

RESERVE JUDGMENT

Court No. - 8

Case :- WRIT - A No. - 23479 of 2019

Petitioner :- Dr. Ram Suresh Rai And 28 Ors.

Respondent :- U.O.I. Thru Secy. Health And Family Welfare Nirman N.Delhiandors

Counsel for Petitioner :- Amrendra Nath Tripathi,Kumkum Tripathi,Lalta Prasad Misra

Counsel for Respondent :- C.S.C.,Puneet Chandra,Ravi Shanker Tewari

Hon'ble Alok Mathur,J.

1. Heard Dr. L.P. Mishra, alongwith Sri Amrendra Nath Tripathi, learned counsel for the petitioners as well as Sri Rahul Shukla, learned Additional Chief Standing Counsel for the State respondents, Sri S.B. Pandey, learned Senior Advocate assisted by Sri Anand Dwivedi, learned counsel appearing for Union of India and Sri Puneet Chandra, learned counsel appearing on behalf of National Health Mission.

2. It is submitted by learned counsel for the petitioners that they are Ayush doctors who are working in the NHRM Scheme and are aggrieved by the impugned order dated 29.03.2019, passed by the Principal Secretary, Medical and Health Department, Government of U.P., Lucknow thereby rejecting their representation for being granted equivalent honorarium as is being given to the Allopathic doctors.

3. Brief facts of the case are that the petitioners are qualified AYUSH Doctors and were engaged as such and were posted in different districts in the State of Uttar Pradesh and their services were renewed from time to time and are currently serving as contractual employees. The Union of India recognizing the importance of health in the process of economic and social development and improving the

quality of life of its citizens resolved to launch the National Health Mission Scheme to carry out necessary aid in the basic health case delivery system.

4. An advertisement was issued for appointment on various posts in all the districts including the post of Medical Officer Allopathic, BDS Doctors as well as AYUSH Doctors. Till the year 2009-10, honorarium for all the above-mentioned doctors was proposed to be Rs.24,000/- per month but later on in 2010-11, the honorarium of Medical Officers Allopathic was increased to Rs.30,000/- per month. Similarly, for the year 2011-12, the honorarium of the Medical Officers Allopathic was increased to Rs.36,000/- per month for rural posting and Rs.33,000/- per month for urban posting and honorarium of Medical Officers BDS was increased to Rs.35,000/- per month for rural posting and Rs.30,000/- per month for urban posting. The honorarium of Ayush Doctors was not revised and renewal of Ayush Doctors was denied and aggrieved by the order, not renewing the period of Ayush Doctors, they challenged the action before this Court and Court while disposing the Writ Petition No. 769 (S/B) of 2011, directed the respondents to continue their services till the scheme continues and be paid accordingly.

5. The State Government assailed the order passed by the writ Court by filing Special Leave Petition (Civil) No. 28122 of 2011, which was dismissed on 18.10.2011 and in compliance of the order of the Court the services of Ayush doctors were continued and renewed but the honorarium remained Rs.24,000/- per month.

6. The claim of the AYUSH Doctors for equal honorarium was further raised in Writ Petition No. 295 (S/B) of 2013 - Anil Kumar and Others Vs. Union of India and Others, which was disposed of by this Court by means of order dated 01.03.2013, with direction to the Principal Secretary, Health and Family Welfare, U.P. to take decision in this

regard and the Principal Secretary took the decision in the matter vide order dated 04.09.2013, whereby the representation was rejected on the ground that honorarium was to be fixed in terms of the operational guidelines/record of proceedings and in the said terms the Government of India had approved honorarium only Rs.24,000/- per month.

7. The claim of the petitioners to be treated at par with the Allopathic Doctors has been rejected by the State Government on the following ground :

"(i) AYUSH doctors do not have to render emergency services,
(ii) their services are limited for their work up to six hours and
(iii) they are not given any medico legal work."

8. The aforesaid order has been passed considering various directions issued by the High Court in Writ Petition No. 5633 (S/S) of 2019 and Writ Petition No. 22529(S/B) of 2018, rejecting the claim of the petitioners.

9. It is submitted by learned counsel for the petitioners that it is wrong to say that the duties and responsibilities of the AYUSH doctors are in any way inferior to the Allopathic doctors, and the reasoning given for such discrimination is illegal and arbitrary. The reasoning that Allopathic doctors are entitled for non-practicing allowance, is baseless, as no such allowance is admissible to any contractual employee either Allopathic or AYUSH. It is submitted that the State Government is giving equal honorarium to the Allopathic and AYUSH medical officers in case of contractual appointments. It is also relevant to mention here that in case of emergency, every moment and every second is important and vital and every medical practitioner is under pious and legal obligation to attend the medical emergencies. Moreover, in many PHCs/CHCs only AYUSH doctors are appointed

and in medical emergencies, such doctors have been appointed to take care of the medical emergencies, and such patients are treated by the AYUSH doctors and even the guidelines of the AYUSH doctors also permit them to do the same.

