

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT APPEAL No.303 of 2022

% Date: 09.01.2023

The State of Telangana, rep. by its Secretary to Government, Health, Medical & Family Welfare Department, Secretariat, Hyderabad and others.

... Appellants

v.

\$ Mohd. Ibrahim,
and others.

... Respondents

! Counsel for the appellants : Ms. Vachepally Usha
learned Assistant Government Pleader attached
to the office of learned Additional Advocate General

^ Counsel for respondents No.1 to 148: Ms. Tasleem Fatima

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➤ HEAD NOTE:

? CASES REFERRED:

1. AIR 2021 SC 3795 : 2021 SCC Online SC 540

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT APPEAL No.303 of 2022

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Ms. Vachepally Usha, learned Assistant Government Pleader attached to the office of learned Additional Advocate General for the appellants and Ms. Tasleem Fatima, learned counsel appearing for respondents No.1 to 148/writ petitioners.

2. Appellants before us are the State of Telangana in the Health, Medical and Family Welfare Department and its officials.

3. This writ appeal is directed against the order dated 21.01.2022 passed by the learned Single Judge allowing W.P.No.18828 of 2021 filed by respondents No.1 to 148 as the writ petitioners.

4. Respondents No.1 to 148 had filed the related writ petition taking exception to the action of the appellants in not enhancing the stipend paid to them as House Surgeons and Post Graduate students of AYUSH Institutions from the year 2016 onwards at par with House Surgeons and Post Graduate students in Allopathic Institutions under the State of Telangana.

5. It was contended that House Surgeons and Post Graduate students of modern medicine in Allopathic Institutions were sanctioned enhanced stipend vide G.O.Ms.No.88, dated 18.05.2021. Learned Single Judge summed up the grievance of the writ petitioners in the following manner:

3. The petitioners are stated to be Post Graduate Doctors and House Surgeons of AYUSH Department and had been rendering services in different hospitals. Vide G.O.Ms. No.219, Health, Medical and Family Welfare (R1) Department, dated 26.07.2004, respondent No.1 has accorded sanction for enhancement of stipend with effect from 01.01.2002 to 31.12.2003 and from 01.01.2004 to 31.12.2005 to the Internees, Post Graduate students, House Surgeons of Indian Medicines and Homeopathy Department at 15% on par with the

Allopathic Department. The Government continued to enhance the stipend to the Internees, Post Graduate Degree and Diploma students of Medical Colleges including those of Dental Colleges and Post Graduate students of Super Specialities at 15% once in every two years and during the year 2007, the Government has issued G.O. Ms. No.51 dated 09.02.2007 enhancing the stipends in respect of House Surgeons and Post Graduate students of AYUSH Institutions on par with the Allopathic Department with immediate effect.

4. Subsequently, upon request made by respondent No.3 - the Deputy Director, Department of AYUSH, Hyderabad, for enhancement of stipend to House Surgeons and Post Graduate students of AYUSH Department with effect from 01.01.2008 on par with the Allopathic Department, G.O. Ms. No.65 dated 05.03.2008 and G.O. Ms. No.77 dated 02.03.2009 were issued for payment of stipends to the House Surgeons and Post Graduate students of AYUSH Institutions at the enhanced rates i.e., 15% on par with the Internees and Post Graduate students of Allopathic Departments with effect from 01.01.2008.

5. It is submitted that the petitioners had been receiving the stipend irregularly until the Commissioner of AYUSH, Telangana, Hyderabad, requested the Government for enhancement of stipend to the House Surgeons and Post Graduate students of AYUSH Department on par with the House Surgeons and Post Graduate students of Allopathic Department with effect from 01.01.2012. In pursuance thereof, the

Government issued G.O. Ms. No.152 dated 03.11.2016 enhancing stipends to the House Surgeons and Post Graduate students of AYUSH Institutions on par with the House Surgeons and Post Graduate students of Allopathic Institutions with effect from 01.01.2014. However, the petitioners have been receiving the stipend irregularly till now without any enhancement.

6. The petitioners submit that in terms of G.O. Ms. No.219 dated 26.07.2004, they are entitled to get stipend at 15% enhancement once in every two years but the Government vide G.O. Ms. No.152 dated 03.11.2016 enhanced the stipend till 2016 and later for the reasons best known to them, did not enhance the stipend in spite of repeated requests. It is the case of the petitioners that Allopathic Institution doctors had been receiving enhanced stipend at 15% for every three years as their stipend was enhanced for the year 2016 and 2018 but enhancement for AYUSH Institutions is pending since 2014 onwards and the Government is not taking any action. A representation has been submitted by the House Surgeons and Post Graduate students of AYUSH Department for enhancement of stipend which is pending in File No.4631/E2/2018.

