

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 15.03.2023
Pronounced on: 31.03.2023

ROBSW No.02/2018
In
CPSW No.377/2015

ROBKAR **...PETITIONER(S)**

Through:- Mr. M. A. Qayoom, Advocate, with
Mr. Mian Muzaffar, Advocate.

Vs.

VIVEK BHARDAWAJ & ORS. **...RESPONDENT(S)**

Through:- Mr. Amit Gupta, AAG.
Mr. T. M. Shamsi, DSGI.

CORAM:- HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

JUDGMENT

1) The petitioners, who are working as Indian System of Medicine doctors in National Rural Health Mission (NRHM) on consolidated salary basis, have filed the instant contempt petition seeking initiation of contempt proceedings against the respondents for not implementing the judgment and order dated 29.11.2014 passed by the Writ Court.

2) It appears that the petitioners had invoked the writ jurisdiction of this Court challenging the action of the respondents whereby remuneration of Allopathic doctors working in NRHM was enhanced from Rs.19,200/ to Rs.25,000/ per month but the said enhancement was

denied to the petitioners. The learned Writ Court observed that the doctors under AYUSH system and MBBS doctors, though work in different systems of medicine, yet they serve the patients having regard to their respective system and their common object is to treat the patients suffering from various diseases. The Writ Court, terming the action of the respondents in denying the enhancement of remuneration to the petitioners discriminatory, quashed the said action of the respondents. Operative portion of the judgment of the Writ Court is reproduced as under:

“Viewed thus, writ petition is accepted and by writ of Certiorari, order No.SHS/K/NRHM/579 dated 29.08.2012 is quashed and respondents by writ of Mandamus, directed to enhance salary of ISM doctors including petitioners as well from Rs 19200/- to Rs.25,000/ with effect from the date such enhancement has been granted to Allopathic doctors working under the Scheme.”

3) The judgment of the Writ Court was challenged by the respondents by way of an LPA before the Division Bench of this Court and thereafter by filing an SLP before the Supreme Court but without any success.

4) In spite of the judgment of the Writ Court having acquired finality, the same was not implemented by the respondents which compelled the petitioners to file the instant contempt petition. Even after filing of the contempt petition, the respondents dragged their feet in implementation of the judgment, which compelled the Court to frame Rule against respondents No.1, 2, 4 and 5 in terms of order dated 01.08.2018.

Accordingly, ROBKAR was framed and notice of show cause was issued to the said respondents.

5) In reply to the show cause notice, a series of status reports/compliance reports came to be filed by the respondents. From a perusal of these status/compliance reports, it is revealed that the Government issued order No.337-HME of 2018 dated 31.05.2018, whereby Mission Director, NHM, was authorized to carry out the enhancement of monthly remuneration of AYUSH doctors to the extent it has been allowed in case of Allopathic doctors along with payment of arrears due subject to the availability of funds. Pursuant to this order, Mission, Director, NHM, J&K, issued order No.155 OF 2018 dated 08.09.2018, whereby monthly remuneration of all the AYUSH doctors has been enhanced and brought at par with MBBS doctors along with all the increments, other benefits that have accrued from time to time in case of MBBS doctors. It was, however, provided that the arrears w.e.f. 01.04.2012 to 31.08.2018 would be released in a phased manner.

6) It seems that the instant proceedings were kept alive by this Court in spite of passing of aforesaid orders by the Government because the arrears of enhanced remuneration were not being paid to the petitioners in accordance with the mandate of judgment of the Writ Court which clearly provides that enhancement of remuneration of ISM doctors has to take effect from the date such enhancement has been granted to Allopathic doctors working under the scheme.

7) While these proceedings were pending before this Court, it seems that the respondents issued another order bearing No.37-NHM of 2021 dated 10.08.2021, whereby remuneration of both classes of doctors i.e. MBBS Medical Officers and AYUSH Medical Officers, was revised to Rs.35,000/ per month but MBBS Medical Officers were given Rs.15,000/ per month as a special performance based incentive with an increment of Rs.5,000/ but in the case of AYUSH Medical Officers, the increment of Rs.10,000/ per month was provided. It is this order which has become a bone of contention between petitioners and the respondents.

8) According to the petitioners, the Writ Court has clearly laid down that nature of work being performed by AYUSH doctors and MBBS doctors is identical and, as such, they are entitled to equal remuneration. Thus, according to the petitioners, it was not open to the respondents to provide for additional incentive of Rs.15,000/ to MBBS doctors and deny the same to the AYUSH doctors i.e., petitioners herein. On this ground, it is urged that the judgment of the Writ Court has not been implemented in its letter and spirit.

