

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 610 of 2013 (S.B.)

Maharashtra Rajya Shaskiya Bhautikopachar va
Vyavasayopachar Tadnya Sangathana through
its Secretary- Shri Sachin Ramteke,
Office at B 3/6, Patrakar Colony, Civil Lines,
Nagpur-440 001.

Applicant.

Versus

- 1) The State of Maharashtra,
Finance Department,
through its Chief Secretary,
Mumbai-32.
- 2) The Public Health Department,
Government of Maharashtra,
through its Principal Secretary,
Mantralaya, Mumbai.
- 3) The Director of Health Services,
Mumbai-400 001.
- 4) The Commissioner,
Employees State Insurance Scheme (ESIS),
Lower Parel, Mumbai.
- 5) The Commissioner of Disability, Pune.
- 6) The Maharashtra State Council for
Occupational and Physiotherapy,
through its Chairman / Registrar,
Government Dental College and
Hospital Building, St. George's
Hospital Compound, Mumbai-01.

Respondents

Shri Bharat Kulkarni, Advocate for the applicant.

Shri P.N. Warjurkar, learned P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 18th day of January,2018)

Heard Shri Bharat Kulkarni, Id. Counsel for the applicant and Shri P.N. Warjurkar, Id. P.O. for the respondents.

2. This O.A. has been filed by the “Maharashtra Rajya Shaskiya Bhautikopachar va Vyavasayopachar Tadnya Sangathana” which is an Association of Occupational and Physiotherapists. The applicants have filed the O.A. through its Secretary.

3. According to the applicant, all its members mentioned in the list at Annex-A-1 are Occupational and Physiotherapists having qualification of Bachelor of Occupational Therapy and therefore they are entitled to receive all the remuneration, pay scales and other service benefits as applicable to the Graduate Occupational Therapists. The members of the association have acquired B.Th. O. which is a full fledged degree level course and they acquired it after passing Common Entrance Test after 10+2 examination. The members came to be appointed on the posts of Occupational Therapist in State of Maharashtra as per Recruitment Rules. The Government of Maharashtra however granted pay scales applicable to Diploma level examination to the

applicants and as such violated the Article 14 and 16 of the Constitution of India.

4. The learned counsel for the applicant submits that the Government of Maharashtra appointed First Pay Commission under the Chairmanship of Retired Judge of the Bombay High Court, for the purposes of recommendations regarding revision of pay scales to the State Government employees and the Second Pay Commission was appointed under the Chairmanship of Shri R.R. Bhole, Retired Judge of Bombay High Court in 1975. The applicant submits that as per the Badkas Commission in 1966 the applicants were getting pay scale of Rs.220-400 and as per Bhole Commission in 1976 they were getting pay scale of Rs. 395-800. The Dental Surgeons, who are equally qualified, were also getting pay scale of Rs.395-800 as per Bhole Commission. The pay scale of applicants, i.e., Occupational Therapists and that of Dental Surgeons was thus equal as per Bhole Commission. However, the Kasbekar/Naik Equivalence Committee in 1986 granted pay scale of Rs.1400-2600 to the Occupational Therapists/ Physiotherapists and Rs. 2200-4000 to the Dental Surgeons. Similarly the Sukathankar Equivalence Committee in 1996 granted pay scale of Rs.5500-9000 to the Occupational Therapists. Whereas, the pay scale of Rs.8000-13500 was

granted to the Dental Surgeons. According to the applicant, the respondents have committed discrimination amongst the applicants and Dental Surgeons who are equally qualified and were getting similar pay scale earlier.

5. The applicant's association made representation on 20/12/2002 and pointed out the discrimination. It was also the Public Health Department decided to submit a proposal regarding the problems faced by the Therapists for necessary action and same was forwarded to the Pay Revision Committee under the Finance Department vide letter dated 16/12/2003. The applicant's association again filed representation on 18/04/2007 and thereafter on 13/10/2008 for the same relief. The respondent no.3, i.e., the Directorate of Medical Education and Research, Mumbai vide letter 17/11/2008 recommended the applicants representation and recommended the pay scale of Rs. 15600-39100 and Grade Pay of Rs. 5400/- for degree holders Physiotherapists. The Directorate of Medical Education & Research also requested the Government vide letter dated 28/05/2009 to pass appropriate orders considering the grievance of the applicants. The Joint Director of Health Services, Pune also requested the respondent no.3, the Director of Health Services, Mumbai to grant proper pay scale to the members of

applicant's association considering the nature of work, working hours and duties and responsibilities of the Occupational and Physiotherapists vide communication dated 16/07/2009.

