

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 750 OF 2018

1. Sameer S/o shripatrao Holkar,
Age : 45 Years, Occu. : Service (RMO),
R/o Gangadhar Shastri Gune
Ayurvedic Hospital, Tilak Road,
Ahmednagar, Dist. Ahmednagar.
2. Deelip S/o Sahebrao Patil,
Age : 42 Years, Occu. : Service (RMO)
R/o K. V. T. Randheer Ayurvedic
College, Shirpur, Dhule.
3. Pournima W/o Sandeep Arankale,
Age : 40 Years, Occu. : Service (RMO),
R/o Ashtang Ayurvedic College,
Sadashiv Peth, Pune.
4. Sujeet S/o Subhash Patil,
Age : 45 Years, Occu. : Service (RMO),
R/o Vasant Data Patil Ayurvedic
College, Sangli-Miraj Road, Sangli,
Tq. and Dist. Sangli.
5. Priyadarshini Sanjay Nipanikar,
Age : 40 Years, Occu. : Service (RMO),
R/o Tilak Ayurvedic College,
Tarachand Hospital, Rasta Peth,
Pune, Dist. Pune.
6. Shobhana Shamsundar Nagpure,
Age : 40 Years, Occu. : Service (RMO),
R/o Ayurvdic Seva Sangh,
Ayurvedic College, Ganeshwadi,
Panchwati, Nashik, Dist. Nashik.

7. Dr. Ravindra Uttamrao Waghmare,
Age : 45 Years, Occu. : Service (RMO),
R/o Vidarbha Ayurvedic College,
Dhanwantari Nagar, Farsi Stop,
Amrawati, Dist. Amrawati.
8. Manoj S/o Shriram Sangle,
Age : 43 Years, Occu. : Service (RMO),
R/o Gurdev Ayurvedic College,
Majari, Amrawati, Dist. Amrawati.
9. Krushnamurari Akhileshkumar Sharma,
Age : 45 Years, Occu. : Service (RMO),
R/o Radhakrushna Toshniwal Ayurvedic
College, Akola, Dist. Akola. .. Petitioners

Versus

1. The State of Maharashtra,
Through the Secretary,
Department of Medical Education,
Mantralaya, Mumbai – 32.
2. The State of Maharashtra,
Through its Secretary,
Department of Finance,
Mantralaya, Mumbai – 32.
3. The President,
Pay Fixation Committee,
Finance Department,
Mantralaya, Mumbai.
4. The Deputy Director,
Medical Education & Drugs
Department, Mantralaya,
Mumbai.
5. The Director of Ayurved,
Dr. Thadani Marg, Khanna

Construction House, Worli,
Mumbai – 18.

6. The Assistant Director of Ayurved,
Mumbai.

7. The Assistant Director of Ayurved,
Pune.

8. The Assistant Director of Ayurved,
Nagpur.

.. Respondents

Shri Y. S. Choudhari, Advocate for Petitioners.

Shri S. B. Yawalkar, Addl.G.P. for Respondent Nos. 1 to 7.

**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 24TH FEBRUARY, 2022.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioners are serving as Residential Medical Officers (for short 'RMO') in the private aided Ayurvedic Colleges. The petitioners seek grant of appropriate pay scale on par with the pay scale applicable to the Resident Medical Officers of Government Ayurvedic Colleges.

3. According to the learned advocate for petitioners under the 06th Pay Commission, the petitioners are paid as per the pay scale of Rs. 9300 – 34800 with Grade Pay of Rs. 5400/- and the

RMO's of the Government Ayurvedic Colleges are accorded pay scale of Rs. 15600 – 39100. The Grade Pay is the same i. e. 5400/-. The petitioners and RMO's in Government Ayurvedic Colleges are performing similar duties. The learned counsel further submits that, during the 4th Pay Commission, 5th Pay Commission and 7th Pay Commission the pay band of the petitioners and the RMO in the Government Ayurvedic Colleges is the same. The learned counsel submits that, the petitioners had approached the Pay Anomaly Committee. The Pay Anomaly Committee has also considered the said defect and had recommended pay scale to the Resident Medical Officers of private aided Ayurvedic Colleges of Rs. 15600 - 39100 with Grade pay of Rs. 5400/- and Government Resolution to that effect is also issued on 11th February, 2013. The learned counsel submits that, still the said benefit is not accorded to the petitioners.

