

Joint Action Council of Service Doctors' Organisations and Others

Vs

Union of India and Another

Writ Petitions (C) Nos. 363 of 1991 and 1092 of 1990

(K. Ramaswamy, B. L. Hansaria JJ)

14.12.1995

JUDGMENT

HANSARIA, J. -

1. The petitioner is basically an association of Service Doctor's who are about 10,000 in number, of whom about 4500 are members of Central Health Service. This service is divided into four sub-cadres : (1) General Duty Medical Officers; (2) Specialist non-teaching; (3) Specialist teaching and (4) Public Health.

2. The Service Doctors have been agitating, soon after the recommendations of the IVth Central Pay Commission in 1986, about cadre review. To give teeth to the agitational programme, a Joint Action Council of Service Doctors' Organisations was formed, which body is the petitioner herein. A delegation of this body had gone on indefinite strike in July 1987, after they felt dissatisfied with the working etc. of the High Power Committee which had been set up in the wake of the unsatisfactory recommendations of the IVth Pay Commission. A package of benefits was announced by the Health Ministry which included some interim reliefs. As these benefits were not implemented, further agitation was launched, which ended in a Memorandum of Settlement of 21-8-1989. One of the terms of the settlement was setting up of a High Power Committee, which was notified in February 1990. Constitution of this Committee was changed in May 1990. Shri R.K. Tikoo, Secretary (Coordination) in the Cabinet Secretariat, was made the Chairman and the terms of the reference were approved by the Cabinet. The Committee deliberated on the terms and submitted its report on 31-10-1990. The present writ petition was filed on 3-4-1991 as the recommendations had not been fully implemented.

3. The grievance of the petitioner is that, not to speak of not implementing all the recommendations of the Tikoo Committee, some of the terms incorporated in the Memorandum of Settlement are yet to be fully implemented. Some grievance has also been made about non-implementation of what has been described as 1987 Package Deal.

Grievances relating to 1987 Package Deal

4. The grievances on this aspect are threefold : (1) non-inclusion of Non-Practising Allowance (NPA) while determining entitlement for residential accommodation; (2) non-creation of required number of posts of Chief Medical Officer, pay scale for which was agreed to be Rs 3700-5000; and (3) non-giving of scale of Rs 4500-5700 to the Associate Professors on completion of the required

period of service.

5. The case of the Union of India regarding the first grievance is that the NPA is not taken into account for determining the eligibility of accommodation in view of Government of India's order under the Allotment of Government Residences (General Pool in Delhi) Rules, 1963. The further case is that even special pay is not taken into account for this purpose. The petitioner's stand, however, is that as the NPA is treated as part of basic pay for purposes of computation of dearness allowance, terminal benefits, house building advance, travelling concession benefits etc. there is no justifiable reason to exclude this allowance for the purpose of entitlement to residential accommodation. It is urged that merely because the special pay is not taken into account for this purpose, does not provide a cogent reason for excluding non-practising allowance inasmuch as special pay is not treated as part of basic pay for the aforesaid purposes as well.

6. According to us, the present is basically a question of policy and the claim in this regard is not founded on any right as such. Insofar as the policy is concerned, there may be some justification for excluding the non-practising allowance for the purpose at hand because this allowance is seemingly not paid to all the Service Doctors. So, if this allowance is included for the purpose at hand, the same may be disadvantageous even to some Service Doctors. We do not say more than this as this matter is presently under examination of the Vth Pay Commission.

7. Insofar as the creation of required number of posts of Chief Medical Officer in the scale of Rs 3700-5000 is concerned, it may be pointed out that in the settlement which was arrived at in 1989, it was agreed upon that the promotion as Chief Medical Officer shall be "subject to availability of vacancies". In the additional affidavit filed on behalf of Ministry of Health and Family Welfare in September 1995 by one M.M. Perumal, Secretary of the Ministry, it has been stated that the upgradation was of 500 posts on "functional basis" by identifying posts in various participating Units/Institutions of Central Health Service with a view to cover all the eligible officers who have requisite eligibility service and had been recommended by the DPC.

8. Insofar as the non-giving of scale of Rs 4500-5700 meant for teaching sub-cadre, the averment in the aforesaid affidavit is that the package envisaged that all the promotions would be with prospective effect and so the petitioner's contention that placement in the aforesaid scale should have been with effect from 1-8-1987 is not correct.

9. The aforesaid averments, the authenticity of which has not been disputed, do establish due fulfilment of the package benefits.