10. It is submitted by learned counsel for the petitioners that on one hand the order says that the honorarium of the AYUSH doctors are to be decided by the Department of AYUSH of Central Government and on the other hand National AYUSH Policy, 2002 formulated by the Department of AYUSH of the Central Government are not being followed while fixing the honorarium.

11. To canvass their claim for being treated equally on the ground that their obligations are also similar to those of Allopathic doctors, it has been stated that AYUSH doctors are employed under the Jan Suraksha Yojana, are employed as Obstetrics and also employed in emergency service. It is stated that AYUSH doctors are also duly registered by the registering Council and are practicing as doctors in their respective fields of medicine and it is submitted that the State Government is discriminating between them without there being any rational basis which is illegal and arbitrary.

12. It is further submitted that till 2009-10, honorarium for all the doctors was uniformly fixed at Rs.24,000/- per month and it is only after 2011-12 that honorarium of Allopathic doctors was raised to Rs. 36,000/- per month for rural posting and Rs.33,000/- per month for urban posting, while honorarium for Ayush doctors was not revised.

13. In earlier round of litigation, this very aspect was meticulously scrutinised and this Court while deciding bunch of cases leading being Writ Petition No. 738 (S/B) of 2015, had considered all the aspects of their work, educational qualifications and returned a finding that

AYUSH doctors are also entitled to the same honorarium as is given to Allopath doctors.

14. Similar controversy was raised before the High Court Uttarakhand in the case of **Dr. Sanjay Singh Chauhan and Others Vs. State of Uttarakhand, Writ Petition No. 484 (S/B) of 2014** (decided on 03.04.2018), wherein the High Court of Uttarakhand observed as under :-

"1. The petitioners were appointed as Medical Officers "Ayush" on the contract basis during the year 2010 to 2013 under "National Rural Health Mission" (hereinafter referred to as "NRHM" for the sake of brevity). The NRHM was started by Government of India in the year 2005 for the purpose of Healthcare, more particularly, in rural areas. The 85% expenses are borne by the Central Government and 15% by the State Government.

2. According to the preamble of NRHM scheme, it is meant to develop and improve the quality of life of citizens and to adopt a synergistic approach by relating health to indica of good health viz. segments of nutrition, sanitation, hygiene and safe drinking water. It also aims at main streaming the Indian System of Medicine to facilitate health care. The overall goal of the Mission is to improve the availability of access to quality health care by people especially for those residing in rural areas, the poor, women and children. In fact, it provides effective health care to rural population throughout the country 2 with special focus on 18 States including State of Uttarakhand.

3. The petitioners were appointed in Rastriya Bal Swasthaya Karyakram (RBSK) run by the NRHM. The State Government has also employed Allopathic, Dental, Ayurvedic and Homeopathic Medical Officers under NRHM on contract basis. The Allopathic and Dental Doctors were given consolidated salary of Rs.48,000/-,

Rs.52,000/- and Rs.56,000/- for Sugam, Durgam and Ati-durgam places respectively. The petitioners were paid only Rs.36,000/-, Rs.40,000/- and Rs.44,000/- for Sugam, Durgam and Ati-durgam places respectively. There were 82 Ayurvedic and 18 Homeopathic Medical Officers appointed on contract basis under NRHM. 296 Ayurvedic Medical Officers were also appointed on contract basis under RBSK. Initially there was no difference in the salary between Allopathic Medical Officers and Ayurvedic Medical Officers as per advertisement issued in the year 2010. The petitioners have made several representations seeking parity of salary with their counter-parts working as Allopathic Medical Officers and Dental Medical Officers.

4. The case of the petitioners has been rejected only on the ground that they are working on contractual basis and thus, they are not entitled to the parity with Allopathic Medical Officers and Dental Medical Officers. The petitioners are discharging the same duties which are being discharged by the Allopathic Medical Officers and Dental Medical Officers. 3

5. The underlying principles of NRHM is to provide basic health facilities to the citizen of the State, more particularly, of rural areas. The petitioners have obtained their degrees from recognized institutions. They have also taken 4-5 years course. It is for the patient to opt for any of the system i.e. Allopathic or Ayurvedic or Homeopathic.

