

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	24.01.2019
Orders pronounced on	21.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.6861 of 2011

DR.S.RAJAN
S/O.LATE.MR.K.SOUNDARARAJAN,
96/A1, VEENA NILAYAM,
BANDISHOLA
UDHAGAMANDALAM-643 001. PETITIONER

Vs.

- 1 THE SECRETARY TO THE GOVT OF INDIA,
MINISTRY OF AYUSH AYUSH BHAVAN,
B-BLOCK, G.P.O. COMPLEX,
INA, NEW DELHI-110023.
- 2 THE DIRECTOR GENERAL
CENTRAL COUNCIL FOR RESEARCH IN HOMEOPATHY
61-65 INSTITUTIONAL AREA D-BLOCK OPPOSITE
JANAKPURI
NEW DELHI-110058. RESPONDENTS

(Cause title of R1 amended vide court order dt.11/12/2018)

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records pertaining the orders passed in F.No.12-137/2006/CCRH/Estt/ CC/3620 dated 03.02.2010 by the 2nd respondent and to quash the same and consequently directing the 2nd respondent herein to pass an order granting the higher Scale of Pay of Rs.8,000/- to 13,500/- with effect from 09.06.1999 to the Petitioner.

For Petitioner : Mr.Rajkumar Paul
For Respondent No.1 : Mr.J.Madanagopal Rao, SCCG
Central Govt. Standing counsel
For Respondent No.2 : Mr.G.Jaganathan

O R D E R

It is the case of the petitioner that the petitioner joined the respondent Council on 12.3.1984 as Field Assistant and presently holding the post of Field Botanist from 27.12.1991. The second respondent passed an order in his letter No.12-69/99-CCRH/Estt/CC/4646, dated 23.3.2000 and letter No.12-20/96-CCRH/Estt/CC/3051, dated 7.7.2000 stating that the Executive Committee modified the recruitment rules and fixed the essential qualification for the post of Field Botanist as M.Sc. in Botany. Whereas in other Councils in the department of AYUSH, no modifications were made to recruitment rules but enhancement in scale of pay has been effected. The Council has modified the recruitment rules and enhanced the essential qualification as M.Sc. from B.Sc. for the post of Field Botanist with effect from 9.6.1999. The petitioner is entitled for enhancement in scale of pay from (Rs.5500 - 9000) to Rs.8000 - 13,500) with effect from 9.6.1999. The petitioner was holding M.Sc. degree at the time of enhancement. According to the petitioner, essential qualification and nature of work is same except scale of pay for the posts of Field Botanist, Research Assistant (Chemistry) and Research Assistant (Homeopathy). According to the petitioner, petitioner is entitled to receive higher scale of pay of Rs.8000/- to 13,500/- on par with Scientist "B" at Botanical Survey of India because the essential qualifications and sphere of duties are equal in both the posts. According to the petitioner, the nature of work involved in the post of Field Botanist, Research Assistant (Chemistry) and Research Officer (Homeopathy) are as follows:

SL.No	Name of Post	Nature of Work
1.	Field Botanist	Survey, Collection, identification, preparation of Herbarium, Conservation, Germplasm collection, Cultivation and Multiplication. Supply of raw drug plant materials to Drug Standardization Units (DSU) for the preparation of medicine.
2.	Reserch Assistant (Chemistry)	Preparation of mother tincture (medicine), to determine moisture content, ash value, extractive value, study of active constituents and organoleptic characteristics and various tests like, TLC, UV and spectrophotometry of mother tincture (medicine).

SL.No	Name of Post	Nature of Work
3.	Research Officer (Homeopathy)	The Doctor (The Research Assistant Homeopathy, now become Research Officer Homeopathy will prescribe the medicine to various patients according to their symptoms.

