



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5933 OF 2023**

Dr. Balbir Singh Bhandari

... Appellant

Versus

The State of Uttarakhand & Ors.

... Respondents

With

Civil Appeal No. 5935 of 2023

Civil Appeal No. 5937 of 2023

Civil Appeal No. 5938 of 2023

Civil Appeal No. 5934 of 2023

Civil Appeal No. 5936 of 2023

Civil Appeal No. 5941 of 2023

and

Civil Appeal Nos. 5939-5940 of 2023

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The benefit of a personal/promotional pay scale was granted to the appellants by the State of Uttarakhand. The said benefit was withdrawn under a subsequent decision of the State of Uttarakhand. The narrow question is whether the

benefits can be recovered from the appellants who have superannuated.

2. Few factual aspects need consideration. The undivided Government of Uttar Pradesh issued an order dated 16th June 1988 by which the appellants were appointed on an *ad hoc* basis in the State Ayurvedic and Unani Medical Service Cadre. The appointments were expressly made for a period of one year or till the State Public Service Commission provides the duly selected candidates. A decision dated 5th February 1998 of the Government of Uttar Pradesh provided that any medical officer working on an *ad hoc* basis shall be considered for regularisation upon completing continuous and satisfactory service of 8 years. However, it was clarified that the benefit of personal payment should be approved only after their regularisation in service. It was specifically made clear that if any medical officer has completed 8 years of continuous service but has not been regularised, the benefit of the personal pay band will be admissible only after he is regularised. On 2nd December 2000, a decision was made by the government that officers/employees who completed continuous and satisfactory service of 8 years in the same post on or after 1st January 1996 shall be provided a salary increment in the revised pay band. It was also decided that the officers who have been granted the aforesaid benefit and who have completed continuous and satisfactory service of 6 years from the date of getting the benefit of selection grade to a total of 14 years of continuous and satisfactory service shall be approved on the next pay-band

or promotional post on a personal basis. It was clarified that the benefit be available to those who have been regularised on the concerned post.

3. The first respondent, by an office memorandum dated 27th January 2006, regularised the appellants' employment. The appellants filed writ petitions before the High Court. The grievance was regarding the non-grant of the promotional pay scale. The writ petitions were disposed of by the order dated 3rd January 2011, directing the State Government to consider their claim for the grant of a promotional pay scale. On 8th March 2011, the first respondent – the State Government, granted approval for applying a new ACP (Assured Career Progression Scheme) in the revised pay structure from 1st January 2006 for the State Government employees. On 4th August 2011, the Chief Secretary of the State Government issued a communication to the Director General of Ayurvedic and Unani Services, which reads thus:

“In the light of G.O. No.2178/71-2-2010-519/2005 Dt. 18th June, 2010 of Govt. of U.P, Medical Education Section-2, I have been directed to say that with regard to G.O. No. 7468/71-2- 5/92 Dt. 5th February, 1998, the benefit of personal/promotional pay-scale (i.e. 08/14 years) shall be admissible to Ayurvedic and Unani Medical Officers and Medical Officers (Community Health) only after their regularization. **It means that whenever concerned medical officer shall be regularized at that time while considering his entire satisfactory service on ad hoc basis to be regular, individual/promotional pay-scale shall be**

**admissible upon completion of 08/14
years of service.”**

(emphasis added)

4. On 27th September 2011, in terms of the directions issued by the Chief Secretary, the Director of the Ayurvedic and Unani Services of the first respondent granted a time-bound pay band to the appellants in terms of the order dated 4th August 2011. As some of the appellants were not given the benefit of the order dated 4th August 2011, they filed a writ petition before the High Court. By the order dated 7th May 2013, the High Court directed the State Government to consider granting the next higher pay scale or pay to the appellants on completion of 14 years of service in terms of the Government decision dated 4th August 2011 not later than three months.

5. The State Government made an application for recall of the said order dated 7th May 2013 on the ground that the order dated 4th August 2011 issued by the Principal Secretary was not consistent with the orders issued by the Finance Department. A submission was made that though the said order was issued by Shri Rajiv Gupta, the Principal Secretary, after the approval of the Hon'ble Chief Minister, the relevant orders may not have been noticed by the Hon'ble Chief Minister. By the order dated 4th March 2014, the application for recall made by the State Government was rejected by a Division Bench of the High Court. It was held that the decision taken by the Hon'ble Chief Minister remains valid unless the Cabinet of the Government expressly withdraws the decision. While rejecting the application, a direction was issued to

implement the order dated 4th August 2011. By a decision dated 29th May 2014, the State Government cancelled the order dated 4th August 2011 on the ground that it was contrary to the Government orders of the Finance Department.

