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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2200 OF 2018

- 1. GOVERNMENT GRANT-IN-AID
AYURVED & UNANI COLLEGE
TEACHERS ORGANISATION,**
Through its Secretary
Having address at – 302/01,
Om Sai CHS, Vaishali Nagar,
Modern Mill Compound,
Keshavrao Khade Marg, Mahalaxmi,
Mumbai - 400011
- 2. MUKESH B SHUKLA,**
Age – 48 Years
Residing at – A-601,
Om Chamunda CHS,
Dattamandir Road, Santacruz (E)
Mumbai - 400028
- 3. PRAVIN PRABHAKAR PATIL,**
Age – 38 Years
Residing at – 5/5, Prabhat,
Vittal Nagar, Mharal,
Kalyan, Thane

...Petitioners

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
Medical Education and Drug
Department
Through its Principal Secretary
Having Address at - 9th Floor,
GT Hospital Compound,

New Mantralaya,
Mumbai - 400001

2. **MINISTRY OF AYUSH,**
Through its Secretary
Having address at –
AYUSH BHAWAN, B Block,
GPO Complex, INA,
New Delhi - 110023
3. **DIRECTORATE OF AYUSH,**
Through the Director
Having address at – Govt. Dental
College & Hospital, 4th Floor,
St George Hospital Compound,
P D'emelo Road, Fort, Mumbai
4. **MAHARASHTRA UNIVERSITY OF
HEALTH SCIENCES,**
Through its Vice Chancellor
Having address at – Mhasrul,
Vani-Dindori Road, Nashik - 422004

...Respondents

APPEARANCES

FOR THE PETITIONER	Mr Mihir Desai, Senior Advocate, <i>i/b Devyani Kulkarni.</i>
FOR RESPONDENT- STATE	Mrs PJ Gavhane, AGP.
FOR RESPONDENT NO.4	Mr RV Govilkar, with Shalsa Khan.

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 23rd February 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** Respondents waive service. Rule made returnable forthwith.

2. This is a strange story of a partial withdrawal of a complete withdrawal, and of a classification within a classification buried in another classification. The issue presented by Mr Desai is an Article 14 challenge of several dimensions.

3. To set the factual context and the boundaries of this discussion, we are concerned only with aided Ayurvedic and Unani Colleges. We are also concerned only with one class of professors in these colleges, namely “Associate Professors”. The factual background is non-contentious. The 6th Pay Commission made various recommendations and the Union and State Governments issued resolutions (“GRs”) on 31st December 2008 and 8th September 2011 respectively adopting the 6th Pay Commission. The pay scales of teachers in Government-aided Ayurvedic and Unani Colleges (among others) were revised with effect from 1st June 2006. Teachers received the benefit in accordance with their seniority, together with arrears. The issue that remained was about the Career Advancement Scheme (“CAS”). The conditions for availing the benefits of CAS remained to be specified for some time. Finally, on 26th June 2012, a CAS clarification followed.

4. The GR revisited the designations of teachers. There were now three categories: were Assistant Professor, Associate Professor

and Professor. Pay scales stood revised correspondingly. CAS benefits were accorded to teachers. These were subjected to conditions specified by the University Grants Commissions (“UGC”) and the university in question. The CAS benefits were thus dependent upon UGC or university conditions. No such conditions attaching to CAS benefits were specified by the State, the UGC or by the University. That clarification came by means of the 26th June 2012 GR. A copy of that GR is at Exhibit ‘C’ to the Petition. For some reason, those clarifications were only implemented for the administrative divisions of Pune and Mumbai but not Vidarbha. That resulted in a Writ Petition being filed before the Nagpur Bench. The Petition succeeded on 14th March 2016. The State Government did not deny the CAS benefits, nor did it say that these were wrongly granted.

5. On 31st March 2016, the State Government issued another GR which now set out conditions for availing CAS benefits and applicable to professors in Government-aided Ayurvedic and Unani Colleges in Maharashtra. The 1st Respondent increased the pay band, and also increased other benefits. Higher re-designations were also proposed.

6. The 3rd Respondent to this Petition is the Directorate of Ayurveda, Yoga, and Naturopathy, Unani, Siddha and Homoeopathy (“AYUSH”). By its letters dated 28th July and 5th August 2016, the 3rd Respondent proposed the formation of a scrutiny committee to examine the proposal of each teacher before making available CAS benefits. The Committee included

representatives of the Respondent authorities. That committee's scrutiny and approval were required to avail of the benefits of the CAS. Those who were approved did get the benefits and this included re-fixed pay-bands and higher emoluments.

7. Then came a GR of 1st February 2018, from the State Government *withdrawing* the benefits of the CAS, i.e., the increased payments to teachers in Government aided Ayurvedic and Unani Colleges. This is impugned in the present Petition.

8. On 6th February 2018, the 3rd Respondent issued an office order reiterating the context of the impugned 1st February 2018 GR and withdrew the increased benefits including those of the enhanced academic grade pay under the CAS for teachers in Government-aided Ayurvedic and Unani Colleges. This is decidedly odd because it was the 3rd Respondent that awarded those benefits of CAS and enhanced Academic Grade Pay (“**AGP**”), to begin with.

9. Even this is impugned in the Petition. Paragraphs 14 to 17 contain the substantive challenge. The grounds are set out in paragraph 20 and these lead to the final reliefs prayer clauses (A), (B) and (C) of the Petition, which read thus:

“A. For a Writ of Certiorari or a writ, order or direction in the nature of Certiorari to quash and set aside the Government Resolution dated 01.02.2018 and the Office Order dated 06.02.2018, which have been marked and annexed hereto as **Exhibit H & Exhibit I respectively**.

B. For a Writ of Mandamus or a writ, order or direction in the nature of Mandamus directing the Respondent

Authority to not conduct recovery of the alleged excess amount of salary.

C. For a Writ of Mandamus or a writ, order or direction in the nature of Mandamus directing the Respondent Authority to continue with the benefits of CAS as per the Government Resolution dated 08.09.2011 and 31.03.2016 and Office Order dated 31.08.2016.”

10. Mr Desai points out that subsequent developments have overtaken the Petition. The challenge is now even further constrained or narrowed. There is no dispute that pursuant to the impugned orders and GR, the Government began recoveries. This Court stayed the recovery against all these teachers from its first order of 15th March 2018 onwards.

11. But there is more. The impugned GR and the impugned office order withdrew the CAS and enhanced benefits. This withdrawal was then itself partly withdrawn by means a letter dated 26th July 2019. We accept this because it is not contentious. This document, however, created a further division, classification or differentiation. It withdrew the withdrawal of the CAS benefits in Ayurvedic and Unani Government aided colleges — but only for Assistant Professors, not Associate Professors.

12. But it does not end at that. For Government Colleges, an almost identical exclusion of Associate Professors appears to have been struck down by the Maharashtra Administrative Tribunal (“MAT”). That order not only stays the recovery but in paragraph 5 clearly says that there is no reason why the CAS benefits should

not be continued for Associate Professors since the parent GR applies to both.

13. The MAT order inter alia required the Government to issue appropriate instructions. The Government has accepted the MAT order as applied to Government Hospitals, i.e., the withdrawal of the withdrawal applies also to Associate Professors in Government-run Ayurvedic and Unani Colleges. They too enjoy the benefits of the original GR, the CAS and the enhanced AGP.

14. It is thus only Associate Professors in Government-aided Colleges who continue to be denied the benefits of the CAS etc.

15. Mr Desai presents this as an irrational or unintelligible classification and says there is no meaningful distinction between Associate professors in Government-aided Colleges and Associate Professors in Government Colleges. There is also no intelligible differentiation between Assistant and Associate Professors within Government aided Ayurvedic and Unani Colleges, and no distinction that can meaningfully or intelligibly be made between Professors of both descriptions in those colleges and their exact equivalents in Government Colleges. Viewed from any perspective, the isolation of Associate Professors in Government-aided Ayurvedic and Unani Colleges is unsustainable.

16. Ms Gavhane the learned AGP points out that there was a challenge before the Nagpur Bench of this Court. The Bench asked the Government to reconsider its position. This resulted in an order

of the 3rd Respondent of 18th October 2022, maintaining its position and declining to reconsider. A copy of that communication is given to Mr Desai in the Court today. On his application, we permit an amendment without need of re-verification to impugn this communication as well, although we believe it is not really necessary. This is only a refusal to reconsider the earlier stand. If the earlier withdrawal, which resulted in an exclusion of Associate Professors, is itself held not to be sustainable, then the later order refusing to reconsider must go with it. For the refusal to reconsider is nothing but a re-assertion of the previous stand that we have already held to be arbitrary and unreasonable.

17. Further, the 18th October 2022 communication seems to be restricted to the two individuals named in it.

18. Consequently, the Petition succeeds. We are not, we make it clear, granting a blanket application of the CAS and the AGP. It is necessarily subject to the conditions of eligibility. But subject to that, and to the extent that there is an exclusion of Associate Professors in Government-aided Unani Colleges, the impugned GR of 1st February 2018 and the Office Order of 6th February 2018 are quashed and struck down. The Respondent Authority will, subject to all conditions of eligibility, continue the benefits of CAS as per the GRs of 8th September 2011 and 31st March 2016 and the Office Order of 31st August 2016 as applicable to Associate Professors in Government-Aided Ayurvedic and Unani Colleges.

19. The previous order staying recovery is confirmed.

20. The Petition is disposed of in these terms.

21. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)

Note: This judgment is modified by an order dated 6th April 2023. Corrections are shown in bold and italics.