

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

WRIT PETITION NO. 14184 OF 2017

Digambar s/o Vitthal Gaikwad,
(died) through his legal representatives :

1A) Kaushalya w/o Digambar Gaikwad,
Age 42 years, Occ. Household.

1B) Prakash s/o Digambar Gaikwad,
Age 27 years, Occ. Education.

1C) Pradeep s/o Digambar Gaikwad,
Age 25 years, Occ. Education.

... **Petitioners**

VERSUS

1) The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai-32.

2) The Registrar,
Maharashtra Council of Indian
Medicine, 3rd Floor, Commissariat
Building, Next to Fort House, D.N.Road,
Fort, Mumbai – 400001.

3) The Chief Executive Officer,
Zilla Parishad, Nanded,
Tq. & Dist. Nanded.

4) The Block Development Officer,
Panchayat Samitee Nanded,
Tq. Mukhed, Dist. Nanded.

... **Respondents**

...

Advocate for the Petitioners : Mr. Shelke Manoj U.

A.G.P for the Respondent No. 1 : Mr. A. S. Shinde.

Advocate for the Respondent Nos. 3 & 4 : Mr. S.B. Pulkundwar

CORAM : **MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : **01.08.2022.**

ORAL JUDGMENT : (PER : SANDEEP V. MARNE, J.)

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The present petition was originally filed by Digambar Vitthal Gaikwad praying for payment of entire amount of gratuity, pension and all other retiral benefits with interest. During pendency of the present petition, petitioner Digambar Gaikwad has unfortunately expired and his legal representatives have been brought on record.

3. It is the case of the petitioner that he holds the qualification of “Ayurvedacharya” ‘Bachelor of Shudda Ayurved Medicine’ (B.S.A.M.). On the basis of the said qualification the petitioner came to be appointed on the post of Medical Officer on 5.12.1978. As per the Schedule II of the Maharashtra Civil Services (Revised Pay) Rules 1988, the revision of earlier pay scales was carried out. Prior to the Rules of 1988, two pay scales were admissible in respect of the post of Medical Officer. For those holding allopathic qualifications or those mentioned in part ‘A’ of Schedule to the Maharashtra Medical Practitioners Act, the pay scale of Rs. 395-800 was admissible. For all others slightly lower pay scale Rs.365-760 was admissible. By the Rules of 1988, the said pay scales were revised and replaced by Rs. 2000-3200 and Rs. 1640-2900 respectively.

4. On the basis of his qualification as B.S.A.M, the respondent No. 3 Zilla Parishad granted the pay scale of Rs. 395-800 to the petitioner from the date of his appointment i.e. 05.12.1978. The petitioner retired from service on 31.08.2009. It is only after his retirement that a query was raised about the exact pay scale admissible to the petitioner on the ground that the qualification of B.S.A.M is not to be found in part ‘A’ of the Maharashtra Medical Practitioners Act. On that count the petitioner has been sanctioned

only provisional pension and an amount of Rs. 8,24,313/- appears to have been withheld from the pensionsary benefits payable to the petitioner.

5. In short, the question involved in the present petition is, whether the pay scale of Rs. 395-800 was correctly extended to the petitioner or not ?

6. Mr. Pulkundwar learned advocate appearing for the respondent No. 3 Zilla Parishad contends that since the qualification of B.S.A.M is not to be found in part 'A' of the Act and that the same is to be found in part 'C' of the Act, the pay scale of Rs. 395-800 was not admissible to the petitioner. He contends that as the petitioner does not possess the qualification mentioned in part 'A' of the Act, the pay scale of Rs. 365-760 ought to have been extended to the petitioner.

7. Learned advocate Mr. Shelke for the petitioner has invited our attention to the letter dated 11.02.1979 issued by the Maharashtra Council of Indian Medicine, by which it is clarified that qualification of B.S.A.M of Shivaji University, Kolhapur and Karnatak University, Dharwar which are listed in part 'C' and 'B' for the Act are also entitled to the same pay scales and service conditions as that of B.A.M.S. of any recognized University, since they are treated as equivalent.

8. Learned advocate Mr. Pulkundwear appearing for the respondent No. 3 Zilla Parishad seeks to counter this submission by contending that the said clarification has not been issued in respect of the Marathwada University. The letter dated 11.02.1979 clearly takes into account the fact that the qualification of B.S.A.M of Shivaji University Kolhapur and Karnatak University, Dharwar are included in part 'B' and 'C' of the Act. Similarly, the qualification of B.S.A.M of Marathwada University is also included in part 'C' of the Act. We, therefore, do not find any difficulty in extending the benefit of clarification given by the letter dated 11.02.1979 in respect of the qualification of B.S.A.M acquired by the petitioner from Marathwada

University.

9. It is also required to be kept in mind that the petitioner was granted the pay scale of Rs. 395-800 right from the date of his appointment i.e. 05.12.1978 and he continued to draw the said pay scale (as revised from time to time) till his retirement on 31.08.2009. During the entire period of service of the petitioner, no dispute was created with regard to the said scale drawn by the petitioner. The respondent No. 3 Zilla Parishad never entertained a doubt as to the qualification of petitioner and his entitlement to draw the pay scale of Rs. 395-800.

10. Even now the respondent No. 3-Zilla Parishad does not appear to be firm in its stand which is clear from the affidavit in reply filed by it. In its reply, the respondent No. 3 has contended that it sought guidance from the respondent No. 1 with regard to the pay scale admissible to the petitioner and that the guidance was awaited. We cannot lose sight of the fact that the petitioner has retired in the year 2009 and despite passage of period of 12-13 long years, the issue still remains unsolved.

11. There appears to be no document on record which unequivocally provide or clarify that the qualification of B.S.A.M. acquired through Marathwada University cannot be treated as equivalent to the qualification of B.A.M.S. included in part 'A' of the Act. On the contrary there is specific clarification in respect of B.S.A.M. qualification acquired through Shivaji University, Kolhapur and Karnatak University, Dharwar treating it as equivalent to B.A.M.S. qualification included in part 'A' of the Act.

12. Considering the fact that the petitioner had retired in the year 2009, it is too late in a day to permit the respondent No. 3 to entertain the doubt about the qualification of the petitioner and the exact pay scale that was admissible to him at the time of his appointment in the year 1978. We think, time has come to draw curtains on the dispute and give justice to the

petitioner, who is unfortunately no more. Since the retirement benefits have been erroneously withheld for an undue long period of time, we deem it appropriate to award interest on the withheld amount of arrears.

13. We, therefore, pass following order :

(I) We hold and declare that the petitioner Digambar Vitthal Gaikwad was rightly granted the pay scale of Rs. 395-800 with effect from the date of his initial appointment.

(II) The respondents are directed to compute the pensionary benefits payable to the petitioner based on the said pay scale of Rs. 395-800 and pay the same to the petitioner within a period of six weeks from today.

(III) Since we have already held that the petitioner is entitled to the pay scale of Rs. 395-800 from the date of his initial appointment, there would be no question of any amount being recovered from his salary. Therefore, the withheld amount be released to the petitioner immediately.

(IV) The respondents are directed to pay interest at the rate of Rs. 8% per annum on the amount of arrears of pension and other retirement benefits to the petitioner from the date they same were due till the date of payment.

14. With these directions, the writ petition is disposed of.

15. Rule is made absolute.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-