6. According to the applicant, The Joint Director of Health Services, Pune vide letter dated 16/07/2009 and the respondent no.3, the Director of Health Services, Mumbai vide letter dated 01/08/2009 recommended the pay scale of Rs.15600-39100/- with Grade Pay of Rs.5400/- to the Occupational Physiotherapists. However, no favourable decision was taken. On 01/03/2011 the applicant's association sought intervention of the members of legislative assembly for redressal of their grievances. The Joint Director of Health Services, Pune vide letter dated 14/03/2011 also recommended the applicants' claim and accordingly vide letter dated 04/07/2011 the respondent no.4 sent proposal to the respondent State Government. However nothing was done and therefore the applicant's association was constrained to file this O.A.

7. In the O.A. the applicant's association claimed suitable order or direction to the respondents thereby to declare that the action on the part of respondent state in granting fixation of pay of the Occupational Therapists working in the State Government services considering their educational qualification

as diploma holders is arbitrary and violative of Article 14 and 16 of the Constitution of India and to issue order or direction to the respondent state for fixing the pay scale of the Occupational Physiotherapists. The applicant's association is claiming direction to respondent no.1, to implement the recommendations of the respondent no.3, i.e., the Director of Health Services vide communication dated 4/7/2011.

8. Subsequently by way of amendment the applicant has claimed direction to respondent no.2 to consider the proposal of respondent no.3 dated 4/7/2011 and to recommend the respondent no.1, the Finance Department to issue proper pay scale to Occupational Physiotherapists equal to the Lecturer in O.T./PT. having similar educational qualification and nature of work.

9. The respondent no.6, i.e., The Maharashtra State Council for Occupational and Physiotherapy, Mumbai supported the applicants claim stating that the State Government shall be directed to redress the grievance of the Occupational Therapists/ Physiotherapists working in the Government of Maharashtra by fixing their pay scales considering their qualifications of degree level and grant them appropriate pay scale equivalent to Medical

professionals, i.e., MBBS Doctors / Dentists working in the State Government.

10. The respondent nos. 1 to 5 resisted the claim. According to them, a demand of pay on par with their respective counterparts, i.e., MBBS degree holders is only based on the educational qualification, but the educational qualification between the two are different and they are not performing similar duties. The respondents denied the applicant's claim for equality on the ground that the applicants and the Dental Surgeons or the Medical Officers are not equivalent in qualification as well as considering the nature of the duties. It is stated that the Committee of experts after fully study and analysis of the work, rejected the representation filed by the applicant's association on 11/2/2013. It is further stated that the expert committee, i.e., equivalence committee must have considered all factors whether pay scale to the Occupational Physiotherapists is to be required on par with that of Occupational Physiotherapists working under Central Government. The respondent nos. 1 to 5 have also given chart regarding the duties and responsibilities of the degree holders, i.e., Occupational Physiotherapists and MBBS degree holders and justified the difference in para-23 of the reply.

11. The learned counsel for the applicant Shri Bharat Kulkarni has invited my attention to the recommendation letter dated 1/8/2009 written by the Director of Health services, Mumbai. The copy of the said letter is at Annex-A-13 at P.B. page nos. 72 & 73. Vide this letter the case of the applicant has been recommended. It seems that the Director of Health Services, Mumbai subsequently recommended the applicants' claim vide its letter dated 4/7/2011. The copy of the said letter is at Annex-A-17 at P.B. page nos. 82& 83. The relevant para of the said letter shows that the Director of Health Services, Mumbai has recommended the applicants' claim to the Government. However, he has given some suggestion such as amendment to the rules and taking of policy decision. This can be seen from the last para of the said letter which reads as under :-

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12. The perusal of the aforesaid letter shows that though the applicants claim was recommended by the Director of Health Services, Mumbai to the Government, it seems that the applicants' association was allowed to put its grievances before the Pay Revision Committee.

13. The learned P.O. however submits that the aforesaid communication clearly shows that the applicant's association was allowed to put its grievances before the Pay Revision Committee. The learned P.O. has invited my attention to the report of the Pay Revision Committee and on the basis of which a G.R. has been issued by the Government on 11/2/2013. The said G.R. is at P.B. page nos. 113 to 148 (both inclusive). The said G.R. has been issued on the basis of report submitted by the Pay Revision Committee dated 31/05/2012. The learned P.O. invited my attention to the fact that the Pay Revision Committee also considered the grievance of the Occupational Physiotherapists.

14. It seems from the order dated 20/12/2017 that the learned P.O. has placed on record the communication dated 20/12/2017 which was received by the respondents and sought

two weeks' time to make statement in respect of Director's proposal to the Government. It was because the applicant's claim was recommended by the Director of Health Services to the Government. In view of this, the learned P.O. has placed on record the copy of communication received from Under Secretary, Government of Maharashtra, Department of Finance, Mantralaya, Mumbai dated 9/1/2018 which is marked Exh-X. From the said communication, the learned P.O. was intimated that the recommendation dated 4/7/2011 received from the Joint Director of Health Services, was not placed before the Pay Revision Committee. It was further informed to the learned P.O. as under:-

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15. From the aforesaid circumstances, it will be cleared that though the Director of Health Services recommended the applicants claim to the Government, his recommendation was not placed before the Pay Revision Committee.

16. The learned counsel for the applicants has placed reliance on the Judgment reported in the case of **D.S. Nakara & Ors. Vs. Union of India & Ors.**, by Hon'ble Apex Court. The said Judgment has been delivered on 17/12/1982. In the said Judgment it has been held as under :-

“ The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of the things the society being composed of unequals a welfare state will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged.”

17. As against the above contention, the learned P.O. has placed reliance on the Judgment in the case of **Union of India & Ors. Makhan Chandra Roy reported in (1997) 11 SCC, 182.**, wherein the Hon'ble Apex Court has held that the equation of posts or equation of pay must be left to the Executive Government. It must be determined by the expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such

equivalence unless it is shown that it was made with extraneous consideration.

18. From the discussion in forgoing paras, it will be crystal clear that in the present case though the Government has not taken any decision on the recommendation of the applicant's claim on the basis of letter issued by the Joint Director of Health Services, the applicant's association was allowed to represent by the Pay Revision Committee and after hearing the applicant's association, the Committee issued its report dated 31/5/2012 as mentioned in the G.R. dated 11/2/2013 (Annex-R-9). In the said report, the cases of the applicants seem to have been considered, but the recommendation made by the Director of Health services was not placed before the said Committee. Once the Pay Revision Committee which is an expert Committee has considered the grievance and submitted its report on 31/5/2012 and decided not to change the pay scale of members of applicant's association, it will not be proper at this juncture for this Tribunal to interfere in the said report of expert Committee. However, it is clear that the suggestion / recommendation made by the Director of Health Services, was not placed before the Committee. Since the new Pay Revision Committee is formed under the Chairmanship of K.P. Bakshi, Retired IAS which is

known as ^jkt; oru I qkkj.kk I ferh] 2017**, it will be in the interest of justice and equity to allow the association to submit its grievances before the said Committee and at the same time the recommendation made by the Director of Health Services vide its communication dated 4/7/2011 (Annex-A-17) shall also be placed before the said Committee for consideration. In view of this, I pass the following order :-

ORDER

The O.A. is partly allowed. The respondents are directed to place a proposal of respondent no.3, i.e., the Director of Health Services dated 4/7/2011 and recommendation made by the respondent no.1 the Finance Department before the ^jkt; oru I qkkj.kk I ferh] 2017**, under the Chairmanship of Shri K.P. Bakshi, Retired IAS. The said Committee may take appropriate decision in respect of grievances made by the applicant's association and also by considering the recommendation made by the Joint Director of Health Services, Mumbai vide letter dated 4/7/2011 (Annex-A-17). No order as to costs.

Dated :- 18/01/2018.

**(J.D. Kulkarni)
Vice-Chairman (J).**