

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18379 of 2015

=====

Balmiki Pathak, S/o Late Ram Pathak, resident of Ram Krishna Puri Colony,
Masoomganj, Post- Bhagwan Bazar, P.S.- Revelganj, District- Chapra, Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Health, Government of Bihar, Patna.
4. The Director-in-Chief, Health Services, Government of Bihar, Patna
5. The Deputy Director, Health Services, Government of Bihar, Patna.
6. The Civil Surgeon Cum Chief Medical Officer, Saran at Chapra.
7. The In-charge Medical Officer, Primary Health Centre, Revelganj (Saran).
8. The Collector-cum-District Magistrate, Saran at Chapra.
9. The District Accounts Officer, Saran at Chapra.
10. The Treasury Officer, District Treasury, Saran at Chapra.
11. The Accountant General, Bihar, Patna.
12. The Finance Department through its Principal Secretary, Govt. of Bihar, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ratnesh Kumar Singh, Adv
For the Respondent/s : Mr. R.R.K. Pandey- SC29

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 26-11-2018

Heard learned counsel for the parties.

2. This writ petition under article 226 of the Constitution of India has been filed to grant similar pay scale to Basic Health Worker as being granted to Auxiliary Health Worker who are also performing similar nature of work and responsibility also being the same and qualification of Basic Health Worker being higher to Auxiliary Health Worker and as such are entitled for similar pay scale.

3. It has been further prayed for revising the pension and



other retiral dues after re-fixation of pay scale of the petitioner in the pay scale of Rs. 240-396/- in Third Pay Revision and Rs. 680-695/- in Fourth Pay Revision and thereafter the petitioner has further prayed to fix his pay scale in terms of judgment and order dated 26.03.1996 and 27.08.1996 passed in CWJC No. 6096 of 1992 w.e.f. 01.01.1986 with consequential benefit and 18 per cent interest.

4. Briefly stated, the facts of the case is that petitioner was selected for appointment to the post of Basic Health Worker pursuant to an Advertisement. The petitioner successfully completed training of ten and a half months from 28.08.1973 to 30.07.1974. Petitioner was appointed as Basic Health Worker on 26.02.1976 at Primary Health Centre, Gadha, Saran in the pay scale of Rs. 220-315/- and retired on 30.06.2015.

5. It has been submitted on behalf of petitioner that Basic Health Worker and Auxiliary Health Worker were doing the same nature of work but Basic Health Worker were given pay scale of Rs. 220-315/- whereas Auxiliary Health Worker were given the pay scale of Rs. 240-396/- and as such their pay scale also ought to have been fixed at Rs. 240-396/- on the principle of equal pay for equal work.

6. The Basic Health Workers were getting pay scale of Rs.



220-315/- under Third Pay Revision and corresponding pay scale in Fourth Pay Revision was Rs. 535-765/- whereas corresponding pay scale of Auxiliary Health Worker was Rs. 680-695/-. The different pay scale between the Basic Health Worker and Auxiliary Health Worker was maintained throughout and for which several representations were filed before the department as well as Pay Anomaly Committee but still the two pay scales were maintained even in subsequent Pay Revisions. Auxiliary Health Worker were always given higher pay scale than Basic Health Worker and their claim that anomaly in pay scales should be removed and Basic Health Workers should also have similar pay scale as of Auxiliary Health Worker but such claim was never accepted by Pay Anomaly Committee. It has been contended on behalf of petitioner that the Health Commissioner had once recommended pay scale of Rs. 680-965/- to Basic Health Workers which was being paid to Auxiliary Health Workers. However, same was not accepted by the Government and the Finance Department as the report of the Pay Anomaly Committee was pending before the Government for consideration.

7. The Health Department placed memorandum dated 12.05.1988 before Fifth Pay Revision Committee stating therein



that the qualification prescribed for Basic Health Worker was higher than Auxiliary Health Workers and nature of work performed by both are similar and have similar responsibility as such there should be parity in the pay scale. However, different pay scales remained and Auxiliary Health Workers were being granted higher pay scale than the Basic Health Worker.