6. There is no intelligible differentia so as to distinguish the Ayurvedic and Homeopathic Medical Officers viz-a-viz Allopathic and Dental Medical Officers. There is no rational why the similar situate persons have been discriminated against. The petitioners as well as Allopathic and Dental Medical Officers constitute homogenous class.

7. Homeopathy, Ayurved and Allopathy are different streams of Medicines, yet these have to be treated at par

with each other. The nature of degrees and duration of courses are almost the same. There is also discrimination by paying Rs.10,000/- extra to the Doctors working in Community Health Centres and Primary Health Centres. The petitioners are working in rural areas. They cannot be discriminated against only on the ground that they are not serving in Community Health Centres and Primary Health Centres.

8. Their Lordships of Hon'ble Supreme Court in (1987) 4 SCC 634 in the case of Bhagwan Dass and others Vs. State of Haryana and others have held that if duties and functions of temporary appointees and employees of regular cadre in the same government 4 department are similar, there cannot be discrimination in pay between them merely on ground of difference in mode of their selection or that the appointment or scheme under which appointments made was temporary. Their Lordships have held as under :-

“8. It is therefore futile to contend that the petitioners in their capacity as Supervisors were required only to perform part-time work. As per clause (d) of the aforesaid extract, the supervisors were required to stay for the whole day in the village and were required to visit the Informal Education Centre and the Adult Education Centre in the night. They were also required to go on tour and to remain at the headquarter once a week from 9.30 A.M. to 4.00 P.M. The conclusion is therefore inevitable that the petitioners were not part-time functionaries but were whole-time functionaries. 10. With regard to the first ground for not granting salary on the same basis as of respondents 2 to 6, viz. that they are part-time employees whereas respondents 2 to 6 are full-time employees, having examined the aforesaid records placed before the Court, we are of the opinion that there is no substance in this contention.

11. With regard to the next contention viz. that the mode of recruitment of the petitioners is different from the

mode of recruitment of respondents 2 to 6, we are afraid it is altogether without substance. The contention has been raised in the following terms (paragraph 4(d) of the Counter affidavit dated 6-1-1986 filed on behalf of Respondents 1 to 13):-- It is absolutely incorrect that the Petitioners are similarly placed as the employees under the Social Education Scheme, as alleged. The latter are wholtime employees selected by the subordinate services Selection Board after competing with candidates from any pan of the country. In the case of Petitioners, normally the selection at best is limited to the candidates from the Cluster of a few villages only. The contention made by the Petitioners has no justifiable basis." (Emphasis added).

We need not enter into the merits of the respective modes of selection. Assuming that the selection of the petitioners has been limited to the cluster of a few villages, whereas Respondents 2 to 6 were selected by another mode wherein they had faced competition from candidates from all over the 5 country., we need not examine the merits of these modes for the very good reason that once the nature and functions and the work are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "Equal pay for equal work" doctrine. It was open to the State to resort to a selection process whereat candidates from all over the country might have competed if they so desired. If however they deliberately chose to limit the selection of the candidates from a cluster of a few villages it will not absolve the State from treating such candidates in a discriminatory manner to the disadvantage of the selectees once they are appointed, provided the work done by the candidates so selected is similar in nature. It was perhaps considered advantageous to make recruitment from the cluster of a few villages for the purposes of the Adult Education Scheme because the Supervisors appointed from that area would know the

people of that area more intimately and would be in a better position to persuade them to take advantage of the Adult Education Scheme in order to make it a success. So also it was perhaps considered desirable to make recourse to this mode of recruitment of candidates because candidates from other parts of the country would have found it inconvenient and onerous to seek employment in such a Scheme where they would have to work amongst total strangers and it would have made it difficult for them to discharge their functions of persuading the villagers to avail of the Adult Education Scheme on account of that factor. So also they might not have been tempted to compete for these posts in view of the fact that the Scheme itself was for an uncertain duration and could have been discontinued at any time. Be that as it may, so long as the petitioners are doing work which is similar to the work performed by respondents 2 to 6 from the stand point of 'Equal work for equal pay' doctrine, the petitioners cannot be discriminated against in regard to pay scales. Whether equal work is put in by a candidate, selected by a process whereat candidates from all parts of the country could have competed or whether they are selected by a process where candidates from only a cluster of a few villages could have competed is altogether irrelevant and immaterial, for the purposes of the applicability of 'Equal work for equal pay' doctrine.. A typist doing similar work as another typist cannot be denied equal pay on the ground that the process of selection was different in as much as ultimately the work done is similar and there is no rational ground to refuse equal pay for equal work. It is quite possible that if he had to compete with candidates from all over the country, he might or might not have been selected. It would be easier for him to be selected when the selection is limited to a cluster of a few villages. That however is altogether a different matter. It is possible that he might not have been selected at all if he had to compete against candidates

from all over the country. But once he is selected, whether he is selected by one process or the other, he cannot be denied equal pay for equal work without violating the said doctrine. This plea raised by the Respondent-State must also fail.

