



Court that though the duties discharged by them were same as compared to the duties discharged by the Post Graduate students belonging to the Allopathy stream, they were discriminated against in the matter of stipend.

**4.** The said writ petition came to be contested by the State on various grounds. However, by the impugned judgment and order, the High Court observed that the State had failed to establish that the students pursuing Post Graduate course in Ayurveda are of different class than that of students pursuing Post Graduate course in Allopathy. It was, therefore, found that the State was indulging in a discriminatory practice. A *mandamus* was, therefore, issued to the State to treat the students pursuing Post Graduate in Ayurveda stream at par with the students pursuing Post Graduate Course in Allopathy stream.

**5.** We have heard Mr. Saurabh Mishra, learned Additional Advocate General for the appellant-State and Mr. Sandeep S. Tiwari, appearing for the respondents.

**6.** Mr. Mishra submits that the issue is no more *res integra*. This Court, in the case of ***State of Gujarat and Others v. Dr. P.A. Bhatt and Others***<sup>1</sup>, has held that the

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<sup>1</sup> 2023 SCC Online SC 503

duties discharged by the Post Graduate students in Ayurveda stream cannot be equated with the duties discharged by the Post Graduate students in Allopathy stream.

**7.** On the contrary, learned counsel for the respondents submits that the stand taken by the State before the High Court was found to be not tenable and as such, no interference is warranted with the impugned judgment and order.

**8.** This Court, in the case of **Dr. P.A. Bhatt** (supra), has framed the following two questions:

**“24.** Two questions, in our opinion, arise for consideration in these appeals. They are:

(i) Whether different scales of pay can be fixed for officers appointed to the same cadre, on the basis of educational qualifications possessed by them?

(ii) Whether Allopathy doctors and doctors of indigenous medicine can be said to be performing “equal work” so as to be entitled to “equal pay”?”

**9.** After comparing the nature of duties discharged by the Post Graduate students in the Allopathy as well as in the Ayurveda streams, this Court in the said case, observed as under:

**“40.** The Government filed an affidavit before the

High Court contending *inter alia* -

(i) that while General Hospitals and Government Hospitals come under the Medical Services Department, PHCs, CHCs and Government dispensaries come under the Public Health Department;

(ii) that in respect of medical services, doctors with MD/MS or postgraduate degree/diploma are appointed to Class-I specialist cadre;

(iii) that Homeopathy doctors are appointed to Class-III posts;

(iv) that Ayurved doctors are appointed to Class-II posts; and

(v) that there are lot of differences between the duties and responsibilities discharged by both these categories of doctors.

**41.** In paragraph 9 of the affidavit filed on 23.07.2013, on behalf of the Government before the Division Bench of the High Court, a comparative chart was provided. It reads as follows-

Sr. No.	Allopathy Doctors	Ayurved Doctors
1.	MBBS/MD/P.G. Degree/P.G. Diploma/Specialization	BAMS/BHMS/MD
2.	Required to perform emergency duties and trauma cases, surgery cases and post mortem cases.	No emergency duty, cannot perform surgery and post mortem
3.	Have to work in OPD and operation theater	No operation work

4.	Give IV injections and ART injections themselves	Not applicable
5.	Medicines given are allopathic. For eg: pain killers	The medicine is based on ayurved. For eg: Powder to be taken with boiled water
6.	Main duty is with respect to emergencies, casualty and OPD patients.	Main duty is to advertise/make people aware about ayurvedic treatment and organizing camps where different vanaspati are displayed.
7.	Nature of treatment thus different from ayurved.	Nature of treatment is totally different from allopathy.
8.	Such doctors not easily available	Available in plenty
9.	Therefore bond system applicable for getting service of at least 5 years in village	No such bond system
10.	Night duty	No Night Duty

**42.** Apart from the above comparative chart, the learned Government Pleader also placed before the High Court, another comparative chart showing the various characteristics of Ayurvedic medicine and Allopathic medicine. The High Court extracted the said comparative chart in paragraph 5 of the impugned order. But unfortunately, the said chart

is of no assistance to find out whether both these categories of doctors are performing the same or similar duties and responsibilities, to be entitled to claim equal pay. The comparative chart extracted in paragraph 5 of the impugned order merely shows what these two categories of doctors “can do” and the different approaches that the different systems of medicine have towards persons suffering from various illnesses. But an appreciation of these characteristics will not empower the Court to direct the Government to treat both categories of doctors on par. Taking into consideration a comparative chart relating to the characteristics of both these types of medicine and not taking into consideration the comparative chart which we have extracted in paragraph 41 above, was the first mistake committed by the High Court in the impugned order.

**43.** As seen from paragraph 41 above, Allopathy doctors are required to perform emergency duties and to provide trauma care. By the very nature of the science that they practice and with the advancement of science and modern medical technology, the emergency duty that Allopathy doctors are capable of performing and the trauma care that they are capable of providing, cannot be performed by Ayurved doctors.”

**10.** After observing the aforesaid, this Court in the said case, observed as under:

**“54.** Therefore, even while recognizing the importance of Ayurved doctors and the need to promote alternative/indigenous systems of medicine, we cannot be oblivious of the fact that both categories of doctors are certainly not performing equal work to be entitled to equal pay. Hence, Issue No.2 has to be answered in favour of the appellant-State and against the respondents.”

**11.** Mr. Mishra further submitted that as a matter of fact, subsequently, there has been a revision of stipend paid to both the streams and as a matter of fact, there is not much of a difference in the stipend paid to the Post Graduate students in both the streams.

**12.** In view of the specific findings of this Court that the nature of duties discharged by the Post Graduate students in Ayurveda stream is not the same as that of Post Graduate students undertaking therein education in Allopathy stream, the impugned judgment and order would not be sustainable.

**13.** The appeal is, therefore, allowed.

**14.** The impugned judgment and order is, therefore, quashed and set aside and the Writ Petition No. 6415 of 2015 filed by the petitioners therein (respondents herein) before the High Court stands dismissed.

.....**J.**  
**[B.R. GAVAI]**

.....**J.**  
**[SANDEEP MEHTA]**

**NEW DELHI;**  
**JANUARY 02, 2024.**