

**Court Matter
Personal Attention**

No. Fin (C) B (15) -1 / 2011
Government of Himachal Pradesh,
Finance (Regulation) Department.

From

The Pr. Secretary (Finance) to the
Government of Himachal Pradesh.

To

All Administrative secretaries to the
Government of Himachal Pradesh.

Dated Shimla-2, the 8th January, 2013.

Subject :-

**Civil appeal No. 5951 of 2010 arising out of SLP © No.
11239 of 2006 titled as State of H.P. & Ors. Vs. Parvesh
Tanwar and Ors.**

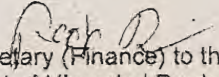
Sir/ Madam,

I am directed to refer to the subject cited above and to say that directions were issued by the Hon'ble High Court of H.P. in various Civil Writ Petitions for grant of stipend/ remuneration to the students of three-year Post Graduate Ayurveda Vachaspati/ MD/ MS Course which was being paid to the post graduate students of Allopathy Medical Colleges in the State. These orders were contested by the State Government by way of filing an SLP No. 11239/ 2006 in Hon'ble Supreme Court of India.

The Hon'ble Supreme Court of India has set aside the orders of Hon'ble High Court vide its judgment dated 20.7.2010 which is enclosed herewith for your kind information and necessary action.

Yours faithfully,

Encl: As above.


Under Secretary (Finance) to the
Government of Himachal Pradesh.

Am. P.M. Sc 101

Ayur. Section
Dy. No. 385910
Date 12/12/12

No. DA/H.P.LC/DELHI/ C. CASES/2012-

DISTRICT ATTORNEY, H.P.LEGAL CELL, HIMACHAL BHWAN, NEW DELHI

To

✓ The Pr. Secretary (Ayurvadya) to the
Government of Himachal Pradesh,
Shimla.

Dated New Delhi, the 6th December, 2012

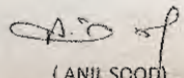
Subject :- Civil appeal No. 5951 of 2010 arising out of SLP@ No. 11239 of 2006 titled
as State of H.P. & Ors. Vs. Parvesh Tanwar and Ors.

Sir,

Kindly refer to your office letter No. Ayur. -C (7)-1/2012 dated 1st November,
2012 on the subject cited court case.

The above mentioned matter was listed for hearing on 20th July, 2010 in Apex
Court and this appeal is disposed of in terms of order passed in Civil Appeal No. 7752/2004. The
Certified copy of Civil appeal No. 7752 of 2004 is being enclosed herewith for your kind
information please.

Yours faithfully,



(ANIL SOOD)
DISTRICT ATTORNEY,
H.P.LEGAL CELL, HIMACHAL BHWAN
NEW DELHI,

Enclosed: - As Above

ATE
H.S (Ayur) 7/12

Sr. Chandu
10/12

IN THE SUPREME COURT OF INDIA

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CIVIL APPELLAE JURISDICTION

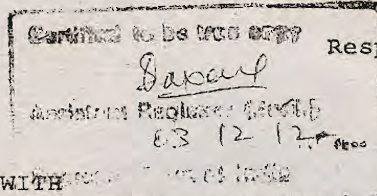
CIVIL APPEAL NO. 7752/2004

STATE OF H.P. AND ANR.

Appellant (s)

VERSUS

PARVESH TANWAR AND ORS.



Respondent (s)

WITH

Civil Appeal NO. 7754 of 2004

Civil Appeal NO. 7755 of 2004

Civil Appeal No. 7753 of 2004

WITH

CIVIL APPEAL NO. 5951 OF 2010

(Arising out of SLP(C) NO. 11239 of 2006)

O R D E R

CIVIL APPEAL NO. 7752/2004

Civil Appeal NO. 7754 of 2004 AND

Civil Appeal NO. 7755 of 2004

The respondents at the relevant time were the students of three-year Post Graduate Ayurveda Vachaspati/MD/MS Course in the Himachal Pradesh Government Institute of Post Graduate Education and Research in Ayurveda. They have filed a Writ Petition in the High Court invoking the extra-ordinary jurisdiction of that Court seeking appropriate directions as against the appellants herein to pay to them the amount of stipend at the rate at which it was being paid to the post-graduate students of Indira Gandhi Medical College at Shimla. Be it noted, the post-graduate students of Indira Gandhi Medical College prosecute their studies in the system of Alopathy medicine. They were being paid stipend at the rate of Rs. 7,500/-

per month for first year course, Rs. 7,600/- p.m. For second year course and Rs. 7,800/- for third year course. The respondents in their Writ Petition prayed for grant of amounts of stipend at the same rate.