9) *Per contra*, the respondents have contented that there is no discrimination between AYUSH doctors and MBBS doctors so far as their basic remuneration is concerned. Both these categories of doctors are getting Rs.35,000/ per month as their remuneration. It is only because of the nature of duties that are being performed by the MBBS doctors, who according to the respondents have to work round the clock while

undertaking duties relating to surgeries, emergencies, Gynecology & obstetrics, that special incentive of Rs.15,000/ per month has been provided to them. According to the respondents, AYUSH Medical Officers are only performing OPD duties, as such, they cannot claim additional incentive that is being provided to the MBBS doctors.

10) I have heard learned counsel for the parties and perused the record of the case.

11) Before testing the merits of rival submissions made by learned counsel appearing for the parties, it would be apt to understand the scope of power of this Court under contempt jurisdiction. In this regard it would be profitable to refer to the judgment of the Supreme Court in the case of **Jhareshwar Prasad Paul and another vs. Tarak Nath Ganguly and others**, (2002) 5 SCC 352. In the said case, the Supreme Court has, while explaining the scope of contempt jurisdiction, observed as under:

“The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be

confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind, then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."

12) In view of what has been laid down by the Supreme Court in the aforesaid case, it is clear that the power of contempt is of a special nature and it needs to be exercised with care and caution. It is also clear that the contempt jurisdiction has to be confined to the question whether there has been a deliberate disobedience of the order of the court and the court should not go into the questions which have not been dealt with and

decided in the judgment or order, violation of which is alleged by an applicant. Thus, a Court cannot travel beyond the original judgment while exercising its contempt jurisdiction. It has also to be borne in mind that the Court cannot issue additional or incidental directions if these are not found in the original judgment.

13) Coming to the facts of the instant case, as already noted, the Writ Court had directed the respondents to enhance the remuneration of AYUSH doctors from Rs.19,200/ to Rs.25,000/ per month from the date the said enhancement had been granted in favour of MBBS doctors. This was done by the Writ Court on account of the ground that initial remuneration of both classes of doctors was fixed at similar levels and there was no justification for discrimination between the two classes of doctors as nothing in this regard was pleaded by the respondents before the Writ Court.

14) It is not in dispute that pursuant to the order of the Writ Court, though belatedly, remuneration of the petitioners was brought at par with the remuneration of MBBS doctors by enhancing their remuneration to Rs.25,000/ per month from the date said enhancement was made in favour of MBBS doctors. It is also not in dispute that after a great struggle, the petitioners have received the arrears on account of enhanced remuneration.

15) The question that falls for determination is whether the action of respondents in granting special incentive of Rs.15,000/ per month in

favour of MBBS doctors violates the spirit of the judgment of the Writ Court. The order whereby performance based incentive was given in favour of MBBS doctors has been issued as recently as on 10th August, 2021, and it was not in existence when the writ petition was disposed of. So, the question whether respondents were justified in granting performance based incentive in favour of MBBS doctors, keeping in view the nature of additional duties that they are performing, was obviously neither raised before the Writ Court nor was it adjudicated upon by the said Court.

16) While it may not be appropriate for this Court in these proceedings to make any observation as regards the justification or otherwise of the action of respondents in granting performance based incentive in favour of MBBS doctors, one thing is clear that the same gives a separate cause of action to the petitioners. This Court, in these proceedings, cannot test the merits of the aforesaid action of the respondents and pass any direction in this regard as the same would be beyond the jurisdiction of this Court. As already noted, while exercising contempt of court jurisdiction, this Court is concerned with the question as to whether the direction issued in the judgement of the Writ Court has been or has not been complied with. In the opinion of this Court, the respondents have complied with the direction of the Writ Court in its letter and spirit as the question with regard to justification for granting performance based incentive to MBBS doctors was neither an issue before the Writ Court nor any direction in this regard was issued in the judgment.

17) This Court cannot enlarge the scope of its jurisdiction by determining the validity or otherwise of the action of respondent in granting performance based incentive in faovur of MBBS doctors. The same is a separate cause of action and, in fact, as per the status report filed by the respondents, a writ petition bearing WP(C) No.2379/2022 titled Dr. Syed Shahnawaz Andrabi & Ors. on the issue is already subjudice before this Court.

18) For the foregoing reasons, it cannot be stated that the respondents have deliberately violated any direction of the Writ Court that would persuade this Court to hold the respondents guilty of having committed contempt of the court. In this view of the matter, the contempt proceedings are closed.

19) The ROB KAR framed against the respondents is dropped and consequently, rule framed against them is discharged.

(SANJAY DHAR)
JUDGE

SRINAGAR
31.03.2023
"Bhat Altaf, PS"

Whether the order is speaking: *Yes/No*
Whether the order is reportable: *Yes/No*