

**Court No. - 39**

**Case :-** CIVIL MISC REVIEW APPLICATION No. - 512 of 2023

**Applicant :-** Dr. Arvind Kumar And 3 Others

**Opposite Party :-** State Of U.P. And 4 Others

**Counsel for Applicant :-** Manoj Kumar Singh, Manoj Kumar Mishra

**Counsel for Opposite Party :-** Sunil Kumar Srivastava

**Hon'ble Saumitra Dayal Singh, J.**

**Hon'ble Shiv Shanker Prasad, J.**

1. Heard Sri Ashok Mehta, learned Additional Advocate General assisted by Sri Manoj Kumar Singh, learned Chief Standing Counsel and Sri Manoj Kumar Mishra, learned Standing Counsel for the State-respondents. At the fresh stage itself, private respondents have put in appearance. Accordingly, Sri Ashok Khare, learned Senior Advocate assisted by Sri Sunil Kumar Srivastava, learned counsel appearing for private respondent nos. 2, 3 and 4 have been heard.

2. Present review application is directed against the order of a coordinate bench of this Court dated 12.02.2013 (hereinafter referred to as the 'impugned order') passed in Writ - A No. 28101 of 2010 (Dr. Ravindra Kumar Agrawal Vs. State of U.P. & Ors.) and connected Civil Misc. Writ Petition No. 31066 of 2010. For ready reference, the operative portion of that order reads as below:

*"(15) In view of above, writ petition are allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 12.3.2010 as contained in Annexure 14 to the writ petition and the order dated 30.3.2010 as contained in Annexure-15 to the writ petition with all consequential benefits. The State Government shall ensure the payment of non-practising allowances to all the Medical Officers including the petitioners whose services are governed by 1953 Rules, including Ayurvedic, Allopathic and Homeopathic Medical Officers.*

*A further writ in the nature of mandamus is issued commanding the government to re-consider the petitioners' case for payment of non-practicing allowance keeping in view the observation made in the body of*

*the present judgment and pass a fresh order, expeditiously, say within a period of three months from the date of receipt of a certified copy of the present order.*

*The writ petitions are allowed accordingly. No order as to costs."*

3. It is not in dispute that the above order was made subject matter of challenge by the State in Special Leave to Appeal (Civil) No. .... of 2014 CC 4097 of 2014. The same was dismissed by the Supreme Court, vide order dated 04.04.2014. That order reads as below :

*"Heard.*

*Delay condoned.*

*No merit.*

*The special leave petition is dismissed."*

4. It is also a fact admitted to the applicants-in review that at that stage the latter implemented the impugned order on 23.05.2014. Thus, non-practising allowance was granted to the private respondents though undisputedly they were practitioners of Ayurvedic medicine not holding MBBS degree or BDS or LSMF (LMP) diploma nor they were registered by the Indian Medical Council/Indian Dental Council nor they were holding any post for which MBBS degree or BDS or LSMF (LMP) diploma was an essential qualification.

5. Learned Senior Counsel for the private respondents would inform, another dispute arose between the parties as to the date of enforcement of the impugned order i.e. date from which non-practising allowance was paid to the private respondents. That dispute was raised by the private respondents by filing another Writ - A No. 726 of 2016 (Dr. Lal Dhari Yadav & 2 Ors. Vs. State of U.P. & 4 Ors.). That petition came to be allowed, vide another order of a learned single-judge of this Court dated 05.07.2019. That order was also subjected to challenge by the State in another Special Leave Petition filed before the Supreme

Court that came to be dismissed, vide order dated 23.08.2021.

The said order reads as below:

*"Heard learned counsel for the petitioners.*

*We do not find any reason to interfere with the impugned judgment and order. The Special Leave Petition is dismissed on the ground of delay as well as on merits.*

*Pending application(s) shall stand disposed of."*

6. Consequently, vide order dated 18.11.2021, the private respondents came to be paid non-practising allowance from the date of their initial appointment.

7. While no dispute survives with respect to the past payment, at present, the private respondents have filed another Writ - A No. 16453 of 2023 (Dr. L.D. Yadav & 2 Ors. Vs. State of U.P. & 6 Ors.), seeking upward revision of the non-practising allowance being paid to the private respondents. That petition is still pending.

8. At the same time, learned Additional Advocate General would inform, yet, another Writ - A No. 22098 of 2022 (Dr. Jaiprakash & 9 Ors. Vs. State of U.P. & 2 Ors.) has been filed last year by practitioners of Homeopathic medicine. Those Homeopathic doctors working at ESI Hospitals have now claimed the benefits given to the private respondents thus claiming parity.

9. It is in these facts that the applicants claim to have woken up from deep slumber to realise that in absence of compliance of Rule 4 of the U.P. Government Doctors (Allopathic) Restriction on Private Practice Rules, 1983 (hereinafter referred to as the 'Rules'), neither the private respondents nor other doctors who did not hold MBBS degree or BDS or LSMF (LMP) diploma or who were not registered with Indian Medical Council/Indian Dental Council or who were not holding a post for which

MBBS degree or BDS or LSMF (LMP) diploma was an essential qualification, were not eligible to claim benefit of the Rules and thus non-practising allowance.

10. That obvious ground of challenge, according to the learned Additional Advocate General, somehow escaped the entire establishment of the State. Though equipped with best resources that our society can afford, not only the State lost before the Supreme Court not once but twice but that even if the ground of review survived to it despite such reversal faced, it somehow did not raise enough noise to disturb the deep sleep of the State functionaries.

11. What has caused the State to now act is not a new fact or ground becoming available but recurrence of a litigation i.e. institution of Writ - A No. 22098 of 2022 (Dr. Jaiprakash & 9 Ors. Vs. State of U.P. & 2 Ors.) filed by the Homeopathic doctors. It is to that variety of doctors who deal with sweetpills that the State seeks to deny the sweet fruit of litigation enjoyed by the Ayurvedic doctors.

12. While learned Additional Advocate General would submit in his usual fairness that there exists no other ground or reason to explain the inordinate delay, according to him, it is only when the present government functionaries have been confronted with the impugned order dated 12.02.2013 and its benefit has been claimed by the Homeopathic doctors that the matter has been examined threadbare. Thus, it has been opined that the impugned order is founded on a wrong legal premise i.e. wrong reading of the Rule 4 of the Rules.

13. While such grounds may have been open to be raised at the appropriate time, at present, the same is not more than academic, in the context of the finality of adjudication in favour of the private respondents.

14. Almost eleven years have passed since the impugned order came to be pronounced more than a decade ago. Finality attached to the judgements and orders passed by a Court is not a matter to be trifled with. It is not an assumption available under the Constitution that all judgements of the Courts would be correct on all counts. Yet, for functionality to exist and order to prevail, the doctrine of finality of adjudication often eclipses or over powers concerns or considerations that otherwise exist in favour of accuracy or correctness of judgements.

15. Once the impugned order attained finality in the year 2014 upon dismissal of the Special Leave Petition and the State implemented the same *qua* the private respondents, vide its communication dated 28.07.2015 and no review petition was filed at that stage, we find the explanation for the delay (being now furnished), to be nothing more than an eye wash, in law.

16. Archival judgements are not to be dug out to test their correctness or to correct any error of law that may be claimed to exist in them.

17. Once a proceeding is shown to have been contested fairly and squarely by the necessary parties, the finality of such adjudication must be maintained without excessive concern for the inconvenience that may be suffered by one or other party. More than that, in the case of the contesting State, we cannot make any exception to that Rule. State is a mammoth being of which citizen is a constituent cell. In the context of the fact situation obtaining in the present case, we do not see what grave prejudice may be caused to the State in continuing to implement the impugned order, as it has been doing for almost eleven years.

18. As for the submission that the benefit of this impugned order it is to be contested *qua* the claim being made by the

practitioners of Homeopathic medicine, we leave that issue open to be considered on its own merit in the appropriate proceedings, if any.

19. For the reasons noted above, we are disinclined to condone the extraordinary and inordinate, unexplained delay. Even on merits, the matter is seen to have attained finality. Delay if condoned and review entertained would only bring uncertainty where finality otherwise prevails.

20. Present review application stands **dismissed**. No order as to costs.

**Order Date :-** 29.11.2023  
Abhilash

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)