



223
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21269-2016 (O&M)
Date of decision: 16.07.2024

SUDHA BANSAL AND OTHERS

...Petitioner

VERSUS

MEDICAL SUPERINTENDENT GMSH-16 CHANDIGARH

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr.. Kunal Mulwani, Advocate with
Mr. Udit Garg, Advocate, for the petitioners.

Mr. Amit Jhanji, Senior Advocate
(Senior Standing Counsel) with
Mr. Sahil Shehrawat, Advocate,
Dr. Neha Awasthi, Advocate,
for the respondent-Union Territory.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondent to release the amount as per the scales given to DNB trainees and the said issue already stands settled in terms of the order passed by this Court in CWPs No.8190 of 2014 and 1566 of 2011 on 19.11.2014 (Annexure P-1).

2. Learned counsel appearing on behalf of the petitioners submitted that it is a case of the petitioners that they are seeking parity with regard to



their stipend which were to be paid to the petitioners who were DNB trainees at Government Hospital, Sector 16, Chandigarh on the ground that the similarly situated DNBs who were working in Government Medical College and Hospital, Sector 32, Chandigarh which is in the same city were being paid at a different and higher rate. He submitted that as per the policy statement issued by the National Board of Examination Postgraduate Medical Education & Training, Ministry of Health and Family Welfare regarding the stipend of the DNB trainees a schedule has been given. He submitted that the petitioners who were Postgraduate students were granted stipend at the rate of Rs. 10,000/- for the first year, Rs. 11,000/- for the second year and Rs. 12,000/- for the third year, whereas the stipend which was given to similarly situated DNBs who were working in Government Medical College and Hospital, Sector 32, Chandigarh were granted stipend at the rate of Rs.42,848/- for the first year, Rs. 45,337/- for the second year and Rs. 45,941/- for the third year and this disparity is violative of Article 14 of the Constitution of India. He also submitted that even otherwise also the prayer of the petitioners is squarely covered by the judgment of a Co-ordinate Bench of this Court in CWP No.8190 of 2014, decided on 19.11.2014 (Annexure P-1). He submitted that the aforesaid judgment has since attained finality as the same was not assailed by filing any LPA. While referring to the aforesaid judgment, he submitted that the petitioners of that case were similarly situated as the present petitioners because those petitioners were also working in Government Hospital, Sector 16, Chandigarh and they were claiming parity of stipend with that of the doctors who were working in Government Medical College and Hospital, Sector 32, Chandigarh. He also submitted that the petitioners have made representations



before the respondent for a number of time and even after the aforesaid judgment (Annexure P-1) came into being another representation was made in the year 2015 vide Annexure P-13 that they are entitled for the benefits exactly in terms of the aforesaid judgment which has since been decided by a Coordinate Bench of this Court but still no benefit was granted. He submitted that in view of the above, the case of the present petitioners is squarely covered by the aforesaid judgment (Annexure P-1) and necessary directions may be issued in the same terms as that of the aforesaid judgment.

3. On the other hand, Mr. Amit Jhanji, learned Senior Counsel appearing on behalf of the respondent alongwith Mr. Sahil Shehrawat, learned counsel has submitted that he has not chosen to file any reply on the merits of the case but he has chosen to file only a short affidavit by taking a preliminary objection with regard to delay and laches only. He submitted that the prayer of the petitioners is hit by the doctrine of delay and laches because as per the details given in para No.4 of the short affidavit, the dates of joining and dates of completion of the course have been given to be raising from the year 2007 to 2010. He submitted that the present petition has been filed after a delay of about 7-8 years and therefore, on the ground of delay itself, the petitioners are not entitled for any relief notwithstanding the fact that on the point of law and on facts, the aforesaid judgment (Annexure P-1) will be applicable to the petitioners but so far as the present petitioners are concerned, they cannot be granted relief only on the ground of delay and laches. He also referred to the judgments of Hon'ble Supreme Court in *State of Uttar Pradesh and others Versus Arvind Kumar Srivastava and others, 2014(4) SCT 648, State of Uttaranchal and another Versus Sri Shiv Charan Singh Bhandari and others,*



2013 (12) SCC 179, S.S. Balu and another Versus State of Kerala and others, 200(2) SCC 479 and judgment of a Division Bench of this Court in ***Anita Yadav Versus Central Administrative Tribunal, Chandigarh Bench Chandigarh and others, 2009(2) SCC 479*** in this regard.

4. I have heard the learned counsel for the parties.

5. So far as the case on merits is concerned, the respondent has not filed any reply on merits. A perusal of the judgment (Annexure P-1) passed by a Co-ordinate Bench of this Court would show that so far as the present petitioners are concerned, their case is squarely covered by the aforesaid judgment because the petitioners also worked as DNB at Government Hospital, Sector 16, Chandigarh and they are also claiming parity with those doctors who were working in Government Medical College and Hospital, Sector 32, Chandigarh and the same was the position in the aforesaid judgment. Therefore, this Court would only consider the objection raised by the learned Senior Counsel for the respondent with regard to delay and laches. As per the learned counsel for the parties, the aforesaid writ petition was filed on 29.04.2014 and the same was decided on 19.11.2014. A perusal of the aforesaid judgment would show that while allowing the petition, it was so noted by a Co-ordinate Bench that the respondents had stated that the matter is under consideration with the Government and rather had suggested the Court to fix a time frame in this regard. However, a Co-ordinate Bench of this Court thought it fit that the respondent-Administration has been literally dragging its feet for the last three years and the representations were also made which were stated to be under consideration and therefore, came to the conclusion that the Court supplants its decision by what is appropriate and just and not allow a slothful administration



who would request the Court to abide by time endlessly. Para No.4 and 5 of the aforesaid judgments are reproduced as under:-

