

GAHC010280772018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8759/2018

THE AYURVEDIC DOCTORS ASSOCIATION AND 2 ORS.
NATIONAL HEALTH MISSION, ASAM, HOUSE NO. 22, MILLANJYOTI PATH
SIJUBARI, HATIGAON, GUWAHATI-781038, DIST. KAMRUP (M), ASSAM,
REP. BY ITS PRESIDENT NAMELY, DE. MUKUL SARMA.

2: DR. MUKUL SARMA

S/O. LT. GIRINDRA NATH SARMA
VILL.
P.O. AND P.S. PATACHARKUCHI
DIST. BARPETA
ASSAM-781326.

3: DR. SHEIKHUL ISLAM

S/O. MD. SAMED ALI
VILL. GOREMARI (MAZDIA)
P.O. PASCHIM MAZDIA
P.S. SARTHEBARI
DIST. BARPETA
ASSAM-781305

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HEALTH AND
FAMILY WELFARE DEPTT., DISPUR, GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY

GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT.
DISPUR
GUWAHATI-781006.

3:THE MISSION DIRECTOR

NATIONAL HEALTH MISSION
ASSAM
SAIKIA COMMERCIAL COMPLEX
SRINAGAR PATH
CHRISTIANBASTI
G.S. ROAD
GHY.-781005.

4:THE ADDL. SECRETARY AND MISSION DIRECTOR
NATIONAL HEALTH MISSION
MINISTRY OF HEALTH AND FAMILY WELFARE DEPTT.
GOVT. OF INDIA
NIRMAN BHAWAN
NEW DELHI-110011.

5:THE SECRETARY
GOVT. OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN
NEW DELHI-110011

Advocate for the Petitioner : MR. U K NAIR, (SR. ADV.)

Advocate for the Respondent : SC, HEALTH

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the Petitioner : Mr. B. Sinha
Mr. M. Hussain. Advocates

For the respondent no.1 - 4 : Mr. B. Gogoi Advocate.

For the respondent no.5 : Mr. K.K. Parasar. Advocate.

Date of hearing & judgment : 29.03.2022

JUDGMENT AND ORDER

Heard Mr. B. Sinha, learned counsel for the petitioners. Also heard Mr. B. Gogoi, learned counsel for the Health Department and National Health Mission (in short, NHM). Mr. K.K. Parasar, CGC appears for the respondent No.5.

2. The grievance of the petitioners is that while the NHM has engaged Allopathic and Ayurvedic doctors under the NHM on contract basis, the fixed pay given to the Allopathic doctors is higher than that given to the Ayurvedic doctors.

3. The petitioners' counsel submits that as the job responsibility of the Medical Officers (Ayurvedic) under the NHM is identical with that of the job responsibility of the Medical Officers (Allopathic), the fixed pay given to the Medical Officers (Ayurvedic) would have to be the same as that given to the allopathic doctors, as that would be in consonance with the doctrine of equal pay for equal work.

4. The petitioners' counsel, in support of his submission that Allopathic and Ayurvedic doctors are having identical responsibilities and duties, has referred to the terms of reference for Medical Officers (Ayurvedic) and the terms of reference for Medical Officers (MBBS), which is at Annexure-7 & 8 of the writ petition.

