

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP No.20860 of 2012 (O&M)
Date of decision : March 29, 2017

Jagdish Chander and others Petitioners

Versus

State of Haryana and another Respondents

2. CWP No.23045 of 2012 (O&M)
Date of decision : March 29, 2017

Dr. Sachidanand Jaisawal Petitioner

Versus

State of Haryana and another Respondents

3 CWP No.4843 of 2013 (O&M)
Date of decision : March 29, 2017

Dr. Surender Kumar Garg and others Petitioners

Versus

State of Haryana and another Respondents

4 CWP No.1017 of 2013 (O&M)
Date of decision : March 29, 2017

Dr. Bharat Singh Nara and others Petitioners

Versus

State of Haryana and another Respondents

5 CWP No.28745 of 2013 (O&M)
Date of decision : March 29, 2017

Ishwar Singh Kalkot Petitioner

Versus

State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate for the petitioner(s)
in CWP No.20860 of 2012 and 1017 of 2013.

Mr. Balraj Gujjar, Advocate for the petitioner(s)
in CWP No.4843 of 2013.

Mr. Gunjan Gera, Advocate for
Mr. Arvind Rajotia, Advocate for the petitioner(s)
in CWP No.28745 of 2013.

Mr. Ashish Pannu, Advocate for the petitioner(s)
in CWP No.23045 of 2012.

Mr. Naveen Sheoran, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

This judgment shall dispose of five writ petitions bearing CWP Nos.20860, 23045 of 2012, 1017, 28745 and 4843 of 2013, involving the same question of fact and law.

Petitioners in all writ petitions were working in the Animal Husbandary and Dairy Department of the State of Haryana in various capacities.

The brief facts have been extracted from CWP No.20860 of 2012, titled as ***“Jagdish Chander and others v State of Haryana and another”***.

Petitioners claim that they were appointed as Veterinary Surgeons and retired from service on various dates prior to 22.08.2012.

They claim that the Haryana Government with conscious decision has granted the same pay scale to the Veterinary Surgeons and the Medical Officers/Dental Surgeons w.e.f. 01.04.1995. Even non-practicing allowance was also granted at par with the HCMS Doctors. The Government of Haryana adopted 5th Pay Commission Report of the Government of India, in which pay parity was maintained between the Veterinary Surgeons and General Duty Medical Officers. Reliance was also placed upon para 55.291 of the 5th Pay Commission Report, in which it was recommended that the posts requiring a degree of B.V. Sc. and AH with registration in the Veterinary Council of India as the minimum essential qualification may be applicable to General Duty Medical Officers and Dental Doctors under the Government of India. The Veterinaries should have complete parity with Dental and General Duty Medical Officers, as given in Annexure 55.9, in terms of pay scales and career prospects.

The said recommendations were accepted w.e.f. 01.01.1996 and the following pay scales were granted to the Haryana Civil Medical Service Doctors and Veterinary Surgeons in the Department of Animal Husbandry:

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<i>Name of the post/cadre in which the Govt. servant were recruited as a directed recruited fresh entrant</i>	<i>First Assured Career Progression scale</i>	<i>Second Assured Career Progression scale</i>
Haryana Civil Medical Service Doctors	10000-325-13900 (After 5 years of regular satisfactory service in the cadre)	12000-375-16500 (After 11 years of regular satisfactory service in the cadre)
Veterinary Surgeons in the Department of Animal Husbandry	10000-325-13900 (After 5 years of regular satisfactory service in the cadre)	12000-375-16500 (After 11 years of regular satisfactory service in the cadre)

Thereafter, the 6th Pay Commission of Government of India also maintained the pay parity between Medical Officers and Veterinary

Surgeons on the same ground, as per para 3.8.25 of 6th Pay Commission Report. Accordingly, the pay scales of Veterinary Surgeons and Medical Officers were revised from 01.01.2006. The relevant extract of Schedule I, Part I, Haryana Civil Services (Assured Career Progression) Rules 2008, is reproduced as under:

<i>Name of post Cadre</i>	<i>Existing Scheme</i>	<i>Pre-revised/modified</i>	<i>Revised ACP Pay Structure</i>		
Haryana Civil Medical Services			Pay Band	Pay Band Code	Grade Pay
Medical Officers	8000-13500 (entry level pay scale)	No change	9300-34800 (entry level pay band)	PB-2	5400
	10000-13900 (after 5 years of regular satisfactory service)	No Change	15600-39100 (after 5 years of regular satisfactory service)	PB-3	6000
	12000-16500 (After 11 years of regular satisfactory service limited to 20% of the post of MO in the cadre)	No Change	15600-39100 (after 11 years of regular satisfactory service limited to 20% of the post of MO in the cadre)	PB-3	7600
Haryana Veterinary Services					
	8000-13500 (entry level pay scale)	No Change	9300-34800 (entry level pay band)	PB-2	5400
	10000-13900 (after 5 years of regular satisfactory service)	No Change	15600-39100 (after 5 years of regular satisfactory service)	PB-3	6000
	12000-16500 (After 11 years of regular satisfactory service limited to 20% of the post of MO in the cadre)	No Change	15600-39100 (after 11 years of regular satisfactory service limited to 20% of the post of MO in the cadre)	PB-3	7600