12. Turning now to the contention that the nature of the duties are different,, the Respondent-State has failed to establish its plea. In the regular cadre, the essential qualification for appointment is B.A., B.Ed. Petitioners also possess the same qualifications viz. B.A., B.Ed. In fact many of them even possess higher degrees such as M.A.M.Ed. In what manner and in what respect are the duties and functions discharged by those who are in the regular cadre different? The petitioners having discharged the initial burden showing similarity in this regard, the burden is shifted on the Respondent-State to establish that these are dissimilar in essence and in substance. We are unable to uphold the bare assertion made in this behalf by the State of Haryana (in paragraph 21 of the Counter-affidavit dated November 23, 1985). In fact the communication dated April 8, 1985 (Annexure R-2) addressed by the respondent State of Haryana to the District Officers which has been quoted in the earlier part of the judgment supports the contentions of the petitioners and belies the plea raised by the Respondent-State.”

*9. Their Lordships of Hon’ble Supreme Court in the recent judgment reported in (2017) 1 SCC 148 in the case of **State of Punjab and others Vs. Jagjit Singh** and others have laid down the following principles to determine parity in principle of “equal pay for equal work”. Their Lordships have held that the temporary employees are also entitled to minimum regular pay scale 7 on the principle of “equal pay for equal work”. Their Lordships have held as under : “42.2. The mere fact that the subject post occupied by the claimant, is in a “different department” vis-a-vis the reference post, does*

not have any bearing on the determination of a claim, under the principle of 'equal pay for equal work'. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see – the *Randhir Singh case*¹, and the *D.S. Nakara case*²).

42.3. The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (see – the *Randhir Singh case*¹). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see – the *Federation of All India Customs and Central Excise Stenographers (Recognized) case*³, the *Mewa Ram Kanojia case*⁵, the *Grih Kalyan Kendra Workers' Union case*⁶ and the *S.C. Chandra case*¹²).

42.4. Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of 'equal pay for equal work' (see – the *Randhir Singh case*¹, *State of Haryana v. Haryana Civil Secretariat Personal Staff Association*⁹, and the *Hukum Chand Gupta case*¹⁷). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

42.5. In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see – the *Federation of All India Customs and Central Excise*

Stenographers (Recognized) case3 and the State Bank of India case8). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of 'equal pay for equal work' (see - State of U.P. v. J.P. Chaurasia4, and the Grih Kalyan Kendra Workers' Union case6).

42.6. For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular payscale (see – the Orissa University of Agriculture & Technology case10).

42.7. Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria (see - State of U.P. v. J.P. Chaurasia4).

42.8. If the qualifications for recruitment to the subject post vis-a- vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see – the Mewa Ram Kanojia case5, and Government of W.B. v. Tarun K. Roy11). In such a cause, the principle of 'equal pay for equal work', cannot be invoked.

42.9. The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be

permissible, as against a superior post, such as 9 a promotional post (see - Union of India v. Pradip Kumar Dey⁷, and the Hukum Chand Gupta case¹⁷).

42.10. A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see – the Harbans Lal case²³). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - Official Liquidator v. Dayanand¹³).

42.11. Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see – the State Bank of India case⁸).

42.12. The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable (see - State of Haryana v. Haryana Civil Secretariat Personal Staff Association⁹).

42.13. The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay-scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar

duties and responsibilities (see - State of West Bengal v. West Bengal Minimum Wages Inspectors Association¹⁴).

42.14. For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see - Union Territory Administration, Chandigarh v. Manju Mathur¹⁵).

42.15. There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see – the Hukum Chand Gupta case¹⁷), when the duties are qualitatively dissimilar.

42.16. The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see – the Hukum Chand Gupta case¹⁷).

42.17. Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of 'equal pay for equal work', even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the

principle of 'equal pay for equal work' would not apply (see – the S.C. Chandra case¹², and the National Aluminum Company Limited case¹⁸). 60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to 11 temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be

entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

10. In the instant case, the duties discharged by the petitioners viz-a-viz Allopathic Medical Officers and Dental Medical Officers are of equal sensitivity and quality, even the responsibility and reliability are the same. The classification made by the State Government is irrational.

11. Accordingly, the writ petition is allowed. The State/respondents are directed to pay and release the salary to the petitioners at par with Allopathic Medical Officers and Dental Medical Officers from the date when the same was paid to the Allopathic and Dental Medical Officers, within a period of three months from today with arrears."