5. The petitioners' counsel submits that with respect to doctors employed by the State Government on regular basis, be it Allopathic doctors or Ayurvedic doctors, the same pay scale is being given to them. As such, there can be no justification for giving different fixed pay to Ayurvedic doctors and Allopathic doctors, who are engaged on contract basis under the NHM. He further submits that the Secretary to the Government of India, Ministry of Ayurveda, Yoga & Naturopathy, Unany, Siddha and Homeopathy, vide D.O. No.Z.28015/04/2018-H & D Cell dated 27.02.2018, issued to all the Chief Secretaries of the States/ UTs of India, has requested that appropriate steps be taken to enhance the salary of AYUSH doctors to be at par with their Allopathic counterparts. The petitioner's counsel has also relied upon the Judgment of the Division Bench of the High Court of Uttarakhand in W.A. No. 484 of 2014 (S/B), by which the State Government of Uttarakhand has been directed to pay the salary of AYUSH doctors at par with the Allopathic and Dental doctors He also submits that the State of Jammu & Kashmir is also paying the same monthly remuneration to both the Allopathic and Ayurvedic Doctors, vide order dated 08.09.2018 issued by the Mission Director, NHM, J & K, in terms of the Judgment dated 29.05.2018 passed by the High Court of Jammu & Kashmir in SWP No. 2590/2012. The petitioner's counsel submits that the Budget of the NHM is paid by the Central Government and the State Government, in the ratio of 85% and 15% respectively.

6. The petitioners' counsel submits that the appeal filed against the judgment of the Division Bench of the High Court of Uttarakhand in WP No.484/2014 (S/B) has been dismissed by the Apex Court, vide order

dated 24.03.2022 in Special Leave to Appeal (C) No.33645/2018 (State of Uttarakhand & Ors. Vs. Dr. Sanjay Singh Chauhan & Ors.).

7. Mr. B. Gogoi, the learned Standing Counsel for the Health Department and NHM submits that the job responsibility of the Allopathic and Ayurvedic doctors is not identical but different. He also submits that the educational qualifications of the two streams of Medical Officers are different. He also submits that in terms of the Judgment of the Apex Court in the Case of S.C. Chandra and Ors. Vs. State of Jharkhand and Others, reported in (2007) 8 SCC 279, even if employees in two groups are doing identical work, they cannot be granted equal pay, if there is no complete and wholesale identity. He also submits that as granting of pay scales is a purely executive function, the Court should not interfere with the same.

8. Mr. K.K. Parasar, learned CGC submits that Public Health and Hospitals being a State subject, it is the prerogative of the State Government to fix the honorarium of contractual Medical Officers as per local needs and context. He submits that based on the appraisals made by the National Programme Coordination Committee, financial support is provided to the States, subject to availability of resources. However, the post-wise salaries are not decided at the Central level and the decision regarding fixation of salaries for various cadres, lies entirely with the respective State Governments.

9. I have heard the learned counsels for the parties.

10. The admitted fact is that the Allopathic doctors and Ayurvedic doctors, who are working in the Health Department under the Government of Assam, are being given the same pay scale. However, for the Allopathic doctors working under the NHM, Assam on contract basis, they are being paid the fixed salary of Rs.50,000/- per month, while the Ayurvedic doctors are being paid a fixed salary of Rs.30,500/-, with some increments.

11. In the case of S.C. Chandra & Ors. (supra), the Apex Court has held that fixing pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State. The Apex Court further held that realizing the above, the Apex Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay).

12. The job description and responsibility for the post of Medical Officer (Ayurvedic) and Medical Officer (MBBS) in the NHM, Assam shows that the job description and responsibility are nearly the same, which are as follows :

“Medical Officer (Ayurvedic)

Maternal Health :

- *He/She will provide quality Ante-Natal checkup and Ante-Natal care.*
- *He/She will identify High Risk Pregnancy and motivate her for Institutional Delivery.*
- *He/She will motivate pregnant women to avail the benefit of Janani Suraksha Yojana (JSY).*
- *He/She will encourage ASHA to create awareness in the community regarding various activity of NRHM and also examine the cases with due attention referred by ASHA.*
- *He/She will conduct normal deliveries safely (Clean Hand, Clean Surface, Clear Cord tie, Clean Razor Blade/Scissor, Clean Cord Stump. (No applicant).*
- *IEC activities. He/She will create awareness in the Community laying emphasis on marriage after 18 years. First Child at 20 Yrs, Birth preparedness, Ante-Natal Care and need for referral and importance of Hospital delivery.*
- *Referral Transport fund is to be utilized for transportation of Emergency obstetric Cases and Sick New Borne to referral hospital. This fund is available with Member Secretary of Block PHC and CHC under NRHM.*
- *Safe Abortion: Promote awareness about the harmful effect of unsafe abortion (indigenous method) among the women of the community.*

Medical Officer (MBBS)

Maternal Health :

- *He/She will provide quality Antenatal checkup and Antenatal care.*
- *He/She will identify High Risk Pregnancy and motivate her for Institutional Delivery.*

- *He/She will motivate pregnant women to avail the benefit of Janani Suraksha Yojana (JSY).*
- *He/She will encourage ASHA to create awareness in the community regarding various activity of NRHM and also examine the cases with due attention referred by ASHA.*
- *He/She will conduct normal deliveries safely (Clean Hand, Clean Surface, Clear Cord tie, Clean Razor Blade/Scissor, Clean Cord Stump. (No applicant).*
- *If facility for C.S. is available in the Institution, Medical Officer and the Consultant (O&B) will work together along with Anesthetist.*
- *IEC activities. He/She will create awareness in the Community laying emphasis on marriage after 18 years. First Child at 20 Yrs, Birth preparedness, Ante Natal Care and need for referral and importance of Hospital delivery.*
- *Referral Transport fund is to be utilized for transportation of Emergency obstetric Cases and Sick New Borne to referral hospital. This fund is available with Member Secretary of Block PHC and CHC under NRHM.*
- *Safe Abortion: Promote awareness about the harmful effect of unsafe abortion among the women of the community. If facility is available MTP can be done at the Institution.”*

As can be seen from the above, there is hardly any difference in the job description and responsibility of Medical Officer (Ayurvedic) and Medical Officer (MBBS) in the NHM.

13. In the case of Dr. Sanjay Singh Chauhan & Others vs. State of Uttarakhand and Others, WP No.484/2014 (S/B), which was disposed of by the Division of the Uttarakhand High Court vide order dated

03.04.2018, Medical Officers (Ayurvedic) had sought parity of salary with their counterparts working as Allopathic doctors and Dental Medical Officers under the National Rural Health Mission (NRHM) which has been re-named as NHM. The Division Bench held in the above case that the Ayurvedic doctors were discharging the same duties which are being discharged by the Allopathic Medical Officers and Dental Medical Officers. Further, the petitioners therein obtained their degrees from the recognized Institutions and there was no intelligible differentia, so as to distinguish the Ayurvedic doctors from the Allopathic and Dental Medical Officers. The Division Bench also held that though Ayurved and Allopathy are different streams of medicines, but these are to be treated as par with each other. The Division Bench thus directed the State respondents to pay and release the salary to the Ayurvedic Medical Officers at par with the Allopathic Medical Officers.

14. The appeal made against the judgment and order dated 03.04.2018 passed by the Division Bench of High Court of Uttarakhand in WP No.484/2014 (S/B), vide Special Leave to Appeal (C) No.33645/2018, was dismissed by the Apex Court vide order dated 24.03.2022. The contents of the order dated 24.03.2022 passed by the Apex Court is re-produced below :

“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”.

15. A perusal of the order of the Division Bench of the Uttarakhand High Court passed in WP No.484/2014 (S/B) and the order dated 24.03.2022 passed by the Apex Court in Special Leave to Appeal (C) No.33645/2018 show that Ayurvedic doctors would have to be treated at par with the Allopathic Medical Officers and Dental Medical Officers under the NHM and as such, there cannot be any discrimination in the payment of salary/wages between the two. This is further fortified by the fact that the State respondents have taken a conscious decision to give the same scale of pay to the Ayurvedic doctors and Allopathic doctors working in the Health Department, under the Government of Assam.

16. In view of the reasons stated above, the respondents are directed to pay and release the salary to the petitioners at par with the Allopathic Medical Officers of the NHM, Assam w.e.f. the date of filing of the writ petition, i.e. 18.12.2018.

17. The writ petition is disposed of accordingly.

JUDGE

Comparing Assistant