The trouble arose when the Haryana Government vide Notification dated 20.02.2009 (Annexure P-4) further revised the pay scales of the Medical Officers, whereby they were granted higher pay scale after rendering 10 years regular satisfactory service and after rendering 15 years of regular satisfactory service. The Veterinary Surgeons filed representation and claimed the same relief. Consequently, their pay scale was also revised vide Notification dated 22.08.2012 (Annexure P-5) from the date of Notification, wherein the higher pay scale was granted after rendering 11 years of regular satisfactory service and limited to 25% of the cadre strength. Similarly, the next higher pay scale was granted after rendering 17 years of service, which was further limited to 20% of the cadre strength.

In this way, in place of granting higher pay scales after rendering 10 and 15 years of regular satisfactory service without limiting it to any cap in the cadre strength, the Veterinary Surgeons were discriminated by granting them next higher pay scales on completion of 11 and 17 years of regular satisfactory service by putting cap of 25% and 20% respectively on the cadre strength. Moreover, it became applicable from the date of Notification dated 22.08.2012, whereas the Medical Officers were granted such scales w.e.f. 22.02.2009.

The claim of the petitioners is that they should be granted same higher pay scale as given to the Medical Officers without any cap of 25% and 20% of the cadre strength and it should be granted from 22.02.2009 when the same were granted to the Haryana Medical Officers, claiming that it is discriminatory.

Respondent Nos.1 and 2 in the written statement have contested the claim of the petitioners. It is stated that the petitioners are comparing themselves with the Medical Officers on the basis of recommendations of 5th Pay Commission and 6th Pay Commission, whereas their services are not comparable. The matter was considered by the Pay Anomaly Committee. The said Committee after considering the demand of Haryana State Veterinary Services Association for grant of complete pay parity with HCMS Doctors, observed that the qualifications and job profile of Veterinary Surgeons and HCMS Doctors is different. The admission and study course of MBBS/MS/MB is more rigorous than that of Veterinary Surgeons. The availability of MBBS/MD for Haryana Civil Medical Services is also less as compared to Veterinary Surgeons. Therefore, in spite of the fact that the Veterinary Surgeons and HCMS Doctors are given some identical scales before 01.01.2006, no logic was found in the demand for complete pay parity with HCMS Doctors. The Government vide Notification dated 20.04.2001 has specified that the Government may categorically disturb the so called pay parity, stating that

“it is on account of the dynamics of shifting emphasis from time to time that importance of different services and the nature of duties and responsibilities assigned to different services keep changing in order of priorities and significance and the Government has to respond to such changes in duties and responsibilities. Resultantly, the pay scales of certain categories of posts are changed as compared with what it used to be, historically depending upon their nature of job and responsibilities.”

Merely on the basis of 5th and 6th Pay Commission Reports, the

petitioners have mis-interpreted it as parity.

It was further stated that at the time of general revision w.e.f. 01.01.2006, HCS(Ex.), HPS(Dy.SP) and ETO were given three ACPs and HCMS, HDS, Veterinary Surgeons, Engineers, Architects, Town Planners were given two ACPs time to time. Subsequently, Government has granted benefit of 3rd ACP to the HCMS, Engineers, Architects and Town Planners and later on to Dental services.

Now, only Veterinary Surgeons have been left with two ACPs on the ground that said cadre have different qualifications and job profile and there is no established parity between the pay scales/ACP of the said cadre.

The Government further took the stand that generally the pay scales are prescribed keeping in view the following factors:

- “i) method of recruitment;*
- ii) level at which recruitment is made;*
- iii) the hierarchy of service in a given cadre;*
- iv) minimum educational/technical qualifications required;*
- v) avenues of promotions;*
- vi) the nature of duties and responsibilities;*
- vii) the horizontal and vertical relativities with similar jobs;*
- viii) public dealings;*
- ix) satisfaction level;*
- x) employer's capacity to pay etc.”*

Therefore, considering the said facts, the revision in pay scales was correctly done.

In the short replication, the petitioners reiterated the case and claim the pay parity with the HCMS Doctors.

I have heard learned counsel for the parties and have also

carefully gone through the case file.

Learned counsel for the petitioners while referring to the reports of 5th and 6th Pay Commission of the Government of India, which were adopted by the Government of Haryana has reiterated his contentions raised in the petition and reproduced above, have argued that in the pay scales implemented from 01.01.1996 and 01.01.2006, a complete pay parity was maintained between the HCMS Doctors and the Veterinary Surgeons. Therefore, Notification dated 20.02.2009 (Annexure P-4) granting further revision of pay scale to the HCMS Doctors and not allowing the same to the petitioners vide Notification dated 22.08.2012 (Annexure P-5) is discriminatory.