4. Mr. Yawalkar, the learned Additional Government Pleader for respondents/State submits that, the work load of the RMO's of the Government Ayurvedic Colleges and those of grant in aid Ayurvedic Colleges is not the same. There is difference in work load. According to the learned Addl. G. P. taking into account the number of patients, the work load is not same. The number of patients in the aided private Ayurvedic College and Hospital are less than the Government Ayurvedic Colleges and Hospitals. The learned Addl. G. P. further submits that, the posts of resident medical officer in the Government Ayurvedic Colleges are filled in through M.P.S.C. and in the private institute's it is

the college that fills in the posts. The services of the RMO's in the private Ayurvedic Colleges are not transferable, whereas the services of the RMO's of Government Ayurvedic Colleges are transferable. In private aided Ayurvedic Colleges the non practicing allowance is made applicable, whereas in case of Government Ayurvedic Colleges, the same is not made applicable. In the Government Ayurvedic Colleges the post of RMO is Gazetted, whereas in private aided Ayurvedic Colleges the post of RMO is non Gazetted post. In view of the aforesaid, there is no similarity in the work of the petitioners and the claim of parity of salary with the RMO's of Government Ayurvedic Colleges is not tenable. The learned Addl. G. P. further submits that, grant in aid is not as of right. It depends upon financial viability of the State to provide grant in aid.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. Pay party is a question to be dealt with by the Pay Anomaly Committee. The Court would certainly be slow in deciding about the pay parity. Various aspects are required to be considered while arriving at a particular pay scale to be paid to an employee. This Court certainly at the first instance would be slow in entertaining the writ petition. However, in the present case, the petitioners and similarly situated RMO's had approached the pay anomaly committee. The pay anomaly committee considered the grievance of the petitioners and under

G. R. dated 11.02.2013 had recommended pay scale of Rs. 15600 – 39100 with Grade Pay of Rs. 5400/- for the RMO's during the 6th Pay Commission.

7. It is worth considering that during the 4th and 5th Pay Commission, the petitioners were paid at par with the RMO's of Government Ayurvedic Colleges. Even under 7th Pay Commission, the petitioners are paid at par with the RMO's of the Government Ayurvedic Colleges. Only during the 6th Pay Commission the work cannot be different. It also needs to be considered that the recruitment rules of the RMO's in private grant in aid Ayurvedic Colleges and Government Ayurvedic Colleges are the same. As per the 5th Pay Commission, the pay scale for both the posts was the same. The educational qualification, duties and responsibilities of the RMO's of the private aided Ayurvedic Colleges and the Government Ayurvedic Colleges are the same.

8. The Directorate of Ayush under communication dated 23rd July, 2018 has also held that the educational qualification, duties, responsibilities, the service rules for the RMO's of Government Ayurvedic Colleges and the RMO's of grant in aid private Ayurvedic Colleges are the same.

9. The work load would depend upon number patients. It cannot be presumed that the number of patients in private Ayurvedic Colleges would always be less.

10. Be that as it may, we need not dilate more on the said aspect. The pay anomaly committee has already considered said grievance and has recommended pay scale of Rs. 15600 - 39100 with Grade Pay of Rs. 5400/- to the RMO's without making distinction between RMO's of Government Ayurvedic Colleges and private aided Ayurvedic Colleges. The pay anomaly committee is competent body to consider the said grievance. Moreover, during the 4th Pay Commission, 5th Pay Commission and also in the 7th Pay Commission the pay band and the grade pay of RMO's of private grant in aid Ayurvedic Colleges and Government Ayurvedic Colleges are the same. The work load cannot change only during 6th Pay Commission.

11. In the light of all the aforesaid facts, we hold that the petitioners are entitled for the pay scale of Rs. 15600 - 39100 with Grade Pay of Rs. 5400/- for the period the 6th Pay Commission was applicable.

12. The respondents shall accord the benefits to petitioners and the arrears shall be paid to the petitioners expeditiously and preferably within a period of six (06) months.

Rule accordingly is made absolute in above terms. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]