

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

+ **W.P. (C.) No. 3159/2010**

% **Date of Decision: 11.05.2010**

DEVELOPMENT COMMISSIONER, GNCTD & ANR. PETITIONERS
Through Mr. Sunil Bagai, Advocate

Versus

HAR PRASAD RESPONDENT
Through Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

*
1. The short point involved in this matter is “whether the order passed by the Tribunal in OA No. 1313/2007 dated 23.09.2009 directing the petitioners to extend the benefits of the pay scale of Rs. 4000-6000 to the Lab Assistants working in the Department of Animal Husbandry (hereinafter referred to as DAH) under the Govt. of NCT of Delhi is justified”.

2. Briefly stating, the facts of this case are, that the Lab Assistants working in the Ministry of Health & Family Welfare as well as in other Departments of Govt. of NCT of Delhi and Central Government were granted benefits of pay scale of Rs. 4000-6000 after coming into force of

the recommendations of the Fifth Central Pay commission. Those recommendations had been accepted by the Govt. of NCT of Delhi for the Lab Assistants working in various Hospitals etc. However, in the recommendation made by the Fifth Pay Commission, the case of the Lab Assistants working in the Department of Animal Husbandry has not been considered and it is for that reason the respondents approached the Government but their representations were not considered. They filed OA No. 1313/2007 dated 23.09.2009 before the Central Administrative Tribunal, Principal Bench, New Delhi by making the following prayers:

- i) To direct the Respondents to grant the pay scale to Rs. 4000-6000 at par with the pay scale of lab assistants of other department and fix his pay in conformity with the directions made by the Hon'ble CAT in OA No. 1401/06 and in the OA No. 572 of 1999 along with 2082 of 1999.
- ii) To direct the Respondents to pay to the Petitioner the arrears from the year 1983.
- iii) To direct the Respondents to consider the Petitioner for promotion to higher post.
- iv) To pass such further order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice, keeping in view the facts and circumstances of the present case.
- v) To direct the Respondents to revise the pay scale on notional basis as interim measure.
- vi) To pass such further order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice, keeping in view the facts and circumstances of the present case.

3. The petitioners contested the matter on the ground that the case of the respondent is different from the other Lab Assistants working in different Government Departments, as they were working under the

Union Government whereas the respondent in the instant case is working under the GNCTD. It is also the case of the petitioners that the respondent has not been given the arrears of pay in the said scale as per the recommendations made by the Fifth Central Pay Commission and, therefore, the parity claimed by him is not justified.

4. It may, however, be observed that respondent has filed an additional affidavit before the Tribunal, which reads as under:-

ADDITIONAL AFFIDAVIT

I, Har Prasad, Lab. Assistant, Animal Husbandry Department, Veterinary Hospital, Ghazipur, do hereby solemnly affirm and declare as under:

1. I am working in the Animal Husbandry Department on same post as Lab. Assistant since joining service from 22.3.75 i.e. 32 years, with excellent track record. My educational qualifications are class XII Physics, Chemistry and Biology and graduate.

2. That the Lab Assistants of hospitals & dispensaries under Directorate of Health Services & Family Welfare, Govt. of NCT of Delhi had sought parity with the pay scale of lab Assistants in Education Department, Govt. of NCT of Delhi and this Hon'ble Tribunal allowed and granted parity in pay scales vide its different judgments, some of them have been filed by the Applicant. There are many judgments and as per the knowledge of the Applicant, the Respondent has not challenged them and thus these have attained finality.

3. That the Lab Assistants in the Education Department, Govt. of NCT of Delhi have been working in the pay scale of 4000-6000 and as per their recruitment rules, the qualifications required are Higher Secondary with Science and in case of Higher Secondary without Science with three months orientation course conducted by Directorate of Education. The present recruitment rules which I have been able to obtain for Lab Assistants of the Education Department, Govt. of NCT of Delhi and Veterinary Hospitals are enclosed as Annexure A.

4. That parity has been granted to the Lab Assistants of hospitals under Directorate of Health

Services, Govt. of NCT of Delhi with the Lab Assistants in the Education Department, Govt. of NCT of Delhi though there is difference in the nature of duties. On the other hand my qualifications and nature of duties as a Lab Assistant in a Veterinary Hospital are similar to the Lab Assistants of hospitals under Directorate of Health Services, with the only difference being that I deal with veterinary patients whereas and Lab Assistants of other hospitals deal with human patients. Thus by same standards parity should be granted to me as Lab Assistant of Veterinary Hospital, Govt. of NCT of Delhi with Lab Assistants in Education Department, Govt. of NCT of Delhi.

5. That in fact Lab Attendants of different hospitals & dispensaries under Directorate of Health Services & Family Welfare, Govt. of NCT of Delhi who do not even have qualification of Higher Secondary are promoted on basis of experience as Lab Attendants and get the pay scale of 4000-6000 but myself with better qualifications and 32 year experience at a higher post am getting the pay scale of 3200-4900.

