2024:BHC-NAG:10161-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7244 OF 2022

Dr. Gopinath Harishankar Tiwari,
Aged 74 years, Occ. - Retired Employee,
R/o 121, Shrigurudev Nagar, Nagpur-09. .... **PETITIONER**

VERSUS

1) State of Maharashtra,
through its Secretary, Department of
Medical Education and Research,
St. George's Dental Hospital Building,
Near C.S.T., Mumbai.

2) Assistant Director,
Ayurved, Nagpur, Administrative
Building No.1, First Floor, Civil Lines,
Nagpur -01.

3) Principal,
Shri Ayurved Mahavidyalaya,
Near Medical Square, Nagpur. .... **RESPONDENTS**

Mr. R.V. Shiralkar, Counsel for the petitioner,
Mr. S.M. Ghodeswar, AGP for respondent Nos.1 and 2,
Mr. A. Deshpande, Counsel for respondent No.3.

CORAM : NITIN W. SAMBRE
& ABHAY J. MANTRI, JJ.
DATED : 3rd SEPTEMBER, 2024

ORAL JUDGMENT : (Per : NITIN W. SAMBRE, J.)

Heard. Rule. Rule is made returnable forthwith by consent of the learned Counsel for the parties.

2. The petitioner is superannuated from the post of Professor in the aided Ayurvedic College i.e. respondent No.3.

3. The case of the petitioner is that the policy of the Government contemplates payment of non practicing allowance, which is received by the petitioner at the rate of 25% of his basic pay. The said policy is implemented throughout the State irrespective of whether the employee like the petitioner is working with the Government or a Government aided private Ayurvedic College.

4. Subsequent thereto, the 25% of non practicing allowance of the basic pay was increased vide Government Resolution dated 27-3-2008 thereby extending benefits to the teaching staff who are working in the Government Ayurvedic College. As the said benefit is not extended to the employees of the private Ayurvedic Colleges who are receiving grant-in-aid, the petitioner is claiming to be aggrieved.

5. As a sequel of above, the petitioner has approached this Court alleging discriminatory treatment as, according to him, there is no intelligible differentia between the employees of private aided Ayurvedic Colleges and the Government Ayurvedic Colleges as the service conditions are governed by the very same set of rules including that of discharge of nature of duties.

6. It is claimed that the issue was under consideration of the State Government, and the competent authority i.e. Directorate of Ayurveda was directed by the Government to submit a proposal, which is under consideration of the State Government.

7. In this background, it is claimed that the State Government cannot treat the petitioner indifferently from the other similarly placed employees who were or are working in the Government Ayurvedic Colleges.

8. As against above, the learned Assistant Government Pleader Mr. S.M. Ghodeswar would urge that in case if the benefit as are extended to the teaching employees of the Government Ayurvedic Colleges, are to be extended to the petitioner, same shall create additional financial burden. In such an eventuality, this Court cannot issue directives thereby creating additional financial burden. He would claim that the issue is already under active consideration of the State Government.

9. In this background, we have perused the affidavit placed on record by the Principal Secretary, Department of Medical Education & Drugs.