15. The High Court of Uttarakhand allowed the writ petition and held the AYUSH doctors should be treated at par with the Allopathic doctors and are entitled for the same honorarium. The said judgment was challenged before the Hon'ble Apex Court in Special Leave to Appeal (Civil) No. 33645 of 2018, which was dismissed by means of order dated 24.03.2022. Same issue has been raised before this Court where the AYUSH doctors have been denied the benefit of ACP, which was made admissible to the medical officers of Provincial Medical Services, there also the State Government had tried discriminate between medical officers (Ayurvedic) from AYUSH and Allopathic doctors.

16. The petitioners are confirmed Class-II Officers on the post of Medical Officers (Ayurvedic); the first petitioner claims to be the President of Prantiya Ayurvedic Evam Unani Chikitsa Seva Sangh (for short "Association') duly recognized by the second respondent, Principal Secretary, Department of Medical Education and AYUSH (Ayush Anubhag-1), Civil Secretariat, Lucknow. Petitioners are working in the Pay-Scale at Rs. 15600-39100 and Grade Pay at Rs. 6600/-.

17. The instant petition is directed against the order dated 28.02.2017, passed by the first respondent, Principal Secretary, Department of Finance, Civil Secretariat, Lucknow, whereby, the representation of the first petitioner claiming the benefit of Dynamic/Special Assured Career Progression (for short "SACP') Scheme made admissible to the Medical Officers of the Provincial Medical Health Services (for short "PMHS'), has been rejected. Further, a direction has been sought to grant the Medical Officers (Ayurvedic) the benefits of SACP w.e.f. the date it has been allowed to the Medical Officers of PMHS.

18. The facts, inter se parties, are not disputed.

19. The Medical Officers PMHS practice Allopathy stream of medicine. It appears that Medical Officers PMHS made a representation to the State Government for implementation of Dynamic ACP Scheme as made admissible to the Medical Officers under the Central Government. On considering their representation, the State Government vide order dated 14.11.2014, framed a scheme on the recommendation of the Committee. The SACP, primarily, provides that the Medical Officers PMHS would be entitled to upgradation of pay on completing 4, 11, 17 and 24 years of satisfactory service. The scheme was made applicable w.e.f. 01.12.2008. The relevant portion of the Government Order dated

14.11.2014, for the purposes of the instant writ petition, is extracted hereinbelow:

“(1) प्रादेशिक चिकित्सा एवं स्वास्थ्य सेवा (पी०एम०एच०एस०) के चिकित्सकों के लिए केन्द्रीय चिकित्सकों के समान डी०ए०सी०पी० की व्यवस्था लागू करने का औचित्य नहीं है।

(2) पी०एम०एच०एस० संवर्ग के लिए ए०सी०पी० की विशिष्ट व्यवस्था निर्धारित की जाये। तदनुसार ए०सी०पी० की विशिष्ट व्यवस्था के अन्तर्गत पी०एम०एच०एस० संवर्ग के प्रथम स्तर के पद (वेतनमान रू० 8000-13500/ समकक्ष वेतनमान/ पुनरीक्षित वेतन संरचना में सादृश्य वेतन बैण्ड-3 एवं ग्रेड वेतन रू० 5400/-) पर नियुक्ति की तिथि से निम्न तालिका के स्तम्भ-2 में उल्लिखित सेवावधि पर उसके सम्मुख स्तम्भ-3 के अनुसार वैयक्तिक वेतन बैण्ड एवं ग्रेड वेतन अनुमन्य कराये जाये:-

क्र० सं०	पी०एम०एच०एस० संवर्ग में प्रथम स्तर के पद पर नियुक्ति की तिथि से सेवावधि।	ए०सी०पी० की विशिष्ट व्यवस्था के अन्तर्गत वैयक्तिक रूप से अनुमन्य वेतन बैण्ड एवं ग्रेड वेतन।
1	04 वर्ष की निरन्तर संतोषजनक सेवा।	वेतन बैण्ड-3 एवं ग्रेड वेतन रू० 6600/-
2	कुल 11 वर्ष की निरन्तर संतोषजनक सेवा।	वेतन बैण्ड-3 एवं ग्रेड वेतन रू० 7600/-
3	कुल 17 वर्ष की निरन्तर संतोषजनक सेवा।	वेतन बैण्ड-4 एवं ग्रेड वेतन रू० 8700/-
4	कुल 24 वर्ष की निरन्तर संतोषजनक सेवा।	वेतन बैण्ड-4 एवं ग्रेड वेतन रू० 8900/-