6. In the recommendations of the VI Pay Commission with respect to Veterinary staff, the name of Lab Assistants was left out either inadvertently or perhaps intended to be given the pay scale covered under heading other technicians with minimum qualifications as Matriculation with some experience i.e. pay scale of 4000-6000. The Lab Assistants of Veterinary Hospital have better entry qualifications but are still kept under the pay scale of 3200-4900. The copy of the relevant extracts from the recommendations of the V Pay Commission were given before the hon'ble Tribunal during arguments and the same are enclosed as Annexure B.

7. I am the Applicant in this OA and am bringing these facts on record as the same could not be brought to the knowledge of the counsel at the time of drafting of the OA. I have suffered grave injustice and request justice to be done to me.

DEPONENT.

5. From this affidavit it is apparent that educational qualifications required for the Lab Assistants working in the Animal Husbandry Departments and other Departments of Govt. of NCT were similar. The averments made in the affidavit are not reverted by the petitioners. It

was in these circumstances the Tribunal had extended the benefits of pay scale of Rs.4000-6000 as also granted in the case of P.K. Tyagi in OA No. 444/1986 and in the case of other applicants in OA No. 1401/2006, OA No. 572/1999 & OA No. 2082/1999 to the respondent. It is an admitted fact that the order passed in the aforesaid has not been assailed by the petitioners in the above cases rather the orders have been implemented.

6. Moreso, while granting the aforesaid benefits to the respondent in the present case, the Tribunal made the following observations:

5. It is not the Respondents' case that the educational qualifications and nature of work of the Lab Assistant under the DAH, the fourth Respondent, is different from the educational qualifications and nature of work of the Lab Assistants under the Departments of Education or Health and Family Welfare. A feeble attempt was made by the learned counsel for the Respondents by distinguishing OA number 1401/2006, Sanjay Kaushik and others v. Union of India and others by arguing that applicants in the aforesaid OA were working under the Union Government, whereas the Applicant in the instant OA is under GNCTD, the first Respondent. This is not relevant. The Applicants in OAs number 572/1999 and 2082/1999 were similarly situated as the Applicant herein. In fact the Directorate of Health Services of GNCTD has revised the pay scales, as per the direction of the Tribunal in OA number 572/1999 to all the Lab Assistants under its control (page 56 of the paper book). The aforesaid order squarely covers this case.

6. The OA succeeds, on the basis of the above discussion. The Respondents are directed to revise the scale of pay of the Applicant as follows:

- (i) Rs.290-500 with effect from 1.11.1982.
- (ii) Rs.330-530 with effect from 23.08.1983
- (iii) Rs. 1200-2040 with effect from 1.01.1986
- (iv) Rs. 4000-6000 with effect from 1.01.1996

The above revision will be on notional basis and arrears thereof will not be payable. The arrears will be payable with effect from 7.05.2007, which is the date of filing of this OA before this Tribunal. The Applicant will be eligible for all consequential benefits. The above direction should be complied with within eight weeks of receipt of a certified copy of this order. No costs.

7. Assailing the aforesaid order passed by the Tribunal, the learned counsel for the petitioner only submitted that the parity between the Lab Assistants working in the DAH and other Lab Assistants working in various other Departments were not established by the respondent before the Tribunal and, therefore, the Tribunal was not justified in passing the impugned order. He has relied upon the following judgments:

- i) *UOI Vs. Tarit Ranjan Das (2003) 11 SCC 658*
- ii) *U.P. State Electricity Board & Anr. Vs. Aziz Ahmad (2009) 2 SCC 606.*

8. We have gone through the aforesaid judgments. These judgments do not come to the rescue of the petitioners inasmuch as the averments made in the additional affidavit filed by the respondent before the Tribunal wherein it has been brought on record that his qualifications, nature of duties and other circumstances were similar to that of Lab Assistants working in other Departments of the GNCTD & the Union of India, has not been reverted by the petitioners. Moreso, without seeking any liberty from this Court, the petitioners have placed on record some documents pertaining to the duties and responsibilities of the Lab Assistants working in the DAH. However, it was not placed before the

Tribunal for their consideration for the reasons best known to the petitioners. In fact, incorrect certificate has been filed by the petitioners before us that no additional document has been filed along with the petition, which is apparently wrong in view of the documents available at page 121A, 121B & 121C of the paper book along with a typed copy of the recruitment rules which is available at page 124-125.

9. Taking all the facts into consideration & the judgments relied upon by the petitioners, we find no infirmity in the order passed by the Tribunal which calls for our interference under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed with costs of Rs.5000/- to be paid by the petitioners to the Delhi High Court Legal Services Committee within two weeks from today.

10. All the pending applications are also disposed of.

MOOL CHAND GARG, J.

MAY 11, 2010
'ag'

ANIL KUMAR, J.