10. Paragraphs 8 and 9 of the said affidavit read thus ;

> "8. In the above context I state that, the State Government Department of Urban Development vide Government Resolution dated 26-5-1981 applied the 4th Pay Commission scale to full time eligible teacher teaching in Government Ayurvedic Colleges. I state that for the purpose of applying 5th and 6th Pay Commission to the teachers in aided Private Ayurvedic and Unani Colleges, the State Government takes a policy decision considering its financial resources in consultation with the Finance Department and accordingly issues a separate Government Resolution in that regard.
>
> *Basically, the State Government was not giving 100% salary grant to Aided Ayurvedic and Unani Colleges before 01-1-2004. The said colleges started receiving recurring grant-in-aid from 01-4-1978 at 90% of their approved expenditure or actual deficit which ever was less. The grant was released quarterly. The grant for first 3 quarter was paid proportionately on the basis of budget estimate on the institution expected by the State Government. Fourth and last installment was paid after taking into account the total expenditure by audit for previous year, and the excess or shortfall if any was adjusted while releasing these installments. This is how the benefits were given to the employees of said institutes. From 01-1-2004 the said colleges are receiving 100% salary grant.*
>
> *9. I state that the State Government vide Government Resolution dated 08-9-2011 issued by the Medical Education and Drugs Department, applied 6th Pay Commission scale to the teachers of Private Aided Ayurved & Unani Colleges in the State with effect from 01-4-2011. Said teachers have received non practicing allowance of 25% of basic pay of 5th Pay Commission. Further, as per Government Resolution dated 10-8-2016 the Pension and Gratuity Scheme has been made applicable to the employees of Private Aided Ayurved & Unani Colleges in the State.*
>
> *I state that recently the State Government vide Government Resolution dated 18-5-2021 has applied 7th Pay Commission scale to the teachers of Private Aided*

> *Ayurved & Unani Colleges in the State with effect from 01-1-2016 as mentioned in the said Government Resolution."*

11. Merely because the additional financial burden is created on the State Government, that cannot be a justifiable reason to not grant the claim of the petitioner when in law he is entitled for such benefit in view of the fact that the State Government if has extended the benefit to the similarly placed teaching employees in the Government Ayurvedic Colleges whose service conditions are identical to that of the petitioner. In the case of ***All India Judges' Association and others v. Union of India and others, (1993) 4 SCC 288***, the Apex Court has laid down that when the duties are obligatory, no grievance can be heard that they cast financial burden upon the State.

12. The Apex Court in the case of ***Chandigarh Administration and others v. Rajni Vali (Mrs.) and others,*** reported in ***(2000) 2 SCC 42,*** particularly in paragraph 10 has observed thus :

> *"10. Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of the Respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider this question in*

> *further detail. The contention raised by the appellants in this regard is rejected. It is, however, clarified that the proportion in which the additional burden will be shared by the Chandigarh Administration and the Management of the school will be in accordance with the grant-in-aid scheme applicable to the School from time to time. The judgment of the High Court that the sharing of the financial burden will be in the ratio of 95 % to 5% is modified accordingly.*

13. As such, the hardship faced by the State Government cannot be a ground for refusing the relief of the financial benefits to which the employee like the petitioner is entitled to. The Apex Court in the case of ***Haryana State Adhyapak Sangh and others V. State of Haryana and others (1988) 4 SCC 571***, has held that teachers of recognized aided private school are entitled to parity in pay with teachers of government school. In this case, pay scales of government teachers subsequently were revised but pay scale of teachers of private aided schools were revised after two years. The Apex Court indicated the mode of payment of arrears of the revised pay and dearness allowance to the teachers of private aided schools.

14. From the affidavit of the Principal Secretary of the Department of Medical Education and Drugs, it is aptly clear that the college in which the petitioner was employed, was admitted to 100% salary grants from 01.01.2004. The Government Resolution dated September, 08, 2011 applied 6^{th} Pay Commission scales to the teachers like the

petitioner with effect from April 01, 2011 and as such the petitioner was receiving 25% of the basic pay of the 5^{th} Pay Commission as non-practising allowance. The 7^{th} Pay Commission was applied to the employees like the present petitioner vide Government Resolution dated May 18, 2021 with effect from 01.01.2016. Additionally, the nature of duties imparted by the petitioner is similar to the one that of the employees imparting in Government Ayurvedic College and their service conditions are also identical.

15. As such, it has to be held that the service conditions of the petitioner have to be treated at par with the service conditions of the employees of the Government Ayurvedic College qua the grant of non-practicing allowance.

16. Let the consequential benefits be released in favour of the petitioner within a period of three months from today.

17. The petition, as such, stands allowed in the above terms.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

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