6. It appears that the State Government made one more application before the High Court based on the order dated 29th May 2014. By the order dated 28th August 2014, the High Court observed that the Government was at liberty to act in accordance with the order dated 29th May 2014. It was also observed that if any parties were aggrieved by the said Order, they could always approach a proper forum. Notwithstanding the said Order of the High Court, by the order dated 9th October 2014, the State Government granted higher pay to those Ayurvedic Medical Officers who had completed 16 years and 26 years of continuous service. By the order dated 27th October 2014, the Principal Secretary of the Government ordered recovery from the appellants on the basis of the cancellation of the order dated 4th August 2011. This action of recovery, as well as the order dated 29th May 2014, were challenged by the appellants by filing writ petitions, which have been dismissed by the impugned judgment and order.

SUBMISSIONS

7. The learned senior counsel for the appellants submitted that the Government order dated 5th February 1998 issued by the erstwhile State of Uttar Pradesh was binding on the first respondent in view of Section 86 of the Uttar Pradesh Reorganisation Act, 2000. He submitted that the Government

order dated 4th August 2011 merely reiterates the Government order dated 5th February 1998. He submitted that in the earlier writ petition, the High Court had held that the decision dated 4th August 2011 was a decision of the State Government. He submitted that the order of recovery was passed without giving an opportunity of being heard to the appellants. He submitted that the benefits were granted to the appellants based on the valid orders, which have been recalled for no fault on their part. He submitted that, in any event, the order of recovery needs interference, especially when the appellants have superannuated. The learned counsel for the first respondent justified the impugned order.

OUR VIEW

8. We have perused the Government Order dated 5th February 1998, which records that the service rendered by the Medical Officers on an *ad hoc* basis shall be taken into account for computing 8 years of continuous satisfactory service. However, it also provides that they should be given the benefit of personal pay only after the regularisation of their service. The order issued by the Principal Secretary, Department of Ayush, the Government of Uttarakhand, on 4th August 2011 provided that after the regularisation, the ad-hoc services rendered by the Ayurvedic Medical Officers shall be taken into consideration for the grant of personal/promotional pay scale, which is payable on completing 8/14 years of service. It is true that the order dated 7th May 2013 passed by the High Court records the statement of standing counsel for the State

of Uttarakhand that the order dated 4th August 2011 conveys the decision of the State Government. In view of this decision, a direction was given by the High Court to consider the cases of the appellants for grant of the next higher scale of pay upon completion of 14 years of service. By the order dated 4th March 2014, while deciding the recall application filed by the State Government, the High Court observed that the decision dated 4th August 2011 was taken by the Hon'ble Chief Minister of the State and therefore, unless the Cabinet expressly withdraws the same, it will continue to operate.

9. Thereafter, on 22nd August 2014, the State Cabinet came to the conclusion that the order dated 4th August 2011 was contrary to the Government Order issued by the Finance Department and accordingly, the order dated 29th May 2014 was passed, recalling the order dated 4th August 2011.

10. We have carefully perused the order dated 29th May 2014. It is noted in the said order that the Government order dated 8th March 2011 issued by the Finance Department, applicable to all service cadres of the State, directed that three financial upgradations be given to all personnel of the State under certain conditions on the post of direct recruitment after completion of continuous satisfactory service of 10, 18 and 26 years respectively from the first appointment. The order dated 29th May 2014 notes that, however, under the order dated 4th August 2011, the personal/promotional pay scale was made admissible after 8 and 14 years of service only to the Ayurvedic and Unani Medical Officers. Therefore, it was observed that a

special class of Ayurvedic and Unani Medical Officers was created who have been given a different treatment. It is observed that though the Finance Department had objected to issuing the order dated 4th August 2011, the opinion of the Finance Department was overruled, and the same was issued without the approval of the Cabinet. That is how the Cabinet, on 22nd May 2018, decided to cancel the order dated 4th August 2011. We find no error in the view taken by the State Government as there was no valid reason to grant a higher pay scale only to the Ayurvedic and Unani Medical Officers after continuous satisfactory service of 8 years, whereas, for all other Government servants, satisfactory continuous service of 10 years was required.