7. Thereafter, respondent No.4 addressed a letter dated 28.01.2021 requesting the Government to enhance the scholarship and stipend to the petitioners - House Surgeons and Post Graduate students of AYUSH Institutions on par with Allopathic Doctors. It is submitted that AYUSH Hospitals have been treated as isolation centres as Level I & II during this COVID-19

Pandemic Time. The petitioners are House Surgeons and Post Graduate Scholars of AYUSH Department and equally performing their duties regularly and sincerely on par with allopathic House Surgeons and Post Graduate Scholars and COVID-19 duties have been assigned to the petitioners. The petitioners are rendering their services to the utmost satisfaction of the patients and the Government as well in the call centres on requirement. The Government has utilised services of the petitioners to the maximum requirement on par with Allopathic Doctors, however, enhancement of stipend for succeeding years i.e., 2016-2018 and 2018-2020 for Allopathic Doctors is continuing whereas AYUSH Doctors are denied the said benefits. It is stated that the Government while not acting upon the representations of the petitioners, AYUSH Doctors, and the recommendations submitted by respondent No.4, surprisingly issued orders vide G.O. Ms. No.88 dated 18.05.2021 according sanction for enhancement of stipend at 15% to the Medical students prosecuting MBBS / BDS (House Surgeons), Post Graduate Degree, Post Graduate Diploma, MDS and Super Speciality courses. The petitioners claim that they are rendering services on par with allopathic institutions and since there is no response from the Government, they are constrained to approach this Court.

6. Appellants, who were respondents in the writ proceeding, filed a common counter affidavit. Stand taken

by the appellants in the writ proceeding as summed up by the learned Single Judge was as follows:

9. A common counter is filed on behalf of respondent Nos.1, 3 and 4. It is submitted that a representation has been submitted by the Telangana AYUSH P.G. Doctors and House Surgeons Association for enhancement of stipend on par with Allopathic Doctors. There is no rule mandating enhancement of stipend for AYUSH Doctors on par with Allopathic Doctors. In fact, pay scales of Allopathic are different from AYUSH Department. The Doctors of Allopathic Department are drawing scales as per the U.G.C. norms, whereas the Doctors working in the AYUSH Department are drawing scales as per the State scales. The daily outpatient and inpatient cases in Allopathic are few thousands whereas in AYUSH Department, it is few hundred only. Thus, there is no comparison between the Allopathic House Surgeons / P.G. Scholars and AYUSH House Surgeons / P.G. Scholars.

(a) In Allopathic, the House Surgeons / P.G. Scholars will be performing emergency duties in Intensive Care Unit to manage life saving procedures and they are trained in suturing for wounds, tapping of fluids, central line, intubations and many more procedures. Apart from that, they have to attend maternity, post surgical and other emergency wards where night duties are to be performed, whereas workload in AYUSH Department is much lesser compared to Allopathic Department.

(b) There is no rule in Health, Medical and Family Welfare Department which mandates equal stipends to AYUSH Institutions on par with Allopathic, as such, request of the petitioners may not be feasible for consideration. Further, Allopathic Department is having regular public outreach services for the House Surgeons in their Department for conducting various medical / mobile camps as a part of their academic curriculum, whereas there is no such regular outreach program in AYUSH Department. However, a proposal has been submitted by the Commissioner, Department of AYUSH to the Government for enhancement of stipend to the Post Graduate Scholars and House Surgeons of AYUSH Institution vide Letter No.3106/C1/2018 dated 28.01.2021 and the same is under examination. It is also stated that there is no similarity of workload and other aspects for the AYUSH House Surgeons / P.G. Scholars to claim parity on par with Allopathic House Surgeons / P.G. Scholars.

(c) The learned Assistant Government Pleader for Medical and Health has submitted that the proposal dated 28.01.2021 submitted by the Director (FAC), Department of AYUSH, Telangana, to the Government for enhancement of scholarship and stipend to the Post Graduate Scholars and House Surgeons of AYUSH Institution on par with Allopathic Department is under active consideration of the Government and directions may be issued to the Government to take decision pursuant to such proposal.

7. Learned Single Judge on due consideration came to the conclusion that there could not be any valid reason for the Government to not provide enhanced stipend to House Surgeons and Post Graduate students of AYUSH Institutions when such benefit was extended to House Surgeons and Post Graduate students of Allopathic Institutions. Accordingly, direction was issued to the appellants to pay enhanced stipend to the writ petitioners from the year 2016 onwards at par with Allopathic Institutions.

8. Learned Assistant Government Pleader appearing for the appellants has referred to the grounds of appeal and submits that learned Single Judge was not justified in passing the impugned order. That apart, learned Single Judge was also not justified in placing reliance on the decision of the Supreme Court in **North Delhi Municipal Corporation v. Dr. Ram Naresh Sharma**¹ which was rendered in a completely different context. According to her, work undertaken by House Surgeons and Post

¹ AIR 2021 SC 3795 : 2021 SCC Online SC 540

Graduate students of AYUSH Institutions is not comparable with the work undertaken by House Surgeons and Post Graduate students of Allopathic Institutions. Therefore, learned Single Judge was not justified in treating two unequals as equals and issuing the impugned directions.