8. Employee Association filed CWJC No. 3149 of 1991 for re-fixation of their pay scale in the higher pay scale of Auxiliary Health Workers. However, same was disposed of with a direction to the Health Commissioner to consider the claim of petitioners vide order dated 14.08.1991 within three months but no order was passed and thereafter another writ petition being CWJC No. 6096 of 1992 was filed and same was allowed by order dated 26.03.1996 and a direction was issued that similar pay scale to be granted to Basic Health Worker as that of Auxiliary Health Worker from the date of filing of writ petitioner within six months and grant pay scale of Rs. 1400-2600/-w.e.f. 01.01.1986. The State Government preferred LPA NO. 313 of 1998 against the order passed by Single Judge which was dismissed for default.

9. Petitioner was getting pay scale of Rs. 1200-1800/- and pay scale was revised to Rs. 3050-4590/-w.e.f. 01.01.1996 and



their pay scale in Sixth Pay Revision was fixed in the pay scale of PB-1(5200-20200/-) in Grade Pay of Rs. 2400/-w.e.f 01.01.2006. The petitioner retired as Basic Health Worker from Primary Health Centre, Revealganj, Saran on 30.06.2015 and his pension was fixed at Rs. 8750/- and he is getting less pension because of less fixation of his pay scale in the lower pay scale although he was entitled for similar pay scale being granted to Auxiliary Health Worker as a result of which petitioner is getting less pension every month and it being a continuing wrong the present petition is not hit by delay and laches.

10. Counter affidavit has been filed on behalf of the Finance Department in which it has been stated that the petitioner was appointed on the post of Basic Health Worker on 26.02.1976 at the Primary Health Centre, Gadkha, Saran in the pay scale of Rs. 220-315/- and he retired on 30.06.2015. It has been further stated that the judgment and order passed in CWJC No. 6098 of 1994 was placed by the Employee Association of petitioner for consideration and implementation before the Fitment Committee headed by Hon'ble Justice S. Sarvar Ali as well as Fitment Appellate Committee, headed by Hon'ble Justice Aftab Alam and both the Committees considered in



detail the claim for grant of parity in pay scale to the Basic Health Worker with Auxiliary Health Workers. The Fitment Committee considering all the aspects recommended in paragraph no. 38.45.8 the pay scale of Rs. 3050-4590/- for the post of Basic Health Worker whereas for the post of Auxiliary Basic Health Worker recommended pay scale of Rs. 4000-6000/- in paragraph no. 38.45.10 of the report. The Fitment Appellate Committee also considered claim of association of the petitioner in a very exhaustive manner in the light of the judgment and order delivered in CWJC No. 6098 of 1992 as well as judgment and order passed in case of ***State of U.P. & Ors vs J.E. Chaurasia & Ors***, since reported in ***AIR 1989 SC 19*** and after considering all the aspects including previous pay scale of both the posts, nature of work and qualification of both the posts as well as recommendation of pay scale by the Fitment Committee recommending the pay scale of Rs. 3050-4590/- to the Basic Health Workers and Rs. 4000-6000/- for the post of Auxiliary Health Worker and same was maintained by Fitment Appellate Committee also.

11. The rival claims of Basic Health Workers to provide parity in pay scale with Auxiliary Basic Health Worker were settled much earlier by the Expert Fitment Committee and



Fitment Appellate Committee, considering the judgment and order passed in CWJC No. 6098 of 1992 and has attained finality and cannot be opened afresh.

12. The judgment and order passed in CWJC No. 6098 of 1992 against which State of Bihar had filed L.P.A No. 313 of 1998 which was dismissed for default earlier was subsequently restored and L.P.A No. 313 of 1998 was heard by a Division Bench of this Court and the order passed by learned Single Judge was set aside. L.P.A. was allowed and writ petition was dismissed, as such petitioner cannot claim any benefit on the strength of order passed by writ court which was set aside by the Division Bench.

13. After considering the arguments of both sides and materials available on record, this Court finds that the issue of parity of pay scale between the Basic Health Worker and Auxiliary Health Worker has been finally settled which was considered by the Fitment Committee as well as Fitment Appellate Committee and they have recommended separate pay scales of Basic Health Worker and Auxiliary Basic Health Worker and the higher pay scale to Auxiliary Health Worker has been maintained by the Pay Revision Committee who are experts in matters of pay revision and same has been accepted



by the Government as such the issue has been finally settled and cannot be unsettled at this stage.

14. There is no merit in this writ petition and it is accordingly, dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	27.11.2018
Transmission Date	N.A