20. The petitioners herein belong to a different stream of medicine i.e. Ayurvedic and are entitled to the General ACP Scheme applicable to all other government servants which was conferred by the Government Order dated 04.05.2010, wherein, upon stagnation on a post the government servant is entitled to upgradation of pay at 10, 18 and 26 years of service. The relevant portion of the Government Order dated 04.05.2010 reads thus:

‘ (2) (i) ए०सी०पी० के अन्तर्गत सीधी भर्ती के किसी पद पर प्रथम नियमित नियुक्ति की तिथि से 10 वर्ष, 18 वर्ष व 26 वर्ष की **अनवरत संतोषजनक सेवा के आधार पर** तीन वित्तीय स्तरोंनयन निम्न प्रतिबन्धों के अधीन अनुमन्य किये जायेंगे:-

(क) प्रथम वित्तीय स्तरान्तरण सीधी भर्ती के पद के वेतनमान/ सादृश्य ग्रेड वेतन में 10 वर्ष की नियमित सेवा निरन्तर सन्तोषजनक रूप से पूर्ण कर लेने पर देय होगा।”

21. The General ACP Scheme came to be modified vide Government Order dated 05.11.2014 providing upgradation of pay on satisfactory completion of 8/16/24 years of service.

22. In this back drop, it is submitted by the learned counsel for the petitioners that the petitioners who are Medical Officers (Ayurvedic) and were inducted by the State Government on the same pay scale/band as admissible to the Medical Officers PMHS have been discriminated, merely, because they belong to and practice conventional stream of medicine as against modern medicine. It is submitted that the nature and duties of the Medical Officers rendering medical services in different streams of medicine is not comparable but the primary duty being performed by the Medical Officers (Ayurvedic) is the same i.e. treating patients and number of hours of duty is comparable with the Medical Officer of PMHS. It is further sought to be urged that the issue being raised in the instant writ petition is not based on comparison/parity with the other stream of medical science or treatment. The benefit of SACP admissible to the Medical Officers PMHS, excluding, Medical Officers of their streams viz. Ayurvedic /Unani/Dental is discriminatory. The concept of ACP is based on the principle of tiding over stagnation on a post, ACP, per se, is not an incentive scheme so as to discriminate between Medical Officers engaged in different stream of medical treatment and practice. It is further submitted that the Dynamic ACP Scheme was made admissible to all the medical officers of the Central Health Service, irrespective, of the stream of medicine they practice, whereas, State Government while implementing the SACP has confined it to the Medical Officers PMHS (Allopathy).

23. Learned counsel for the petitioners, in support of his submission, has placed reliance on the decision rendered by the Supreme Court in **North Delhi Municipal Corporation Versus Dr. Ram Naresh Sharma and others, SLP (C) No. 10156 of 2019.**

24. The issue before the Court was with regard to the discrimination in the age of superannuation of the medical officers vis-a-vis dentist and doctors covered under the AYUSH, including, Ayurvedic doctors. The Court was of the opinion that the classification of AYUSH doctors and other doctors of Central Health Scheme (for short "CHS") in different categories is not reasonable and permissible under law. The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. It was held that there was no rational justification for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Paragraph nos.22 and 23 are extracted hereinbelow:

"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 31.05.2016.

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-1 (AYUSH)) dated 24.11.2017 must be retrospectively applied from 31.05.2016 to all concerned respondent-doctors, in the present appeals. All consequences must follow from this conclusion."

25. Further, reliance has been placed on the decision rendered by the High Court of Uttarakhand in **Dr. Sanjay Singh Chauhan and others versus State of Uttarakhand and others**, Writ Petition No. 484 (S/B) of 2014.

26. The issue before the High Court was as to whether the Medical Officers (AYUSH) appointed on contract could be discriminated with their counter parts in other streams insofar as salary given to the Medical Officers (Allopathy) and Dental Medical Officers. The High Court allowed the writ petition. Para 10 reads thus:

"10. In the instant case, the duties discharged by the petitioners viz-a-viz Allopathic Medical Officers and Dental Medical Officers are of equal sensitivity and quality, even the responsibility and reliability are the same. The classification made by the State Government is irrational."

27. State of Uttarakhand, aggrieved by the order of the High court, carried the decision in appeal to the Supreme Court where the appeal

(SLP (Civil) No. 33645 of 2018) was dismissed, in limine vide order dated 24.03.2022 making the following observations:

"Having heard learned counsel for the parties and considering the facts and circumstances of the case, we do not find any ground for interference with the order passed by the High Court. The special leave petition is, accordingly, dismissed.

However, we may only clarify that the respondents who are Ayurvedic doctors will be entitled to be treated at par with Allopathic Medical Officers and Dental Medical Officers under the National Rural Health Mission (NRHM/NHM) Scheme.

