

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL


MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.846 OF 2009

DISTRICT : A'bad

Dr. Sow Rajshri S. Kurundkar)
Age: 46 years, Occ: Service)
R/o. Flat No.3, Royal Residency,)
32-G Sector, Town Centre, CIDCO,)
Aurangabad.)...**Applicant**

VERSUS

1. The State of Maharashtra, through)
Chief Presenting Officer, Maharashtra)
Administrative Tribunal, Aurangabad.)
1. The Principal Secretary, Medical)
Education Department, Mantralaya,)
Mumbai.)
2. Principal Secretary, School Education)
And Sports Department, Mantralaya,)
Mumbai.)
3. The Principal Secretary, Finance Dept.)
Mantralaya, Mumbai.)
4. The Director of Ayurveda, Camani)
Chambers, Thandani Marg, Warali,)
Mumbai.)
5. The Dean, Government Ayurved College)
Nanded.).....**Respondents**
- 

Shri A.S. Deshmukh holding for Shri Ajay Deshpande, the learned Advocate for the Applicant.

Mrs. Sanjivani Ghate Deshmukh, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri B. P. Patil, Member (J)

DATE : 08 .03.2017

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri A.S. Deshmukh holding for Shri Ajay Deshpande, the learned Advocate for the Applicant and Mrs. Sanjivani Ghate Deshmukh, learned Presenting Officer for the Respondents.

2. The Applicant has been working as Senior Scientific Officer, Drugs Control Laboratory, Food & Drugs Deptt. Aurangabad. She has challenged communications dated 04.08.2008 and 28.08.2008 from the Respondent No.4 & 5 respectively and she claims that she is eligible for grant of the pay scale of Rs.8000-13,5000/- from the 5th Pay Commission.

3. Learned Counsel for the Applicant argued that the Applicant was working in the post of Assistant Scientific Officer cum Vaidya from 05.08.1992 in the pay scale of Rs.6500-10,500/-. Presently she is working on deputation in Food & Drug Administration in the Laboratory at Aurangabad. The Applicant had filed O.A. No.227/2007 with other Applicants before this Tribunal. By order dated 13.03.2008, the aforesaid O.A. was disposed of with the directions to consider the representation/grievance of the Applicant and others. Learned Counsel for the Applicant stated that this Tribunal had observed that the case of the Applicants was never placed before the Pay Anomaly Committee. As the said Committee was no longer in existence, the State Government was asked to take a decision on the representation. However, the decision to reject the representation of the Applicant was taken at the level of Director of Ayurveda, who is not the Government. Learned Counsel for the Applicant contended that the Respondents have not followed the order of this Tribunal dated 13.03.2008 in the letter and spirit.

4. Learned Counsel for the Applicant argued that the graduates in Ayurveda are seeking parity with their counterparts in Allopathic system of Medicine. As per G.R. dated 26.05.1981, the Govt. agreed in principle to accept the demands of the Ayurveda Graduates to treat them at par with M.B.B.S. degree holders. However, this G.R. did not include many Ayurveda graduates working in Class III posts


in Government. Such Ayurved graduates working as Medical Officer Class III or Extension Officer, Ayurveda under Zilla Parishads were granted pay scale of Rs.8000-13,500/- by G.R. dated 27.2.2006. The same benefit has been denied to the Ayurveda graduates working in Govt. Medical colleges. This is violative of Articles 14 and 16 of the Constitution.

5. Learned Presenting Officer (PO) argued on behalf of the Respondents that the Applicants are seeking pay-parity with the Ayurvedic Medical Officer, who were appointed by Zilla Parishad in District Technical Service, Class-III in the pay scale of Rs.6500-10,500/-. By G.R. dated 27.02.2006, such Medical Officers were granted pay in the scale of Rs.8000-13,500 in the fifth Pay Commission. Learned P.O. stated that the Applicant is seeking parity with Govt. servants who were recruited differently and whose nature of duties is not identical with that of the Applicant. Pay fixation is done by expert bodies like Pay Commission or Pay Equalization Committee, and Hon'ble S.C. has held that it is not the work of Tribunal or courts to decide the pay scales. She referred to the judgment dated 18.10.2016 of this Tribunal in O.A. No.159/2010, 341/2010 and 424/2010, wherein this Tribunal has held that Medical Officers, initially recruited by Zilla Parishads in Class III were absorbed in Govt. service as Group 'B' Medical Officers by G.R. dated 17.10.2014. The pay scale of Group 'B' Medical Officers in 5th Pay Commission was Rs.6500-10,500. However, though the Ayurvedic Medical Officers in Zilla Parishads have been absorbed in Group 'B' posts in Govt., they have been given pay in the

scale of Rs.8000-13,500 by G.R. dated 27.02.2006. Learned P.O. stated that this is an anomaly and such anomalous decision cannot be extended to other cadres.

6. The main issue raised by the Applicant is the G.R. dated 27.02.2006, by which for certain categories of employees working in Zilla Parishads, including class III Medical Officers having Ayurvedic qualifications were given pay in the scale of Rs.8000-13,500. This is pay scale applicable to Group 'A' service. The Govt. has also decided by G.R. dated 28.05.2001 to give Group 'B' status to Medical Officer in District Technical Service (Class III) having B.A. M.S. Degree and working in various Zilla Parishads. Logically, such employees should have been given pay scale of Rs.6500-10,500. However for some unexplained reason, the Govt. decided to extent pay scale of Rs.8000-13,500. Ultimately by G.R. dated 17.10.2014, 869 Medical Officers, who were earlier working in various Zilla Parishads, were absorbed in Group 'B' service of the State Govt. This anomaly has remained that Group 'B' officers have been extended pay scale of Group 'A' post. No steps seem to have been taken by the Govt. to resolve this anomaly. It may be noted that Allopathic Medical Officer, Group 'B' were getting salary in the pay scale of Rs.6500-10,500 in the 5th Pay Commission.

7. The Respondents have stated that the duties of Assistant Scientific Officers cannot be compared to that of



Assistant Professors and on that court also, the Applicant is not entitled to any relief.

8. The Respondents have relied on the following judgments of the Hon'ble S.C. viz.

(1) **Union of India v/s. Arun Jyoti Kundu & Others in Appeal (Civil) No.2468-2469 of 2005.** Hon'ble S.C. has observed that :

“As this Court has clarified in the decisions adverted to, it is for the Government to act on the report of the Pay Commission, either to accept or not to accept its recommendations. Once the recommendations of the Pay Commission are accepted in full, it could also give effect to it from the date recommended in that behalf”.

Hon'ble S.C. has directed that the new pay scale and the date from which such scales are to be granted is a matter of policy decision and there should not be any interference by the courts in such matters.

In the present case, decision to grant a particular pay scale to certain categories of employees working in Zilla Parishads was taken by the Government and G.R. dated 27.2.2006 was issued. It will not be appropriate for this Tribunal to extend the scope of that G.R. and bring the Applicant within its purview.

(2) In the case of **State of Haryana & Another V/s. Haryana Civil Secretarial Personnel Staff Association in Civil Appeal No.3518 of 1997,** Hon'ble S.C. has held that :-

“It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a Constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in decided cases, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration of the State Government, Courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity”.

In the present case, we are not inclined to interfere with the decision of the Respondents not to extend benefit of G.R. dated 27.2.2006 to the Applicant and similarly situated persons. It is a policy decision of the Government and no interference from this Tribunal is called for.

9. In the earlier O.A.No.227 of 2007 by order dated 13.3.2008, this Tribunal had directed the Respondents to consider the representation of the Applicant and others. The representation has been considered and rejected by the Government, Director of Ayurved is also part of the Government. The Applicant has not been able to make out a case of parity with Group 'B' Ayurvedic Medical Officers,



10. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.



(B. P. PATIL)
MEMBER (J)

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 08.03.2017

Place : Aurangabad

Dictation taken by : VSM

E:\VSO\2017\February 2017\Nair Judg\O.A.846-2009 VC & MJ-pay scale.doc