“4. Learned counsel appearing on behalf of the respondents shares with the court a communication issued by the Director Health & Family Welfare, Chandigarh Administration, pleading for a decision to be taken immediately before the court hearing. The counsel also suggests that court could set a timeframe before when a decision could be taken. In a normal situation, I would not have forced a decision, if the respondents were actively considering the same. The counsel for the petitioners points out to me that the administration has been literally dragging its feet for the last three years and a similar representation had been made by the counsel in CWP No. 1566 of 2011 on 19.8.2011 that the matter was under active consideration. If an active consideration in the parlance of the State administration would require more than three years, it is time that the court supplants its decision by what is appropriate and just and not allow a slothful administration who would request the court to bide by time endlessly.

5. The writ petitions are allowed and there shall be relief in the manner sought for, directing that there shall be a parity in the stipend payable to the petitioners with the trainees at the Government College and Hospital at Sector 32. All the arrears shall be calculated and released to them within a period of twelve weeks, failing which for the amount as assessed, it would also attract interest @ 9% per annum.”

6. Therefore, it is very clear that at the time of decision of the aforesaid judgment, the administration rather were considering the aforesaid issue with regard to parity and when the aforesaid judgment was passed, it was rather a duty of the respondent-Administration to have rationalised and



considered the fact of the aforesaid judgment and applied the aforesaid judgment on those persons also who were similar situated but were not the petitioners. This becomes more imperative in view of the fact that the Administration did not choose to assail the aforesaid judgment and rather accepted the same which therefore attained finality. This Court in ***Satbir Singh Versus State of Haryana, 2002(2) SCT 354*** held that when on a particular issue a judgment has been passed by this Court, then the mere fact that some of the similarly situated persons have not approached this Court by filing a petition would not mean that they should be denied the benefit and rather it should be rationalised. The relevant portion of the aforesaid judgment is reproduced as under:-

“19. Be that as it may, particularly in the afore-referred premises, we still feel that it is the bounden duty of the Court to issue the following directions to the State in the larger public interest and for proper administration of justice :-

(i) Wherever the rights of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against that judgment even upto the highest court of the land and the judgments has attained finality, then the State must accept the judgment and implement it in its true spirit and command. There is implicit obligation on the part or the State to grant same relief to other members of the cadre whose claim was based upon identical facts and points of law.

(ii) The State Government shall as expeditiously as possible in any case not later than four months re-act and respond to a legal notice/representation served upon it by any of its employees in redressal of his grievance/grant of relief, which has been granted to his co-employees similarly situated, in furtherance to the judgment of the Court. Unless, for reasons to be indicated in the reply, the State feels compelled to deny such relief. Needless



to point out that denial must neither be evasive nor intended to circumvent the orders of the Court.

(iii) In the event such an employee is compelled to approach the court of law, whereupon the court awards interest and/or costs while allowing such a petition, then the expenditure incurred by the State including the costs/interest paid in furtherance to the orders of the Court should be recovered from the erring officer(s).

(iv) The concerned quarters of the Government are expected to work out the details in furtherance to the above directions and issue pervasive but definite instructions to all its departments forthwith to ensure compliance”

7. During the course of arguments, learned Senior Counsel for the respondent has referred to a judgment of Division Bench of this Court in **Anita Yadav Versus Central Administrative Tribunal, Chandigarh Bench Chandigarh and others (Supra)** to contend that when there is a delay, then delay itself becomes a ground for dismissal of the writ petition. However, the aforesaid judgment would not be applicable to the present case and it is distinguishable on facts because the aforesaid case pertains to the declaration of the marks and was pertaining to a selection matter in which delay certainly has a significant role to play. He also referred to another judgment of Hon'ble Supreme Court in **State of Uttaranchal and another Versus Sri Shiv Charan Singh Bhandari and others (Supra)** to contend that in that case it was held that the respondents could not have challenged the adhoc promotion conferred on the junior employee after delay of about 6 years. However, the aforesaid judgment is also distinguishable on facts in view of the fact that the aforesaid case was pertaining to a adhoc promotion and delay would therefore be



significant in the facts and circumstances and therefore distinguishable from the facts of the present case.

8. However, the present case is a case for grant of stipend to the Postgraduate students which is a kind of salary. Therefore, in such like grievances where the doctors wanted their stipend to be fixed at par with the other doctors of the same city, then it cannot be said that they can be non-suited only on the ground of doctrine of delay and laches since there has been a delay of about 7/8 years. Not only this, it was the case of the Administration itself in the aforesaid judgment that they are already considering the aforesaid parity aspect but a Co-ordinate Bench had allowed the petition by observing that it should not be left to the Administration because they have already delayed the same for three years. In addition to the above, the petitioners filed representation (Annexure P-13) which they filed after the aforesaid judgment was passed but still the respondents did not pay the stipend in terms of the aforesaid judgment which is also in derogation of the law laid down in *Satbir Singh's case (Supra)*. Therefore, this Court is of the considered view that the petitioners cannot be non-suited on the ground of delay and laches.

9. Consequently, the present petition is allowed in the same terms as that of Annexure P-1.

(JASGURPREET SINGH PURI)
JUDGE

16.07.2024
rakesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No