A perusal of Notifications dated 20.02.2009 (Annexure P-4) and dated 22.08.2012 (Annexure P-5) shows that there are following differences in the pay structure:

1. Notification dated 20.02.2009 (Annexure P-4) qua HCMS Doctors is applicable w.e.f. 20.02.2009, whereas Notification dated 22.08.2012 (Annexure P-5) qua Veterinary Surgeons is applicable w.e.f. 22.08.2012.
2. The pay scales granted to the doctors are same. However, the HCMS Doctors in the Health Department have been granted higher pay scale on completion of 10 years of regular satisfactory service in place of earlier 11 years limited to 20% of the post of MO in the cadre. They have further been granted higher pay scale on completion of 15 years of regular satisfactory service, which was not existing earlier, whereas

in case of Veterinary Surgeons, the same higher pay scale has been released after rendering 11 years of regular satisfactory service limited to 25% of the total cadre post in the categories of Veterinary Surgeon/SDO (AH) and Dy. Director. Further the next scale, which was not existing earlier, has been granted after rendering 17 years of regular satisfactory service limited to 20% of the total cadre post in the categories of Veterinary Surgeon/SDO (AH) and Dy. Director. This cap does not exist in the case of HCMS Doctors. Though, it was existing earlier in the case of HCMS Doctors but the same has been removed.

According to the petitioners, this is violation of the earlier pay parity maintained by the Government and is discriminatory and, therefore, a writ of mandamus should be issued directing the Government to grant similar pay scale as granted to the HCMS Doctors, vide Notification dated 20.02.2009 (Annexure P-4).

Learned counsel for the petitioners has relied upon the authority of this Court delivered in case of ***“Kirpal Jeet v The State of Punjab and another” 1987(4) SLR 594***, wherein it was observed as under:

8. After hearing the learned counsel for the parties and examining their pleadings and the material on record, I am of the considered view that this writ petition deserves to be allowed as the same is fully covered by the judgment in Harsaran Singh's case (supra). At the cost of repetition, it is held that once the State Government decided to equate the pay scale of a certain post with that of another post, it

is not open to it to discriminate between the incumbents of the two posts for the grant of pay scale at the time of subsequent revision of pay scales. Such an action would be wholly violative of Article 16 of the Constitution of India inasmuch as it would be denying the equality of opportunity in the matter of employment. Incidentally, in the present case the petitioner is in a much better position. She possesses better qualifications than those possessed by the Lecturers (Junior Scale), who have been placed in the higher pay scale. She has also been entrusted, throughout her career, with duties of purely educational nature involving the imparting of instructions at various levels. The mere fact that she has to work in the office of the Director, Public Instruction, Punjab, instead of the educational institutions, is no ground to deny the same pay scale to her which she would have got had she been required to work in the educational institutions”

Here the dispute was between the Technical Assistant (Evaluations) and the post of Lecturer (Junior Scale).

Further reliance has been placed upon the judgment of this Court delivered in **“Babu Ram v State of Haryana” 2000(4) S.C.T. 670**, wherein the principal of equal pay for equal work was emphasized.

Now, the question would arise whether on account of pay parity being maintained on two occasions i.e. w.e.f. 01.01.1996 and 01.01.2006 the same pay parity has to be maintained, in all respects, for all the times to come and whether the Government has got any discretion to make change in pay structure of the different class of employees?

I am of the considered view that if the Government has maintained pay parity on two occasions by accepting the recommendations of Central Pay Commission, it would not mean that for all the times to come, the same pay parity has to be maintained between the Veterinary Surgeons and the HCMS Doctors.

For the purpose of fixation of pay, the Government has to take into consideration the various factors including the educational qualification, the rigorousness of the course and other factors as enumerated in the written statement.

Admittedly, in the present case, same pay scales have been given to the petitioners after they raised a demand. However, the pay scales were granted to HCMS Doctors w.e.f. 20.02.2009. The only difference is the date of implementation of pay scale. The further difference is regarding the higher pay scales, which is granted after rendering 11 and 17 years of regular satisfactory service, whereas in case of HCMS Doctors, these were granted after rendering 10 and 15 years of regular satisfactory service. The previous cap limiting it to the certain percentage of the cadre strength of the post has been removed, in case of HCMS Doctors, but the same has been retained with some modification in case of Veterinary Surgeons.

Keeping in view the nature of their qualification, nature of duties and considering the other factors, it cannot be said that the Government had agreed to maintain pay parity between the Veterinary Surgeons working in the Animal Husbandry and HCMS Doctors for all the times to come. It is always prerogative of the Government to make changes in the pay structure. It is also not an anomaly. It is conscious decision of the

Government to make some distinction between the HCMS Doctors and the Veterinary Surgeons.

It being so, this Court does not find any merit in the present petitions. As such, the aforesaid five writ petitions are dismissed.

(KULDIP SINGH)
JUDGE

March 29, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes