

17.01.2024.
Court No.13
Item No.1
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W.P.A. No. 9887 of 2021
Dr. Tapas Bhattacharyya & Ors.
Versus
The State of West Bengal & Ors.

Mr. Sanajit Kumar Ghosh,
Ms. Dhiswari Nag,
Mr. Arijit Mahinder.

...For the petitioners.

Mr. Tapan Kr Mukherjee, AGP,
Mr. Somnath Naskar.

...For the State.

Mr. S. N. Dutta,
Mr. Saikat Karmakar.

....For the respondent nos.20, 22 & 23.

Mr. Sunil Kumar Singhanian.

...For the respondent nos.24 & 25.

1. The petitioners were all recruited as Contractual Medical Officers (AYUSH) by a selection process of the State dated 2nd August 2012. There were 13 categories of posts including Allopathic MBBS Doctors also recruited under the same notification. The terms of engagement of all posts were the same i.e. contractual. They eventually came to work under [Rashtriya Bal Swasthya Karyakram](#) (RBSK). The full form of AYUSH is [Ayurveda, Yoga and Naturopathy, Unani, Siddha, and Homeopathy](#).

2. The aforesaid RBSK is part and parcel of the National Health Mission (NHM) of the Central Government. The petitioners are aggrieved that they

are being paid much less than the Medical Officers who possess allopathic MBBS degrees in medicine.

3. The petitioners challenge two memoranda nos. 1351 and 1352 of even date i.e. 29th December 2020 whereby the State has downgraded the remuneration and pay structure of AYUSH doctors as opposed to their Allopathic MBBS counterparts.

4. By several notifications, inter alia, dated 13th March 1990 and 3rd January 1991 the Central Government, Ministry of Health has mandated that there should be no disparity in pay scales between physicians belonging to different systems of medicine. Each of the petitioners has completed the 4/5 and a half-year degree course in Ayurveda recognized by the Government. Petitioner Nos. 1 to 4 hold BAMS degrees (Ayurveda). Petitioner Nos. 5 and 6 are homeopathic doctors holding BHMS degrees.

5. The petitioners draw the attention of this Court to a communication dated 27th February 2018 where the Ministry of AYUSH, Central Government has deprecated payment of lower remuneration to AYUSH Doctors vis a vis the allopathic doctors engaged under the NHM. It has been directed that the Chief Secretary of the State must review the matter of remuneration provided for contractual AYUSH doctors, enhance the same, and ensure that they are at par with their allopathic counterparts.

6. Admittedly, 60% of the funds in respect of the schemes under the NHM implemented through the State is borne by the Central Government and 40 percent is borne by the State. For example, for the year 2020, the Central Government has put in 3169.17 crores towards 60% of their contribution for schemes under the NHM for the State of West Bengal. The said sum is sent a year in advance, inter alia, for payment of the medical officers, and all other support staff and infrastructure, for implementation of the schemes under the NHM. The Central Government has also mandated a 5% increase in the remuneration pay to all medical officers.

7. Pursuant to the said memo dated 29th December 2020, the petitioners received only 10% rationalization benefits for the financial year 2021-22 and 2022-23 where they were given the category of SD-II, as opposed to a 15% continuous rationalization benefit for the allopathic medical officers and doctors. The total remuneration of the petitioners came to be reduced to about 30,000/- as opposed to the total remuneration of Rs.70,000/- being paid to their allopathic counterparts. This was done under a revision of designation and consequent fixation of pay scale pursuant to such re-designation.

8. The petitioners claim that they are clearly being discriminated against. It is also submitted that the redesignation was but an excuse for further reducing

their pay scale to SD 1C from SD II. The total emoluments payable to the petitioners came to be reduced to 32000 which is less than that of psychiatrists, social workers, and Data Entry Operators.

9. In addition to the discrimination based on lower remuneration, the respondents have reduced the retirement age of the petitioners, pursuant to an order dated 3rd March 2020, to 60 years, compared to 65 years for medical officers holding allopathic degrees. In fact, the petitioners have been downgraded even below the nursing staff whose retirement age is 62 years.

10. Reliance is also placed by the Counsel for the petitioners on the Notification dated 27th December, 2023 issued by the Government of Rajasthan where the Pay Scales for AYUSH Medical Doctors and Allopathic MBBS Doctors engaged under the schemes of the National Health Mission (NHM) is one and the same.

11. An order of the Jammu & Kashmir Administration dated 29th May 2018 is also placed. The notification was issued pursuant to orders of the Jammu and Kashmir High Court in S.W.P. No. 2590 of 2012 directing that AYUSH Doctors and Allopathic MBBS Doctors shall be paid the remuneration at par.

12. Counsel for the petitioners would argue that the Guidelines issued by the Ministry of Health and Family Welfare of the Central Government of the year

2022 mandate and direct that there should be a parity in salary and allowance between all the persons engaged to do the same work in the Scheme implemented under the NHM.

13. The disparity in pay structure between the Allopathic Doctors and AYUSH Doctors, according to the Counsel for the petitioners, is not only illegal and arbitrary but also in violation of the principle of “Equal Pay for Equal Work”.

14. Counsel for the petitioners also places a Notification dated 26th June 2023 issued by the Department of Health and Family Welfare, Government of West Bengal mandating prescription of only Allopathic drugs by AYUSH Doctors, under the RBSK Scheme. The same is kept on record.

15. An earlier Notification dated 6th March 2014 of the Central Government also prescribed a list of Allopathic medicines to be prescribed by all the Doctors including AYUSH Doctors under the RBSK is also produced.

16. It is argued by the Counsel for the petitioners that since AYUSH Doctors are also authorized to prescribe Allopathic medication as mandated by the State as well as the Central Government, they cannot be discriminated with the Allopathic doctors recruited at the same time and on the same terms and conditions.

17. In the backdrop of the above, it is submitted that discrimination and differences in pay structures and/or monthly remuneration and benefits between Allopathic Doctors and AYUSH Doctors is arbitrary and illegal, and must be quashed and set aside.

18. Counsel for the petitioners would place reliance on the judgment of the Supreme Court in the case of ***North Delhi Municipal Corporation v. Dr. Ram Naresh Sharma*** reported in ***(2021) 17 SCC 642*** specifically paragraphs 12, and 20-22 thereof, and a decision of the Uttarakhand High Court in the case of ***Dr. Sanjay Singh Chauhan v. Uttarakhand*** in ***WP no. 484 of 2014*** that has been affirmed by the Hon'ble Supreme Court. Para 10 and 11 thereof.

19. Counsel for the petitioners places reliance on the decision of the Allahabad High Court in the case of ***Dr. Ram Suresh Rai & 28 Ors. v. Union of India*** reported in ***2022 SCC OnLine All 738***. The decision of the Division Bench of Uttarakhand High Court dated 3rd April 2018 in Writ Petition No. 484 of 2014 ***[Dr. Sanjay Singh Chauhan (Supra)]*** which has been affirmed by the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No. 33645 of 2018 vide order dated 24th March 2022 is also placed. A subsequent review application filed by the State of Uttarakhand has also been dismissed.

20. Reliance is next placed on a decision of the Jharkhand High Court dated 8th August 2018 in the

case of ***Dr. Jyotish Chandra Singh & Ors. v. State of Jharkhand*** in ***W.P.(S) No. 4071 of 2017*** and also a decision of Manipur High Court dated 2nd April 2019 in the case of ***Dr. Heigrujam Wanglensana & Ors. v. The State of Manipur & Ors*** being ***WP(C) No. 1115 of 2018***.

21. The State in its affidavit-in-opposition has taken a twofold stand. Firstly that the petitioners are all contractual employees. They are governed by Memorandum No. 9000-F(P) of the Finance Department, State of West Bengal dated 16th September 2011 as modified from time to time. It is next argued that the petitioners cannot claim parity in pay structures with permanently engaged Doctors in the State.

22. In that background, reliance is placed on several decisions where the principle of “Equal Pay for Equal Work” was held not applicable. The said decisions are cases of ***Randhir Singh v. Union of India & Ors.*** reported in ***(1982) 1 SCC 618***, ***Minerva Mills Limited & Ors. v. Union of India & Ors.*** reported in ***(1980) 3 SCC 625*** and the decision of the Hon’ble Supreme Court of India in the case of ***State of Haryana & Anr. v. Haryana Civil Secretariat Personal Staff Association*** reported in ***(2002) 6 SCC 72***. The State has also relied upon a decision of ***Sanjay Singh Chauhan (Supra)*** as relied upon by the Counsel for the petitioners.

23. Several other Notifications of engagement of the petitioners being contractual in nature from the year 2015 till 2023 are placed, by the State. The said Notifications are already annexed to the writ petition.

24. The principle of “Equal Pay for Equal Work” not being applicable to persons differently situated, is now well-settled. It is equally settled that a contractual employee cannot claim parity with a permanent employee. The nature of engagement and the nature of work being dissimilar is also a case where the principle of equal pay for equal work cannot be applied. In this regard there cannot be any quarrel with the decision relied upon by the Counsel for the State. No detailed discussion is, therefore, required as regards the decisions cited by the Counsel for the State.

25. One must note that the petitioners do not seek parity with permanent employees under the State. The petitioners seek parity with other contractually engaged Allopathic Doctors, under the recruitment process and on the same terms and conditions.

