

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1400 of 2015 Arising out of Civil Writ Jurisdiction Case No. 4001 of 2015

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1. Sanjay Ram son of Sri Mathura Ram, resident of village- Jiyan Bigha, P.S. and District- Shekhpura, at present posted as Dispenser in the office of District Tuberculosis Centre, Hajipur, Vaishali.
 2. Munna Kumar Chaudhary @ Munnu Kumar Chaudhary, son of Late Somar Chaudhary, resident of village- Hanumangarh Kharjama, P.S. Chandi, District- Nalanda, at present posted as Dispenser in the office of District Tuberculosis Centre, Motihari.
 3. Rajesh Kumar, son of Sri Saryug Tanti, resident of village and P.S. Kalyanpur, District- Munger, at present posted as Dispenser in the office of District Tuberculosis Centre, Jamui.
 4. Ajay Kumar Singh, son of Late Ganesh Singh, resident of village- Samhakti, P.S. Dinara, District- Rohtas, at present posted as Dispenser in the office of District Tuberculosis Centre, Muzaffarpur.
 5. Indu Kumari, wife of Kamal Kishore Kunal, resident of Mohalla- Ward No-10, Chondhi, Behind Middle School, Flat No-7, P.S. Barh, District- Patna, at present posted as Dispenser in the office of District Tuberculosis Centre, Barh, District- Patna.
 6. Arjun Prasad, son of Sri Muneshwar Prasad, resident of village-Belwapur, P.S. Tharthari, District- Nalanda, at present posted as Dispenser in the office of District Tuberculosis Centre, Nalanda.
 7. Jitendra Kumar, son of Sri Satya Narayan Prasad, resident of village- Dhiraundh, P.S. Sirdala, District-Nawada, at present posted as Dispenser in the office of District Tuberculosis Centre, Jehanabad.
 8. Navin Kishore Singh, son of Late Sita Ram Singh, resident of village- Amra, tola- Faruqaganj, P.O. Aurangabad (Saraiya), P.S. Amjhor, District- Rohtas, at present posted as Dispenser in the office of District Tuberculosis Centre, Rohtas.
 9. Baijnath Prasad, son of Sri Diplal Sao, resident of village- Sampatchak, P.S. Gaurichak, District- Patna, at present posted as Sispenser in the office of District Tuberculosis Centre, Bhabhua, Kaimur.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Finance Department, Bihar, Patna.
3. The Principal Secretary, General Administration Department, Bihar, Patna.
4. The Principal Secretary, Health and Family Welfare Department, Government of Bihar, Old Secretariat, Patna.
5. The Director-in-Chief, Health Services, Bihar, Patna.
6. The Deputy Director, Health Services (Tuberculosis), Agam Kuan, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Siya Ram Shahi and Mr. Indu Bhushan
Advocates

For the Respondent/s : Mr. J S Barnwal, GA 5

Mr. Sanjay Kumar, AC to GA 5

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-05-2016

The challenge in the present Letters Patent Appeal is to an order dated 7th July, 2015 passed by the learned Single Judge in CWJC No. 4001 of 2015, whereby the claim of the appellants for pay parity with the employees in the Tuberculosis Department in pay scale of Rs.4000-6000/- remained unsuccessful.

The appellants are the Dispensers with the Health Department. The minimum educational qualification for the said post is Matriculation. There is no requirement of any other technical educational qualification for appointment on this post. In terms of an earlier direction issued by this Court in CWJC No. 18004 of 2011, claim of the petitioners for pay parity was considered by the Principal Secretary, Finance. Such claim was rejected by detailed order passed on 30th June, 2014. Challenge to the said order remained unsuccessful before the learned Single Judge. Still aggrieved, the appellants have come before this Court preferring the present appeal.

Learned counsel for the appellants contends that the Fitment Appellate Committee has recommended the pay scale of Rs.4000-6000/- as per paragraph 30.64 of its Report and that

recommendation of the Fitment Appellate Committee is binding on the State. He refers to an order passed by a Division Bench of this Court in L.P.A. No. 859 of 2007 (The State of Bihar & Ors. Sanjay Kumar & Ors.), decided on 20th April, 2010.

In the counter affidavit, the State has reproduced the recommendations of the Fitment Appellate Committee which was chaired by Hon'ble Mr. Justice Aftab Alam, a Judge of this Court (as his Lordship then was). The recommendation reads as under:-

“As far as the Dispenser is concerned, this post has not been mentioned in the list of posts in the Health Department in the F.D. Resolution No. 660 dated 08.02.1999 as well as No. 6021 dated 18.12.1989. The Department of Health, however, have confirmed vide their letter No. 106 dated -7.11.2000 from Director (Health Services) to Secretary (Health), copy of which has been endorsed by Secretary (Health) to this Committee, that 53 such posts exist in the pay scale of Rs.4000-6000. The Department has, perhaps, presumed the scale. This is the scale demanded by the Association as well. Since the Secretary (Health) has endorsed this, it is presumed he has done so after satisfying himself of the job content and vertical and horizontal hierarchies. This Committee would, therefore, recommend this scale.”

It is stated in the counter affidavit that the report of the Fitment Appellate Committee was placed before the Cabinet Sub-Committee of Economic Affairs. It was found by the Committee that as per the opinion given by the Fitment Appellate Committee, the post of Dispenser is not a technical post, therefore, it is treated as equivalent to that of Lower Division Cadre post and thus accepted the

pay scale of Rs.3050-4590/-.

The Principal Secretary in his order has given the following table to point out that different pay scales were given to the Dispensers than the pay scale to the other technician in the year 1986 and 1996 as well. The table reads as under:-

Years	Post/Pay scale	Post/Pay Scale	Post/Pay scale
	Dispenser/Matric	BCG Technician/Matric	Pharmacist (unqualified)
1981	535-765	535-765	535-765
1986	975-1540	1200-1800	1200-1800
1996	3050-4590	4000-6000	4000-6000
2006	PB -1 + 1900	PB -1 + 2400	PB -1 +2400

The appellants are not holding technical posts, whereas the post of B.C.G. Technician is a post of trained technician, therefore, grant of different pay scale cannot be faulted as the Technicians with technical qualification have been given higher pay scale.

The report of the Fitment Appellate Committee shows that it recommended pay scale of Rs.4000-6000/- on the basis of report by the Secretary, Health, that 53 such posts exist in the pay scale of Rs.4000-6000/-. That was factually erroneous representation as that was the demand raised by the Association of the appellants. Since the very basis of the report of the Fitment Appellate Committee is based on erroneous fact, therefore, the State Government for good and

sufficient reasons can take a different view than that of the Fitment Appellate Committee.

The judgment in L.P.A. No. 859 of 2007 relates to anomaly in the pay scale which was referred to the Fitment Appellate Committee. Under the circumstances, it was found that the report of the Fitment Appellate Committee is binding. The report of the Fitment Appellate Committee is recommendation. Such recommendation on good and valid reasons could always be differed by the State Government which is to determine as to what pay scales have to be given to its employees.

We do not find any error in the order of the learned Single Judge which may warrant any interference by this Court in the present appeal.

The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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