11. What is relevant is the order dated 28th August 2014 passed by the Division Bench of the High Court. The said order reads thus:

“We are afraid, order passed by this Court dated 07.05.2013 as well as order passed on the Recall Application dated 04.03.2014, cannot be reviewed, merely, because subsequent to the passing of the orders under review order dated 04.08.2011 has been recalled. **However, we find that it was specifically made clear by this Court in the order dated 04.03.2014 that till decision is taken by the Cabinet on the order dated 04.08.2011, it has to be implemented. Since, order dated 04.08.2011 has already been revoked/cancelled, therefore, Government is at liberty to act upon in accordance with Government Order dated 29.05.2014.** Petitioner, if so aggrieved the order 29.05.2014, may approach the

appropriate forum assailing the Government order dated 29.05.2014.”

(emphasis added)

12. Notwithstanding the liberty granted under the order described above to the State Government to act upon the order dated 29th May 2014, by the order dated 9th October 2014, higher pay scales were granted to the appellants based on the order dated 4th August 2011. Thereafter, the Government passed the order dated 27th October 2014 ordering recovery of the amounts paid to the appellants according to the Order dated 4th August 2011. However, it was mentioned therein that earlier orders granting personal/promotional pay with effect from the date of regularisation, i.e. 27th January 2006, are revived. The order also accepts that the Medical Officers will be entitled to ACP benefits made available under the orders dated 8th March 2011 and 1st July 2013. The order of recovery reads thus:

“The recoverable amount first be adjusted from the arrears payable on the basis of the ACP benefit made admissible to the concerned Medical Officers under the finance department's govt. order no. 872 dated 08/03/2011 and govt. order no. 589 dated 01/07/2013 and even after that some amount still remains to be recovered, a maximum of 1/3 of the total of pay and dearness allowance of the concerned Medical Officers be fixed as an installment per month and recovery of the remaining amount be ensured to be made.”

13. As held earlier, under the order dated 4th August 2011, the benefit of personal/promotional pay scale was granted only

on Ayurvedic Medical Officers upon completing 8 and 14 years of service. The said order was contrary to the order of the Finance Department and, therefore, was rightly withdrawn as we have held earlier. We may note here that by the order dated 8th November 2006, the personal time-bound pay scale was granted to the appellants, subject to the condition that if the Government takes any decision to the contrary, the amount will be recovered from the salary of the concerned medical officers.

14. While dealing with the refund issue, the High Court has held that the appellants, being Ayurvedic Medical Officers, do not belong to a weaker section of the society and, therefore, recovery will not be inequitable. Moreover, even after the grant of monetary benefits in terms of the Government Order dated 4th August 2011, the designation of the appellants, their duties and responsibilities remained the same. Therefore, the High Court was right in not setting aside the order of recovery.

15. Learned senior counsel appearing for the appellants relied upon the judgment and order dated 26th August 2022 passed by this Court in Civil Appeal No. 5527 of 2022 (M.P. Medical Officers Association vs. The State of Madhya Pradesh and Ors.), which granted relief to the employees against recovery. From paragraph 5 of the said decision, it is evident that the same has been rendered in peculiar facts and circumstances of the case. This Order was passed after holding that the law laid down by this Court in the case of **State of**

Punjab v. Rafiq Masih¹ may not be applicable. Therefore, the said decision rendered in the peculiar facts of the case will have no application. In the facts of the case in hand, what stares at the face is that the benefits granted only to the Ayurvedic and Unani Medical Officers under the Order dated 4th August 2011 were not extended to any other category of the State Government employees. No material was brought on record to show how and why favourable treatment was given to the appellants.

16. Therefore, we are unable to interfere with the view taken by the High Court. The appeals are, accordingly, dismissed. As observed in the order dated 27th October 2014 passed by the State Government, the appellants will be entitled to ACP benefits made available under the orders dated 8th March 2011 and 1st July 2013. Therefore, if any consequential benefits accrue based on the said two orders with time, the appellants will be entitled to the same. Needless to add, the recovery shall be made, as specified under the order dated 27th October 2014.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

**New Delhi;
January 10, 2024.**

¹ (2015) 4 SCC 334