Committee consisting of five senior officers of the State ie. Secretary, Finance Department, State of Chhattisgarh as Chairman; Commissioner, Treasury, Accounts and Pension as Member; Additional Secretary as Member; Deputy Accountant General (Funds); Deputy Secretary, State of Chhattisgarh, respondents filed another writ petition as WPS No. 6597/2008 on the ground that at the time of retirement, respondents were getting 25% of their pay as NPA and once, NPA is granted then non- inclusion of NPA in their pay/ wages for calculating the amount of pension, is irrational. Other similarly situated employee by name Mr. N.K. Sharma, who retired while working as in-charge District Ayurved Officer, has been granted the benefit. His pension is calculated by adding NPA to the pay. Respondent-State filed reply to the writ petition resisting the claim of the respondents pleading that the respondents till the date of their attaining the age of superannuation were holding the substantive post of Ayurved Medical Officer, they were not promoted to the post of District Ayurved Officer, they were performing their duties as in-charge District Ayurved Officer. NPA was paid to them as per rules till the date they officiated as District Ayurved Officer. As per the rules, based on which, respondents were working as Ayurved Medical Officer, their next promotional post was District Ayurved Officer. Appellants-authorities further submitted that the inclusion of NPA for calculating the amount of pension to Dr. N.K.Sharma, was erroneous and after getting the knowledge, corrective measures have been taken and directed for amending the pension case and further recovery of excess amount paid to

him *vide* order dated 30.05.2008.

3. Learned Single Judge after hearing the respective parties allowed the writ petition, set aside the order passed by the High Power Committee and held that the respondents are entitled for revised pension benefits taking into account the NPA as part of wages/ pay by impugned order.
4. Shri Chandresh Shrivastava, learned Deputy Advocate General for the appellants submits that learned Single Judge erred in not taking into consideration that the respondents were not holding the substantive post of District Ayurved Officer but they were holding the substantive post of Ayurved Medical Officer. Learned Judge has only taken into consideration the Circular dated 08.03.2000/20.04.2000, wherein it is mentioned that NPA would be added to pay for calculating the retiral benefits to the doctors/ officers who are doing administrative work. Respondents 1 to 3 and husband of Respondent 4 though working as District Ayurved Officers but they were working as in-charge on the said post till their attaining age of superannuation. Respondents 1 to 3 and husband of Respondent 4 retired as Ayurved Medical Officer which is evident from the orders of their superannuation, hence, the Pension Committee has rightly considered the claim and decided that the respondents are not entitled for adding NPA towards their pay for calculating the retiral benefits. Learned Single Judge has further taken into consideration the benefits granted to Dr. N.K. Sharma, but has not considered Annexure R-1 placed on record with the reply, wherein the orders have been passed for re-calculating the amount of pension without NPA and further directed for recovery of excessive amount paid to Dr. N.K. Sharma. The order impugned is contrary to law, hence, it is not sustainable and requires interference.
5. Mr. Ashish Shrivastava, learned counsel for Respondents submits that it is the circular issued by the State Government itself on

08.03.2000/20.04.2000, wherein it is specifically directed that the Medical Officers/ doctors who are engaged in doing administrative work are entitled for adding NPA to their pay for calculating retiral benefits. He also submits that once there is Circular issued by the State Government and followed the same as considered by learned Single Judge in case of Dr. N.K. Sharma, the respondents 1 to 3 and husband of respondent 4 are also entitled for the same benefit as all of them were working on the administrative post ie. District Ayurved Officer and have drawn salary with NPA as evident from their last pay certificate available on record. The order passed by learned Single Judge is strictly in accordance with the Circular issued by the State Government, hence, it does not call for any interference.

6. We have heard learned counsel for the respective parties and also perused the record with utmost circumspection.
7. The claim of respondents is based on the Circular dated 8-3-2000 / 20.4.2000. To appreciate the submission of learned counsel for appellant we find it appropriate to extract the contents of Circular for ready reference:-

मध्यप्रदेश शासन
स्वास्थ्य एवं परिवार कल्याण विभाग
मंत्रालय - वल्लभ भवन

क्रमांक एफ 1-9/ 98/17 / मेडि -1 भोपाल, दिनांक: 8.3.2000
20.4.2000

प्रति,
आयुक्त,
स्वास्थ्य सेवाएं
म. प्र. भोपाल

विषय:- चिकित्सको की निजी प्रैक्टिस पर प्रतिबन्ध की स्थिति में एनपीए के भुगतान बाबत |

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1. शासन द्वारा सामान्य प्रशासन विभाग के आदेश --क्रमांक 25/971/वे.आ.प्र. / 98 दिनांक 11/13/99 के तहत दिनांक के अंतर्गत कार्यरत उन चिकित्सको अधिकारियों जो प्रशासकीय कार्य करते हैं, को केन्द्र शासन के दरों के अनुरूप स्वीकृत 25% अव्यावसायिक भत्ते को सेवनिर्विक्ती तथा अन्य सेवा लाभों के लिए "वेतन" के रूप में मान्य करने की स्वीकृति प्रदान

की जाती है।

2. यह स्वीकृति वित्त विभाग के पृष्ठांकन क्रमांक 361/ एसआर -178/IV/2000 दिनांक 6.4.2000 द्वारा महालेखाकार को पृष्ठांकित की गयी है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार

सही /-

(जे.एस. राय)

