

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3150/2003**

Ms. Anita Malik Sachdev & Ors. Petitioners
Through: Mr.A.P.Vinod, Adv.

VERSUS

Municipal Corporation of Delhi Respondents
Through: Ms.Maninder Acharya, Adv.

RESERVED ON:
21.07.2008

% DATE OF DECISION:
29.07.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Through the instant writ, the petitioners who are employed as 'Public Health Nurses' (herein after referred to as PHN's) under the respondent are claiming parity of pay and promotion with the 'Staff Nurses' and the 'Sister Tutors' employed under the respondent.

2. The grievance of the petitioners as stated in the petition is that since the date of their joining as PHN their pay scale has remained the same i.e. Rs. 1640-2900 and there exists no scope for promotions. Petitioners claim that Sister Tutors, having the same educational qualifications as that of the

petitioners, are placed in the pay scale of Rs.2000-3200 with 3 possible promotional opportunities. Petitioners also state that the Staff Nurses in the pay scale of Rs.1400-2600 have 5 promotional opportunities even though they require lesser educational qualification.

3. The respondent pleads that it has a policy of Assured Career Progression (A.C.P.) as directed by the Government of India, whereby the pay scale and the promotional schemes for all abovesaid posts have been altered as:

POST	JOINING PAY SCALE	PROMOTIONAL AVENUES
Hospital staff Nurse	Rs 5000-8000	Five promotional opportunities
Sister Tutor	Rs. 6500-10500	Two financial upgradations
PHN	Rs. 5500-9000	Two financial upgradations

4. The implementation of the said A.C.P. Scheme has been denied by the petitioners in their rejoinder but has been accepted by them at the time of hearing and in the written submissions filed thereafter. Thus, learned counsel for the petitioners restricted submissions of the petitioners to pay parity.

5. As pleaded in the petition, the post of Hospital Staff Nurse is in the pay scale of Rs.1400-2000 with eligibility norm being diploma in general nursing and midwifery of three and a half years (GNM). It is pleaded that the post of PHN is in the pay scale of Rs.1640-2900, eligibility qualification being diploma in

general nursing and midwifery of three and a half years (GNM) along with 10 months diploma in public health nursing, or B.Sc(Hons) Nursing (4years)/ Post Basic B.Sc. Nursing (2 years B.SC. Nursing after GNM).

6. However as noted above, under the A.C.P.Scheme the pay scale of Hospital Staff Nurse and that of the PHN's has been altered to Rs.5000-8000 and Rs.5500-9000 respectively. Thus pay parity has to be considered not with reference to Hospital Staff Nurse which post carries a low scale of pay.

7. The issue of parity has thus to be considered with reference to the post of 'Sister Tutor'.

8. The educational qualifications required for the two posts i.e. PHN and 'Sister Tutor' as per the required Recruitment Rules are as follows-

1. Sister Tutor

Diploma in general nursing and midwifery of three and a half years (GNM) along with 10 months diploma in nursing education and administration,
or

B.Sc(Hons) Nursing (4years)/ Post Basic B.Sc. Nursing (2 years B.SC. Nursing after GNM)

2. Public Health Nurse

Diploma in general nursing and midwifery of three and a half years (GNM) along with 10 months diploma in public health nursing,
or

B.Sc(Hons) Nursing (4years)/ Post Basic B.Sc. Nursing (2 years B.SC. Nursing after GNM)

9. In relation to nature of work, the petitioners have filed a chart presented before this court during arguments which draws a comparison in the nature of duties of the two posts. The said comparative chart can be summarised as under:

Subject	Sister Tutor (EDUCATION)	Public Health Nurse(COMMUNITY)
WORK PLACE	Educational institutions	Rural/ semi urban/ urban settings
FOCUS	On training the students in various wards and departments of the hospital	Educating and involving the family members and taking over the responsibility if need arises
RANGE, VARIABILITY OF WORK	Planning and implementation of training program	Works with entire stream of health and illness conditions. Works in all kinds of settings in a day i.e. home, school. Community.
MEETING EMERGENCIES	In routine do not meet emergency. Happens only when they are in the ward	They are accountable to any emergency arising in her presence in the school or community.
ACCOUNTABILITY	Very high	Low being an outside interferes with the family, and cultural norms to implement health programs
TRAINING	Organised with in the premises of the health institute with good infrastructure	Organised within the community with no infrastructure.

10. It was urged by the learned counsel for the petitioners that the educational qualifications required for the appointment to the 2 posts as per the notified Recruitment Regulations for the 2 posts shows complete identity. Counsel urges that the petitioners i.e. Public Health Nurses perform jobs of greater

responsibilities vis-a-vis the Sister Tutors. On these 2 factors alone, case of the petitioners has been projected during arguments for parity with Sister Tutors.

11. The doctrine of equal pay for equal work has been considered in great detail by the Hon'ble Supreme Court in its decision reported as (2006) 9 SCC 321 State of Haryana & Ors. v. Charanjeet Singh & Ors . In para 19 the Hon'ble Supreme Court observed as follows:

“ Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality

of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference."

12. In other words, the principle can only apply if there is complete and wholesome identity between the two which are the subject matter of consideration. As per the decision in Charanjeet Singh's case (supra) the relevant factors that need to be looked into for the application of the principle are: merit, experience, mode of selection, educational qualifications, quality, nature, reliability of work done and responsibility entailed.

13. As noted above, the claim for parity of pay as urged by the petitioners in the instant petition rests only on two grounds i.e. educational qualification and the nature of work.

14. The Hon,ble Supreme Court in the decision reported as AIR 2003 SC 2658 State of Haryana and Anr. v. Tilak Raj and Ors observed as under:

"To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination."

15. Even in respect of the 2 grounds of alleged parity it needs to be noted that there exists parity only qua one i.e. educational qualifications between Public Health Nurses and

Sister Tutors. The second, qua the nature of work, it may be noted that while the work of Sister Tutors is to educate and train students in the nursing programs, the focus of Public Health Nurses relates to promotion of the community health programs. The 2 are wholly different. This court is not competent to determine differences or similarities in the nature of duties in order to ascertain parity as such an assessment can be done more accurately by an expert body as was held in Charanjeet Singh's case (supra). In para 19 it was observed:-

“The application of the principle of “equal pay for equal work” requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus, normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can likely interfere.”

16. In the decision reported as (2007) 8 SCC 279 S.C. Chandra & Ors. v. State of Jharkhand & Ors. the Hon'ble Supreme Court, in para 35, held as under:

“ In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the state. Realising this, this court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and thereto the matter should be sent for an examination by an expert committee appointed by the Government instead of the court itself granting higher pay).”

17. Thus, the petition merits dismissal. Ordered accordingly.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

July 29, 2008