26. The facts are clear and explicit. Both the Allopathic MBBS Doctors as well as AYUSH Doctors under the RBSK and other Schemes of the Central Government under the NHM, have been engaged on the same terms albeit the contractual at the same time. They were engaged under the same Notification of recruitment.

27. The Central Government in several communications and Guidelines referred to hereinabove has indicated that AYUSH Doctors performed the same functions in the same area remote or otherwise, as the Allopathic Doctors. In fact, the list of allopathic medicines to be prescribed, fixed by the State as well as the Central Government under the RBSK Scheme is also required to be prescribed by AYUSH Doctors.

28. It is, therefore, clear from the above that the recruitment, terms and conditions of service, and nature of duties of the Allopathic Doctors are similar to that of AYUSH Doctors.

29. Both categories of Doctors work at the same place i.e. BPHCs, PHCs, BMOHs, and the District Hospitals run by the State. The duties allocated to the Allopathic Doctors and Ayush Doctors are the same even the medicines being prescribed by the two categories of Doctors are the same. It, therefore, cannot be said that the MBBS Doctors, come are a different class from that of Ayush Doctors.

30. The difference in pay and remuneration between Allopathic Doctors and Ayush Doctors, therefore, is not based on any intelligible differentia and bears no rational nexus with the objects sought to be achieved by such differentiation. No such basis has been demonstrated in the affidavit by the State or in the submissions of their Counsel across the bar.

31. In fact the repeated orders by the Central Government, Ministry of Ayush and the Ministry of Health and Family Welfare have strictly mandated Ayush Doctors to be treated at par with the MBBS Allopathic Doctors.

32. The mandate of the Central Government would assume importance as 60% of the funds, for the purpose of implementation of the Schemes under the NHM including RBSK are put in by the Central Government. The entire infrastructure for the AYUSH Doctors is borne by the Central Government.

33. The State appears to have clearly ignored the mandate of the Central Government. The State for some strange reasons appears to believe that AYUSH Doctors are inferior to the Allopathic Doctors. This, to say the least, is arbitrary and ex facie illegal.

34. It would now be relevant and appropriate to refer to the decisions relied upon by the Counsel for the petitioners. In the case of ***North Delhi Municipal Corporation v. Dr. Ram Naresh Sharma & Ors.***, reported in ***(2021) 17 SCC 642***, the Hon'ble Supreme Court of India has held as follows:

“22. The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like ayurveda, unani, etc. and CHS doctors are using

allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The Order of AYUSH Ministry dated 24-11-2017 extending the age of superannuation to 65 years also endorses such a view. This extension is in tune with the Notification of Ministry of Health and Family Welfare dated 31-5-2016.

23. The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry [F. No. D. 14019/4/2016-E-I (AYUSH)] dated 24-11-2017 must be retrospectively applied from 31-5-2016 to all the respondent doctors concerned, in the present appeals. All consequences must follow from this conclusion.

24. In the light of the above discussion, the appellant's actions in not paying the respondent doctors their due salary and benefits, while their counterparts in CHS system received salary and benefits in full, must be seen as discriminatory. Hence, we have no hesitation in holding that the respondent doctors are entitled to their full salary arrears and the same is ordered to be disbursed, within 8 weeks from today. Belated payment beyond the stipulated period will carry interest @ 6% from the date of this order until the date of payment. It is ordered accordingly. The appeals are disposed of in the above terms without any order on costs."

35. The Uttarakhand High Court, following the same principles, has held that Ayush Doctors must be treated at par with the Allopathic Doctors even in contractual, temporary appointments. The Uttarakhand High Court placed reliance on the decision of the Hon'ble Supreme Court of India in ***Bhagwan Dass and Ors. v. State of Haryana and Ors.*** reported in **(1987) 4 SCC 634** and applied the principle of "Equal Pay For Equal Work" between Allopathic Doctors and Ayush Doctors.

36. A similar view has also been taken in respect of the illegal distinction between Allopathic Doctors and Ayush Doctors by the Allahabad High Court in the case of ***Ram Suresh Rai (Supra)***. Several decisions of the Supreme Court of India have been relied upon including Notifications of the State and Central Government. The decision in ***Dr. Sanjay Singh Chauhan (Supra)*** was followed by the Allahabad High Court.

37. Similarly, the Manipur High Court in the case of ***Dr. Heigrujam Wanglensana (supra)*** has also held that Allopathic Doctors and AYUSH Doctors must be treated at par.