अवर सचिव

मध्यप्रदेश शासन

लोक स्वास्थ्य एवं परिवार कल्याण विभाग

8. The undisputed facts are that the respondents 1 to 3 and husband of Respondent 4 were holding their substantive post as Ayurved Medical Officer (Ayurved Chikitsa Adhikari), on 28.06.1999, Respondents 1 to 3 and husband of Respondent 4 were asked to work as in-charge Superintendent-cum-District Ayurved Officer, while working as in-charge District Ayurved Officer, they retired from services on attaining the age of superannuation. During the period of their work as in-charge District Ayurved Officer, they were paid NPA as per rules. Respondents 1 to 3 and husband of Respondent 4 retired from their services as Ayurved Medical Officer and not as District Ayurved Officer. Calculation of amount of pension is to be made in accordance with Chhattisgarh Civil Services (Pension) Rules, 1976, which was applicable to Respondents 1 to 3 and husband of Respondent 4. On the date of their superannuation, pension is to be calculated considering average emoluments drawn by government servant during the last 10 months of their services along with other factors for computing the amount of pension. Rule 31 of Rules, 1976 prescribes for Average Emoluments. Rule 30 prescribes for emoluments which reads as under:

“30. Emoluments.- The expression “emoluments” means pay as defined in Rule 9(21) of the Fundamental Rules (including dearness pay, if any, as

determined by the order of the Government issued from time to time) which on the date of his death, as the case may be”

9. Bare perusal of Rule 30 would show that it means pay as defined under Rule 9 (21) of the Fundamental Rules including dearness pay. Rule 9(21) of Fundamental Rules of the State deals with 'pay' which is reproduced below for ready reference.

“9. (21) (a) “Pay” means the amounts drawn monthly by a Government servant as-

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, technical pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the Governor-General in Council.”

10. From bare perusal of definition of 'pay' would show that the pay does not include the pay granted to an employee for discharging duties in officiating capacity, the special pay is defined under Rule 9(25) of Fundamental rules which reads as under.

“9. (25) “Special pay” means an addition of the pay, to the emoluments of a post or of a Government servant granted in consideration of-

- (a) the specially arduous nature of the duties; or
- (b) a specific addition to the work or responsibility; or
- (c) [Deleted]

11. From bare reading of the aforementioned provisions of Rules, 1976, Fundamental Rules of the State, the emolument means pay including dearness pay and pay is defined as pay other than the special pay or pay under the officiating capacity. The government employee(s) is entitled for

the pay and allowance as a matter of his/ their right and can claim for the post which he or they substantively holding. Respondents 1 to 3 and husband of Respondent 4 were holding the substantive post of Ayurved Medical Officer and not as District Ayurved Officer. Respondents though worked for some period on the post of "in-charge District Ayurved Officer" but they have retired as "Ayurved Medical Officer" and not as District Ayurved Officer. Circular dated 08.03.2000/ 20.04.2000 on which the respondents based their claim specifically mentions of the doctors/ officers who are doing administrative work, NPA as mentioned in the Circular of the State Government is attached to the post and not with the employee. 25% of NPA would be added towards the retiral and service benefit to the employee holding the substantive post of District Ayurved Officer and also retired as District Ayurved Officer. So far as it relates to the facts of the case and claim of Respondents, they were given NPA till they worked as in-charge District Ayurved Officer. Respondents have not retired as the District Ayurved Officer, but they have retired as Ayurved Medical Officer, hence, though for some time when the Respondents have been benefited with 25% NPA on account of officiating on the post of District Ayurved Officer will not make them entitled for the same to be added as pay for calculating the pension because they have not retired as District Ayurved Officer.

12. The other aspect of the case is that Annexure R-1 dated 30.05.2008 placed along with reply, whereby Appellant 2 has issued a letter for re-computation of pension of Dr. N.K. Sharma and further recovery of excess amount paid to him, has not been considered, in fact, learned Single Judge, in impugned order has taken one of the grounds that the respondents have granted benefits to Dr. N.K. Sharma who also retired as Ayurved Medical Officer while working as in-charge District Ayurved Officer and recorded that the benefit extended to Dr. N.K. Sharma has not been recalled at any point of

time. The said finding/ observation made by learned Single Judge is not in conformity with the letter Annexure R-1 dated 30.05.2008. Relevant portion of the letter is extracted below;-

"यह उल्लेखनीय है कि डां शर्मा नियमित रूप से प्रशासकीय पद पर कार्यरत न होते हुए मात्र प्रभार में थे। छ.ग. शासन के पत्र दिनांक 10.10.2002 के परिपेक्ष्य में डां शर्मा के पेन्शन में एन.पी.ए. की पात्रता नहीं है।

अतः निर्देशित किया जाता है कि डां शर्मा का संशोधित पेन्शन प्रकरण तैयार कर तत्काल संयुक्त संचालक, कोष, लेखा एवं पेन्शन को भेजे तथा अधिक भुगतान की वसूली की भी कार्यवाही करें। साथ ही इस प्रकरण में दोषी अधिकारी / कर्मचारी की जानकारी भी अनिवार्यतः संचालनालय को उपलब्ध करावे।"

The letter issuing direction for re-computation of amount of pension and for recovery of excess amount was prior to filing of present writ petition which was filed on 18.11.2008.

13. In view of the above, claim of Respondents that they are entitled for the addition of NPA towards their pay for calculating the amount of pension which is for the officers doing administrative work is not sustainable because the order of retirement of Respondents 1 to 3 and husband of Respondent 4 mentions their designation as Ayurved Medical Officer and not as District Medical Officer. The benefit of adding NPA is attached with the post.
14. Consequently, for the foregoing reasons, we are of the considered view that the order impugned is not sustainable in the eyes of law, hence, it is set aside. Appeal filed by the State Government is allowed and the writ petition filed by the Respondents is dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge