

(2013) 08 AHC CK 0209

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 47435 of 2008

Ghanshyam Bajpayee

APPELLANT

Vs

State of U.P. and  
Others

RESPONDENT

Date of Decision: Aug. 14, 2013

Citation: (2013) 7 ADJ 508 : (2014) 2 UPLBEC 1291

Hon'ble Judges: Rakesh Tiwari, J; Bharat Bhushan, J

Bench: Division Bench

Advocate: D.S.P. Singh, C.S. Garg and R.K. Nigam, for the Appellant;

Final Decision: Allowed

### Judgement

Bharat Bhushan, J.

Heard learned counsel for the petitioner, Sri S.K. Pandey holding brief of Sri R.K. Nigam and learned Standing counsel for the respondents. By means of this writ petition, petitioner has challenged the order dated 12.6.2008 passed by Dr. Raksha Goswami, the then Director of Ayurvedic and Unani Services, Uttar Pradesh, Lucknow, (Annexure-13 of writ petition) declining to accept the representation of petitioner for payment of same salary which is being paid to the Regular Lecturer of Sanskrit in Government Ayurvedic Medical College.

2. The petitioner was appointed as part time Sanskrit Lecturer, in Ayurvedic College on consolidated pay of Rs. 500/- per month on the basis of appointment letter No. 1048/Shiksha-1059/1988 dated 9.3.1988 (Annexure-1 to the writ petition) pursuant to advertisement published in the year 1988. The petitioner joined his post at Government Ayurvedic College, Jhansi in last week of March, 1988 and since then he has been continuously working as a Sanskrit Lecturer. He was required to teach Sanskrit of under graduate standard to the students of B.A.M.S. prescribed by all India Central Medical Board. In the appointment letter dated 9.3.1988 the petitioner's name appears at serial No. 6.

3. As per averments of the petition, petitioner and other part time Sanskrit Lecturers were required to teach Sanskrit to B.A.M.S. students everyday. The petitioner has stated that he was required to teach II<sup>nd</sup> year and III<sup>rd</sup> year students from 9.10 am. to 10 am. and 1<sup>st</sup> year students from 10.45 am. to 11.30 a.m. on every working day of the week. The strength of students taught by the petitioner in each class is around 50 which is equivalent to the strength of the students studying in State Ayurvedic College and Hospital, Lucknow. Petitioner has also alleged that he has been discharging the duties of whole-time Lecturer in the College with no other source of income despite being designated as part time Sanskrit Lecturer. The qualification of part time Lecturer was initially same as that of whole-time Sanskrit Lecturer i.e. M.A. in Sanskrit in second division with two years teaching experience which was later on changed to M.A. in 1<sup>st</sup> division with experience of three years teaching and knowledge of Hindi and English as per Rule 11 of newly framed Rules known as U.P. State Ayurvedic and Unani Degree Colleges, Teachers Services Rules 1990 which were notified vide No. 7757- Sec-9 (509/77) dated 21.12.1990(in short Rules).

4. It is pointed out that the Sanskrit Lecturer in State Ayurvedic College was appointed at the same time and the qualification of petitioner was same i.e. M.A. in Sanskrit, II division which was later on altered to M.A. Sanskrit with 1<sup>st</sup> division pursuant to the promulgation of Rules.

5. The petitioner has alleged that he has been performing the same functions and duties as is performed by the Sanskrit Lecturer appointed against the sanctioned post, receiving the salary in pay-scale of Rs. 2475-4100. The petitioner has claimed that he and other similarly placed Lecturers have been submitting representations before the Director of Ayurvedic & Unani Services Lucknow from time to time for grant of same pay and allowances as those of Lecturers of Sanskrit appointed against the sanctioned post and for regularisation of their services but nothing has been done except changing of consolidated pay of Rs. 500 to Rs. 1000/-. The petitioner has also pointed out that services of Dr. Prabha Kant Upadhyaya, Smt. Suman Misra and Prem Chand Shukla who had been appointed as part time Lecturer in other Government Ayurvedic Colleges, alongwith the petitioner, have been regularised by the order of this Court vide judgment dated 16.12.1996 in "Dr. Prabhakant Upadhyay and others v. State of U.P. and others, 1997(2) ESC 779 (All)" which has been affirmed by Hon Apex Court as SLP against the judgment (supra) was dismissed on 19.12.1997. The order of Hon. Supreme Court is appended as Annexure-8 to the writ petition and pursuant to those judgments, the petitioners of aforesaid Writ Petition No. 30619/1993 are now being paid regular salary.

6. The petitioner has further pointed out that Sri Ram Viyog Pandey whose name appeared at serial No. 6 of appointment letter, has also succeeded in getting similar salary and allowances pursuant to the judgment of this Court in Civil Misc. Writ Petition No. 46525 of 1999 decided on 6.11.2001.

7. The petitioner also filed a representation before Director of Ayurvedic and Unani Services U.P. Lucknow on several occasions. As no decision was forthcoming, he filed a Writ Petition No. 55035/2002 which was decided by this Court on 13.11.2007 directing the Director of Ayurvedic and Unani Services Lucknow, to decide his representation within three months in accordance with law. Pursuant to the aforesaid judgment, petitioner submitted another representation before authority concerned which was dismissed. Aggrieved by the said order, petitioner has filed the present writ petition.

8. The respondents have filed counter-affidavit stating that petitioner was appointed as a part time Teacher on fixed emoluments of Rs. 500/- in Government Ayurvedic College, Jhansi. By the order dated 14.11.1994, the emoluments increased to Rs. 1100/- per month. The respondents have also stated that except the Government Ayurvedic College, Lucknow, all the other Ayurvedic Colleges were running under private management. In the Government Ayurvedic College, Lucknow, post of Lecturer in Sanskrit was sanctioned but in the other Ayurvedic Colleges, no post of Sanskrit Lecturer was sanctioned/created by the Government. The respondents have disputed the claim of petitioner for identical pay with that of Lecturer.

9. A supplementary affidavit has also been filed by the petitioner alleging that all his similarly situated counterparts who were appointed part time Lecturer alongwith him vide letter dated 9.3.1988 by same appointment letter, are now getting regular pay-scale pursuant to the orders of this Court and he is the only person who has been singled out for denial of same benefits provided to others as above. A chart is annexed alongwith supplementary affidavit.

10. It is apparent that in appointment letter dated 9.3.1988 as many as 8 part time Lecturers were appointed to teach Sanskrit in various Ayurvedic Colleges. The petitioner's name figures at serial No. 6. Some of the part time Sanskrit Lecturers from this list including Dr. Prabhakant Upadhyay filed a petition before U.P. Basic Services Tribunal which was dismissed by the Tribunal on 18.9.1993. Dr. Prabhakant Upadhyaya and others filed writ petition against this judgment of Tribunal before this Court. This Court allowed the aforesaid petition and directed respondents to pay the same pay-scale, allowances and other benefits to the petitioner as paid to regular lecturer of Government Agriculture College, Lucknow. The respondents were also directed to pay arrears from the day of appointment. The relevant extract of judgment in Dr. Prabhakant Upadhyay and others v. State of U.P. and others, held thus:

In view of the aforesaid decision, this petition is allowed. The impugned order dated 16.6.1993 is set aside and the respondents are directed to pay same pay-scale, allowances and other benefits to the petitioner as paid to the regular Lecturers of Government Ayurvedic College, Lucknow. Arrears from the date of their appointments shall also be paid within three months of production of certified copy of this order before authorities concerned.

11. Respondents filed SLP before Hon. Apex Court bearing No. CC9243/2007 which was dismissed on 19.12.1997. Copy of this judgment is appended as annexure-8 to the writ petition.

12. Subsequently, Sri Ram Viyog Pandey another part time Lecturer, whose name figures at serial No. 5 of consolidated appointment letter dated 9.3.1988, appended as Annexure-1 to the writ petition, also invoked the jurisdiction of this Court by filing Writ Petition No. 46828/1999 (Ram Viyog Pandey v. State of U.P. and others) which was allowed by the Division Bench of this Court on 6.11.2001. The Division Bench held thus:

Heard counsel for petitioner and learned Standing Counsel.

The facts of this case is covered by the decision of this Court in the case of Dr. Prabhakant Upadhyay and others v. State of U.P. and others, 1997 (2) ESC 779, which has been affirmed by the Hon"ble Supreme Court in SLP No. 9233 of 1997, State of U.P. and others v. Prabhakant Upadhyaya and others, decided on 18.12.1997.

The petition is disposed of in terms of the aforesaid decision.

13. The case of present petitioner is, thus, squarely covered by the directions of this Court passed in Civil Misc. Writ Petition No. 30619/1993 affirmed by Hon"ble Supreme Court in SLP (Civil) CC9243 of 2007 and directions of Division Bench of this Court passed in Civil Misc. Writ Petition No. 46828 of 1999. There was no occasion and ground available to direct Ayurvedic services to reject the representation of petitioner by impugned order. This Court had issued directions to the Directorate for deciding representation within three months, and surprisingly Dr. Raksh Goswami dismissed the representation of the petitioner despite judgment of this Court in Dr. Prabhakant Upadhyay (Supra) which has been affirmed by the Apex Court. In view of earlier decisions of this Court, writ petition is allowed. The impugned order dated 12.6.2008 is set aside and respondents are directed to pay same pay-scale, allowances and other benefits to the petitioner as paid to the regular Lecturer Government Ayurvedic Colleges, Lucknow. The arrears from the date of appointment shall also be paid. In short petitioner shall be given all benefits which have been given to the other similarly situated Lecturers by the consolidated appointment letter dated 9.3.1988.