After the order was passed, learned counsel for the petitioners made a statement that petitioners would like to file a review petition before the High Court. It is not for this Court to issue any such direction. It is always open to the petitioners to pursue such remedy as may be available to them in law."

28. In rebuttal, learned counsel appearing for the State-respondents submits that the reasons assigned conferring SACP to the Medical Officers PMHS as against Medical Officers (Allopathy) is noted in the impugned order. The qualification of the Medical Officers of different streams is not comparable; the nature of duties, responsibility and treatment is entirely different; the Medical Officers of other streams, including, Medical Officers (Ayurvedic) are not engaged in Medico Legal work; further, the Medical Officers PMHS perform complicated surgery and they are not paid Non-Practising Allowance (NPA), whereas, the petitioners, Medical Officers (Ayurvedic), are allowed private practice.

29. In this backdrop, it is submitted by learned counsel for the State-respondents that to encourage the Medical Officers PMHS, the SACP Scheme was formulated in respect of a class of Medical Officers,

excluding, Medical Officers of other streams. It is further submitted that the petitioners have not been discriminated against as they are entitled to ACP Scheme as is applicable to all the employees of the State Government vide Government Order dated 04.05.2010. In support of his submission reliance has been placed on the following authorities: **Mewa Ram Kanojia Versus All India Institute of Medical Sciences and others, (1989) 2 SCC 235, State of Madhya Pradesh Versus R.D. Sharma and others, Manu/SC/0098/2022, Dr. Puneet Kumar Gupta and another Versus Union of India through Secy. Ministry of Health and Family and others, Writ Petition No. 738 (S/B) of 2015, S.C. Chandra and others Versus State of Jharkhand and others, (2007) 8 SCC 279.**

30. The authorities relied upon by the learned counsel appearing for the State-respondents is of no assistance as the decisions pertain to the concept and principle of equal pay for equal work. It is noted therein that the principle of equal pay for equal work cannot be invoked in every kind of service, particularly, in the area of professional services.

31. The issue in the given facts is not with regard to equal pay for equal work, but the Scheme formulated for Career Progression to tide over stagnation on a post.

32. On perusal of the ACP Scheme and the relevant stipulations and conditions, therein, it is evident that the scheme offers higher pay scale/financial upgradation only to those eligible government servants who remained deprived of regular promotions. For such deprivation, they are compensated by grant of monetary benefits on purely personal basis i.e. not dependent upon the post or seniority. The financial upgradation does not amount to functional/regular promotion and does not require creation of new posts. The financial upgradation under the scheme shall be available only if no regular promotions during the prescribed periods have been availed by the government

servant. In other words, the ACP Scheme is compensatory and not an incentive scheme to a class of government servants.

33. On specific query, learned counsel appearing for the State-respondents submits that the Medical Officers are inducted on the same pay scale/band and pay-grade at the entry level in the services, however, in the case of Medical Officers PMHS, different pay scale/band and pay-grade is admissible depending upon their specialization or super specialty/qualifications. The petitioners, admittedly, are not claiming equal pay for equal work or the pay scale/band and or pay-grade admissible to the specialist or super specialist. The claim of the petitioners is confined to a Scheme made applicable to a class of Medical Officers (Allopathy), excluding other Medical Officers (AYUSH).

34. The contention of the petitioners is that a class of Medical Officers, insofar as, it relates to the benefit of SACP have been discriminated against without any justification or rational, merely for the reason that they are rendering medical service in different streams of medical science. The petitioners herein have been inducted as Medical Officers and are performing duties in various AYUSH and Unani Hospitals as has been detailed in para-10 of the writ petition, which is extracted hereinbelow:

"10. That opposite party no. 1 rejected the case of petitioners as in regard of their whole cadre on the fake ground as work and responsibilities are not same and Medical Officers, Ayurvedic are not doing emergency services and surgery and Medico legal work."

35. The averments have not been denied by the State-respondents in the counter affidavit. On a bare perusal of the Government Order dated 14.11.2014, while conferring SACP, the State Government declined the Dynamic ACP applicable to the Medical Officers of the

CHS, irrespective of the stream of specialization i.e. Allopathy/Ayurvedic/Unani/Dental. Whereas, SACP has been made applicable to Medical Officers PMHS and the Medical Officers of other streams i.e. AYUSH/ Dental have been kept out of the scheme.

36. On specific query, learned counsel appearing for the State-respondents admits that the Dynamic ACP has been made applicable to all the Medical Officers irrespective of their streams, but submits that the State Government is not bound to implement the Central Government Scheme in totality.