“**8.** There are certain circumstances which need to be considered by this Court in order to resolve the present controversy. The learned counsel appearing for the petitioners appears to be right when she submits that in the Manipur Health services Rules, 1982 as amended in the year, 2015, both the AYUSH doctors and the allopathic doctors have been shown in the same grades and they are allowed to draw the same salary under the provisions of Manipur Services (Revised Pay) Rules, 2010. The said rules are made by the expert body after taking into account all relevant factors and even the nature of duties and responsibilities to be performed by both the AYUSH doctors and the allopathic doctors, might have been considered by the expert body while making the said rules, otherwise there is no reason as to why both the doctors of two streams be put in the same grades and be allowed to draw the same salary. Moreover, the Government of India took a similar stand when it wrote the letter dated 03-01-1991 to the States/UTs that it accepted the recommendation of the Central Council of Homeopathy and that no disparity in the pay scales was maintained amongst the physicians belonging to different systems of medicine and having completed a degree course. The Government of India being an institution, such a letter might have been written on certain and reasonable basis. However, this stand of the Government of India was sought to be explained in the affidavit standing that it was meant for the physicians

who were appointed after following due process of appointment and were/are working under the Ministry on permanent roll and it was never meant for contractual employees appointed by the State authorities. The fixation of pay for the regular employee differently from that of the contract employees is understandable but to say that the nature of duties of a doctor working on regular basis will be different from a doctor working on contract basis, is illogical and irrational because the system of medicine will remain the same depending upon the type of system of medicine being practiced by a particular doctor. In other words and for instance, the duties and responsibilities of an MBBS doctor working on regular basis cannot be different from that of MBBS doctor working on contract basis. Since the nature of appointment being different, they are given different pay. Similar is the case with the AYUSH doctors. It is evident from the letter dated 14-06-2010 addressed to the Mission Director, NHRM, Ministry of Health & FW, Government of India by the State Mission Director, State Health Society, Manipur that in several States, equal salary/pay is given to both the AYUSH doctors and the allopathic doctors. It means that the equal pay might have been given by those States on certain basis and that it cannot be said that the payment of equal pay to both the AYUSH doctors and the allopathic doctors is impossible and impermissible at all. Moreover, in the letter dated 23-08-2010 of the Deputy Secretary (Health & FW), Government of Manipur addressed to the State Mission Director, NRHM, Manipur, it has been stated that the Secretary to the Government of India, Ministry of Health & FW, Department of AYUSH had intimated that the matter relating to wage disparity between AYUSH doctors and allopathic doctors be looked into considering the service rendered by the AYUSH doctors in far flung and difficult areas. Therefore, it appears that while considering the rationalization of pay of various posts including that of the allopathic doctors and in particular, that of the AYUSH doctors, the said Circumstances have not been taken into account by the authority. In this regard, the averments made in the affidavit of the Union of India are relevant wherein it has been stated that the public health being the State subject, it is open to the State Government to argument NHM effects from their own resources and that the payment of remuneration falls under the domain of the State Government. From these averments, it is seen that there is no bar or prohibition on payment of equal pay despite difference as regards the duties and responsibilities but it depends upon the wisdom of the State Government. So far as the State Government is concerned, it is unfortunate that its stand is not

made known to this court because despite number of opportunities being given to it, no counter on its behalf was filed. Thus, it is clear that it is the State Government which has not taken keen interest towards the payment of equal pay to the AYUSH and allopathic doctors. The State Government being an institution, ought to act fairly and reasonably and to see that they are treated equally keeping in mind the provisions of the Manipur Health Services Rules, 1982, as amended in the year, 2015 and the Manipur Services (Revised Pay) Rules, 2010.”

38. The Jharkhand High Court in the case of **Dr. Jyotish Chandra Singh (Supra)** has also held that the differentiation in the pay structure between Allopathic Doctors and AYUSH Doctors is illegal. In the backdrop of the above, uniform dicta being followed across the country and particularly the observations of the Hon'ble Supreme Court of India in the case of **North Delhi Municipal Corporation (Supra)** this Court is of the clear and unequivocal view that all the AYUSH Doctors must be paid the same remuneration and/or wages and/or benefits including the date of retirement at par with the Allopathic MBBS Doctors engaged for implementation of any Scheme of the State or the Central.

39. The Principal Secretary, Department of Health and Family Welfare, Government of West Bengal and the respondent nos. 5, 6 and 7 are directed to ensure that the petitioners and all the Ayush Doctors in the State are paid the same remuneration and are treated equally in all respects of pay, salary, allowance, benefits, including retirement age whether they are engaged contractually or casually.

40. The benefits of this decision (i.e. difference in pay and computable allowance) to the six writ petitioners shall accrue retrospectively from the date of filing of the writ petition i.e. 16th April 2021. All arrears payable to the six writ petitioners as directed above, shall be paid to them within a period of four months from date.

41. All payments, salaries, and emoluments henceforth to the petitioners shall be paid at par with all the Allopathic MBBS Doctors, who were contractually engaged along with the petitioners.

42. With the aforesaid observations, the instant writ petition is allowed and disposed of.

43. There will be no order as to costs.

44. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)