The High Court upon hearing the parties granted the relief to the respondents and accordingly directed the appellants herein to pay to the respondents the same stipend/remuneration which was being paid to the post-graduate students of Allopathy Medical colleges in the State. The High Court, further directed the appellants to pay the arrears of remuneration at that rate which have not been paid to the respondents. The High Court mainly relied upon the regulations of the Central Council of Indian Medicine and recommendations made by it to the effect that the respondents were also entitled to the same amount of stipend as was being paid to their counterparts in the Allopathy system of Medicine.

In the Writ Petition filed by the respondents herein, they have complained of discrimination between the post-graduate students of Indian System of Medicine and the students of Allopathy System of Medicine. There is no factual foundation as such laid in the Writ Petition stating as to how they are similarly situated on par with Allopathy students except a bald allegation that they are similarly situated in performing duties and responsibilities. In absence of any such details as to how they are similarly situated and at par with the post graduate students of Allopathy system of medicine, the

High Court ought to have rejected the plea of the respondents. The High Court instead held that all systems of medicines in India are important and each system of medicine has its own benefits and it cannot be said that one system is superior to the other.

In our view, the whole approach adopted by the High Court is erroneous. In the absence of the details and the relevant data, the High Court ought not to have treated the post-graduate students prosecuting Indian System of Medicine with those students prosecuting studies in Allopathic System of Medicine. The High Court seems to have applied the principle, "equal pay for equal work" while considering the claim of the respondents for the grant of enhanced amount of stipend. The High Court failed to appreciate that the respondents failed to satisfy the test that they are performing equal and identical work as the post graduate students against whom the equal amount of stipend is claimed. It is needless to state that the persons who claim the parity are required to satisfy the court that their educational qualification, responsibility, mode of selection etc. is the same and at par with whom they compare themselves. The High Court assumed to itself that the students who are prosecuting post graduate studies in Indian System of Medicine and Allopathic System of Medicine are similarly situated. There is no basis for such assumption.

Be that as it may, there is no dispute that the post-graduate training and research institutions in Indian System of Medicine were

established under a Centrally Sponsored Scheme. The institution where the respondents at the relevant time were prosecuting their studies is one such sponsored institution. The Union of India vide its circular dated 26th September 1997 made it clear that the rate of stipend payable to students prosecuting their studies in Indian System Medicine Colleges for post-graduate training shall be paid stipend equal to the rate being paid to its post-graduate students in other upgraded departments prevalent in the State but in any case not more than rates revised w.e.f. 1.8.1996, that is to say, @ Rs. 2,500/- p.m. For first year and rates revised w.e.f. 1.8.1996 Rs. 2,800/- p.m. For second year and third year students. The validity of such memorandum issued by the Union of India is not challenged. The respondents obviously got their admission into post graduate course in Ayurveda medicine fully knowing that the institution where they have taken admission is an institution under the Centrally Sponsored Scheme. In the circumstances, they are not entitled for any amount towards stipend @ Rs. 2,500/- p.m. for first year and @ Rs. 2,800/- p.m. For second and third year. The High Court without assigning any reasons whatsoever and without taking into consideration the said memorandum of the Union of India allowed the Writ Petition directing the appellants herein to pay the amount of stipend to the respondents at par with the amount of stipend that was being paid to post-graduate students in Indira Gandhi Medical College. The view taken by the High Court suffers from incurable legal infirmity. The respondents have no right to claim any amount more than what has been specified in the said memorandum. In our

opinion that the amount of stipend to be paid to the students may depend on the scheme and allocation of financial resources by the Government. No student can claim any amount of stipend as a matter of right. It is granted as an allowance and a mere facility and not a matter of right.

The impugned Order is accordingly set aside. However, we are told by the learned Counsel for the respondents that all the respondents have already been paid the amount of stipend in terms of the directions of the High Court. We make it clear that the appellants shall not recover any amount whatsoever from the respondents. The appeals are accordingly allowed with no order as to costs.

CIVIL APPEAL NO. 7753/2004

No further orders as such are required to be passed in the appeal preferred by University Grants Commission since we have set aside the impugned order vide separate order in Civil Appeal No. 7752/2004. However, we are constrained to observe that the High Court ought not to have granted any relief whatsoever against the University Grants Commission as it has no role to play either in the matter of admission or management or payment of any amount of stipend to the respondents. The High Court in our considered view ought to have deleted the appellant University Grants Commission from the array of parties as it was neither a necessary nor a proper party to the proceedings.

The appeal is accordingly allowed with no order as to costs.

CIVIL APPEAL NO. 5951 OF 2010
(Arising out of SLP(C) NO. 11239 of 2006)

Leave granted.

This appeal is disposed of in terms of order passed in Civil
Appeal NO. 7752/2004.

No orders on application for intervention.

.....sdh.....J.

(B. Sudershan Reddy)

.....sdL.....J.

(Surinder Singh Nijjar)

New Delhi
July 20, 2010