9. On the other hand, learned counsel representing respondents No.1 to 148/writ petitioners submits that order of the learned Single Judge is a well reasoned one and should not be interfered with. She also submits that recently the Central Government has enhanced the stipend paid to House Surgeons and Post Graduate students of AYUSH Institutions at par with House Surgeons and Post Graduate students of Allopathic Institutions which are under the control of the Central Government. Stand taken by the State is discriminatory. Therefore, learned Single Judge was justified in interfering with such discriminatory action or inaction of the State.

10. Submissions made by learned counsel for the parties have received the due consideration of the Court.

11. Rival pleadings and contentions before the learned Single Judge have already been noted above. Grounds taken by the appellants in the memo of appeal are reiteration of the stand taken before the learned Single Judge.

12. Learned Single Judge after considering the rival pleadings and submissions had allowed the writ petition vide the order dated 21.01.2022 in the following manner.

10. The request of the learned Assistant Government Pleader is rejected as a clear stand is taken by the respondents in their counter affidavit stating that services rendered by the AYUSH Post Graduate Scholars and House Surgeons cannot be compared to the Allopathic Post Graduate Scholars and House Surgeons, and this Court is of the view that no useful purpose would be served if directions are issued to the Government to consider proposal dated 28.01.2021 in Letter No.3106/C1/2018 submitted by the Director (FAC), Department of AYUSH, more particularly, in view of the authoritative pronouncement of the Hon'ble Supreme Court in **North Delhi Municipal Corporation Dr. Ram Naresh Sharma** (AIR 2021 SC 3795).

11. As per the above referred Government Orders, it is undisputed that all the House Surgeons

and Post Graduate students of AYUSH Institutions were paid stipend at enhanced rates on par with Internees and Post Graduate students of Allopathic Departments from time to time. Further, it is evident from the above Government Orders that the Government had been uniformly enhancing the stipend from time to time until 2016. Thus, having enhanced the stipend for M.B.B.S. / B.D.S., Post Graduate, M.D.S. and Super Speciality courses, as per G.O. Ms. No.88 dated 18.05.2021, there is no reason whatsoever for the Government in not extending the same benefit to the petitioners. Thus, the action of the respondents is discriminatory, arbitrary and violative of Articles 14 of the Constitution of India.

12. In view of the above, the writ petition is allowed directing the respondents to pay enhanced stipend to the petitioners - House Surgeons and Post Graduates of AYUSH Institutions from the year 2016 onwards on par with Allopathic Institutions as per G.O. Ms. No.88 dated 18.05.2021. No order as to costs.

13. Supreme Court in **Dr. Ram Naresh Sharma** (supra) was considering a batch of appeals filed by the North Delhi Municipal Corporation against the orders of the Delhi High Court upholding the order of Central Administrative Tribunal, Principal Bench. Tribunal had declared that the applicants who were ayurvedic doctors covered under

AYUSH were entitled to the benefit of enhanced superannuation age of 65 years (raised from 60 years), just like the allopathic doctors. Entitlement of the AYUSH doctors to continue in service up to 65 years and receive due remuneration for the same was the issue under consideration of the Supreme Court. While dismissing the civil appeals filed by the North Delhi Municipal Corporation, Supreme Court held as follows:

23. 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.

24. 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-I (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.

13.1. Thus in **Dr. Ram Naresh Sharma** (supra) stand taken by the Municipal Corporation was that AYUSH doctors were not at par with doctors practicing modern medicine. Therefore, classification of AYUSH doctors and doctors under the Central Health Services as separate categories was justified by the Central Government. Supreme Court did not agree with such classification and held such classification to be discriminatory and unreasonable. It was held that 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., whereas doctors under the Central Health Services are using allopathy for tending to their patients. Supreme Court opined that the mode of treatment by itself would not qualify as an intelligible differentia to justify such classification. Accordingly, such classification was held to be unreasonable and discriminatory.

14. If that is the view taken by the Supreme Court, we cannot find any fault with the finding returned by the learned Single Judge that House Surgeons and Post Graduate students of AYUSH Institutions should be treated at par with House Surgeons and Post Graduate students of Allopathic Institutions. If the latter are granted higher stipend, similar benefit should be extended to the House Surgeons and Post Graduate students of AYUSH Institutions.

15. At this stage, we may observe and it would not be out of place to mention that special emphasis is being given in the country both by the Central Government and by the State Governments for development of indigenous alternative medicine. If this is the objective of the State, then students pursuing alternative medicine should be given the same status and benefits as are being extended to the students pursuing allopathic medicine. Therefore, we are of the unhesitant view that learned Single Judge was fully justified in issuing the directions supra. We do not find any merit in the writ appeal to warrant interference. In fact, we feel that State ought not to have filed the writ appeal.

16. Be that as it may, the writ appeal being devoid of any merit is hereby dismissed.

17. Order of the learned Single Judge shall now be complied with by the appellants within a period of three months from the date of receipt of a copy of this order.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

N. TUKARAMJI, J

09.01.2023

Note: LR copy to be marked.

B/o.

vs