1989 Settlement

10. The only point relating to non-fulfilment of the settlement is that the benefits had not been made available from 1-10-1987. In the aforesaid affidavit the settlement is that various allowances like non-practising allowance, annual allowance (contingency allowance) for academic research and other professional pursuit and conveyance allowance have been granted with effect from 1-10-1987. As to the benefits accruing from the Office Memorandum dated 14-11-1991 (infra), which has incorporated the Government's decisions qua the Tikoo Committee recommendations, the averment made is that they are to be from a prospective date. There is merit in this contention.

Tikoo Committee recommendations

11. A perusal of the report of the Tikoo Committee shows that the recommendations are 32 in

number. As the recommendations had huge financial implications and needed sorting out some service matters also, in-depth study was required and after this was done the Government considered the recommendations and its decisions qua then came to be incorporated in the Office Memorandum dated 14-11-1991. Insofar as the recommendations of the Tikoo Committee which have not been accepted, the first contention of Shri Goswami on behalf of the Union of India is that there is ample justification for non-acceptance. He then urges that instead of this Court examining the question of justification or otherwise of the same, the matter may be left to be decided by the Vth pay Commission which was set up recently and is in seizin of many of the matters. To satisfy our mind that this Pay Commission is examining many matters relating to the improvement in the service prospects of the doctors working under the Central Health Service, Shri Goswami placed on record a communication of the Deputy Secretary of the Commission bearing No. DOF/14554/94/PC-B dated 9-9-1994 seeking information of the Ministry of Health on a number of points, which information, as per this communication, is needed for a detailed analysis of the demand of the doctors who have submitted a number of memoranda before the Commission. This communication shows that the information sought relates, inter alia, to the cadre size and structure, pay scale in each sub-cadre, time-bound promotion scheme, reasons in not treating non-practising allowance as part of basic pay for entitlement of a government accommodation despite treating it as such for all purposes and possibility of formation of a unified cadre for all sub-cadres of doctors.

12. Shri Sachar contended in the court as well as in his written submission filed on 28-11-1995, that the matters may not be left to be decided by the Pay Commission because, according to him, the rights which have accrued to the members of the petitioner-Association, following the recommendation of the Tikoo Committee, are vested rights and if the same are not made available, the same would violate Articles 14, 16 and 21 of the Constitution, redressal of which is not within the realm and jurisdiction of the Pay Commission. It has, therefore, been implored, that we ourselves should decide the merits of the left out matters, otherwise the entire exercise undertaken so far as by the petitioner would be rendered futile. The further submission is that as what the Pay Commission would decide would be in a nature of recommendation, which the Government may accept or may not, whereas what this Court would decide would be binding on it.

13. We have duly applied our mind to the rival contentions and, according to us, as it would be within the jurisdiction of the Pay Commission not only to examine the pay structure but also the question of cadre review on which much stress has been given by Shri Sachar. So, the submission that the Pay Commission cannot give the relief being claimed in this petition is not sustainable. Of course, what view the Pay Commission would take in the matter is for the Commission to decide, and all that can be said in this regard is that the Commission, while making its recommendations, would definitely bear in mind the historical background, in particular the recommendations of the Tikoo Committee.

14. As to the contention that the members of the petitioner-Association have come to be clothed with a vested right, we would say this is not so inasmuch as what the Tikoo Committee has said is also in the nature of recommendation and unless accepted cannot be said to be binding on the Union of India. No vested right has thus been created by the force of the recommendations of the Committee. It is, of course, correct that what Pay Commission would say would be recommendatory in nature, as distinguished from the decision of this Court; but, as is known, recommendations of a high-powered committee like Pay Commission are not rejected without cogent reasons. We have no doubt that in the background of the present litigation, the Central Government, while taking decision on the recommendations to be made by the Pay Commission, would bear in mind its commitment to Service Doctors given at various points of time. Another reason which has weighted

with us in accepting the contention of Shri Goswami is that the benefits to a particular service may not be viewed in isolation; the same have to be dovetailed and matched with benefits to be given to members of other services.

15. For the aforesaid reasons, it would be appropriate to await the recommendations of the Vth Pay Commission on those matters qua which the Government of India did not accept the recommendations of the Tikoo Committee.

16. The result is that insofar as the 1987 Package and 1989 Settlement are concerned, no further direction or order of this Court is required. As to the unaccepted recommendations of the Tikoo Committee, the recommendations of the Vth Pay Commission may be awaited.

17. The writ petition is disposed of accordingly with no order as to costs.

Writ Petition (C) No. 1092 of 1990

18. In view of the above, nothing further is required to be stated in this writ petition. It also stands disposed of accordingly.