37. Concept of ACP is the tied over stagnation on a post and to grant financial upgradation to the government servants, it is not based on the concept of equal pay for equal work or the nature of duties being performed by the government servant. It is applicable across the board from Class-D employee to the highest rank officer, wherever such government servant suffers stagnation. However, an exception has been carved out for the Medical Officers, PMHS while implementing SACP, which in the opinion of the Court is discriminatory, insofar as it excludes the other Medical Officers practising medicine in different streams.

38. The ACP Scheme in general is not an incentive scheme resting upon to the nature of duty, responsibility or qualification of the government servant. The ACP Scheme, primarily, is to tide over the stagnation which a government servant, irrespective of his duty, post, pay, qualification or seniority, suffers due to stagnation on a post without earning promotion. The ACP Scheme, in the circumstances, provides for pay up-gradation to the government servant which is purely personal.

39. In this backdrop, having regard to the scope and nature of the ACP scheme, the question that arises is as to whether the Medical Officers

rendering medical services in different streams can be discriminated as against Medical Officer PMHS depriving the SACP. In alternative, whether Medical Officer (Ayurvedic) are entitled to be treated at par with Medical Officer PMHS under the SACP scheme.

40. It goes without saying that the Western medicine (Allopathy) is integral to our current health care system, but so are other alternative and complementary health care modalities that are available for the people to choose. Western medicine is sometimes at a loss when it comes to treating the patients holistically. The submission of the learned State Counsel that the classification of Medical Officer (Ayurvedic) and Medical Officers PMHS is reasonable for the purposes of SACP having regard to their qualification and the nature of duties is not convincing. The classification is discriminatory and unreasonable since Medical Officers of both the segments are primarily performing the same function i.e. treating the patients. The difference is that one stream of doctors are using indigenous system of medicine and the other stream Allopathy for treating their patients. The mode of treatment, by itself does not qualify as an intelligible differentia. At the root is treatment of patients. The Medical Officers, both Ayurvedic and Allopathy render medical service to the patients and on this aspect, there is nothing to distinguish them. Treatment of patients is the core function common to the Medical Officers of different streams, therefore, no rational justification is seen to having different ACP scheme of bestowing the benefit of career progression to Medical Officers. As discussed earlier, the ACP scheme is personal to the government servant suffering stagnation and the pay upgradation does not rest upon any other consideration viz. status of post, qualification, nature of duty or seniority. The scheme is purely compensatory. In the circumstances the Medical Officers of the State cannot be discriminated against by providing different period of

service to earn the benefit of career progression. Therefore, the classification on face value is discriminatory and violative of Article 14 of the Constitution of India.

41. AYUSH is an acronym for Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy are the six Indian system of medicines prevalent and practised in India. A department called the departments of Indian system of medicine was created in 1995 and renamed AYUSH in 2003 with a focus to provide increased attention for the development of these systems. This was felt in order to give increased attention to these systems in the presence of a strong counterpart in the form of Allopathic system of medicine. This took a reverse turn after the initiation of National Rural Health Mission (NRHM) and the AYUSH systems were brought into the mainstream health care. NRHM introduced the concept of mainstreaming of AYUSH and revitalization of local health traditions. This concept helped in utilizing the untapped AYUSH workforce, therapeutics and the principle of management of community health problems at different levels. The envisaged objective, inter alia, was to provide choice of the treatment system to the patients and strengthen implementation of national health programs.

42. The State Government is justified in not accepting the Dynamic ACP formulated by the Central Government for its Medical Officers, instead formulated the SACP scheme falling within the realm of administrative policy. But the question is whether such a policy upon being provided can discriminate amongst different streams of medicine practiced by Medical Officers. Admittedly, the Medical Officers, irrespective of the stream of medicine (Allopathy or conventional) treat the patients which is the core underlying similarity. The comparison with regard to qualification, course of study/syllabus, nature of duty, responsibility etc. as is being pressed by the State

Government to carve out a class of Medical Officers i.e. PHMS being superior to other Medical Officers is misconceived and unfounded insofar it relates to conferment of SACP. The administrative policy is invariably discriminatory in keeping the Medical Officers (Ayurvedic) and other streams out of the scheme having regard to the concept of ACP as discussed earlier.

43. Accordingly, the writ petition is **allowed**.

44. The impugned order dated 29.03.2019, passed by the Principal Secretary, Medical and Health Department, Government of U.P., Lucknow, is hereby quashed. It is provided that the Special ACP Scheme (SACP) implemented vide Government Order dated 14 November 2014, shall be applicable to the Medical Officers of other streams also.

Order Date :- 19.10.2022

A. Verma

(Alok Mathur, J.)