2. According to the petitioner, qualification, nature of work and responsibilities are same except scale of pay. Therefore, there is discrimination among the aforesaid category of posts. The Council will assign the work allotment to Survey Unit, Ooty in the name of medicine or medicinal plants every year. The Field Botanist will identify the correct locality and its availability within India and propose tour sanction for the collection of exact plant species and part used. After the correct identification of the plant species and part used will be collected and processed for sending to Drug Standardization Research Centres for the preparation of medicine. The Field Botanist did not send the correct species for the raw drug plant material to Drug Standardization Centres. The Chemist will prepare the medicine from the supplied material by the Field Botanist. The Research Assistant (Homeopathy) now become Research Officer (Homeopathy) will prescribe the medicine in their respective outpatients department. Therefore, the Field Botanist role is important for the Collection, identification and supply of proper authentic raw drug plant materials to Drug Standardization Research Centres for the preparation of medicine. Therefore, several representations were made to the authorities to consider the Field Botanist on par with the Research Assistant (Homeopathy) and fix the scale of pay equivalent to the Research Assistant (Homeopathy), but the said request made by the petitioner was rejected by the respondents. Hence, the petitioner has filed the present writ petition before this Court.

3. In the counter affidavit filed by the second respondent, it is stated that the petitioner holding the post of Field Botanist which is equivalent to the post of Group B in the pay scale of Rs.2000-60-3500 (pre revised in the Vth CPC). Now, the petitioner demanded to upgrade the post by enhancing the basic pay from 6500-60-10,500 to 8000-13,500. The above said scale of pay is only meant for the Group A cadre post. According to the second respondent, nature of duties and responsibilities for the post of Research Assistant (Chemistry) and that of Field Botanist are entirely different, such comparison is irrelevant. In so far as enhancing the qualification for the post of Senior Research fellows from B.H.M.S. Degree to PG Degree, the mode of recruitment is entirely different. Therefore, the duties and

responsibilities of Field Botanist cannot be equated on par with Research Assistant (Homeopathy). The nature of work of the Field Botanist is entirely different than that of the Research Assistant (Homeopathy). Therefore, there is no question of discrimination arising when the duties and responsibilities of the aforesaid two posts are different. Therefore, the writ petition is liable to be dismissed.

4. Heard the learned counsel for the petitioner, learned Central Government Standing counsel appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

5. According to the learned counsel for the petitioner, nature of work of the Field Botanist is Survey, Collection, identification, preparation of Herbarium, Conservation, Germplasm collection, Cultivation and Multiplication. Supply of raw drug plant materials to Drug Standardization Units (DSU) for the preparation of medicine. For Research Assistant (Chemistry) is, Preparation of mother tincture (medicine), to determine moisture content, ash value, extractive value, study of active constituents and organoleptic characteristics and various tests like, TLC, UV and spectrophotometry of mother tincture (medicine). The Research Officer (Homeopathy) will prescribe the medicine in their respective outpatients department. Therefore, the Field Botanist role is also important since the work of Field Botanist involved in Collection, identification and supply of proper authentic raw drug plant materials to Drug Standardization Research Centres for the preparation of medicine.

6. According to the learned counsel for the second respondent, the petitioner was initially appointed by the Respondent Council on 12.3.1984 as Field Assistant in Group C cadre which is not Scientist cadre post and the petitioner accepted the terms and conditions of the recruitment rules of the CCRH. CCRH is following the norms for all the purpose of recruitment and service rules laid down by the DOPT, Government of India in the pay scale of Rs.260-400 (pre revised). Later on, he was appointed as Field Botanist from 27.12.1991 in the pay scale of Rs.1400-40-1800-2300 (revised) and the same was replaced to Rs.4500-125-7000 as per 5th Central Pay Commission (C.P.C.). The petitioner was given Assured Career Progress (ACP), and upgraded the pay scale of the petitioner from 5500-175-9000 to 6500-200-10,500 with effect from 27.12.2003. Presently, the petitioner is holding Field Botanist post which is equivalent to the post of Group B in the pay scale of Rs.2000-60-3500 (pre revised in the Vth CPC) and presently 9300-34,800 in VIth CPC. The contention of the petitioner that duties and responsibilities for the post of Field Botanist and

the Research Assistant (Homeopathy) are similar in nature is not correct.

7. According to the learned counsel appearing for the second respondent, the nature of work and responsibilities of both the posts are different. He also placed before this Court, comparative table showing the essential qualification and pay scale for the post of Field Botanist, Research Assistant (Chemistry) and Research Assistant (Homeopathy) which reads as follows:

	Field Botanist	R.A. (Chemistry)	R.A. (Homeopathy)	Remarks
Group	C	C	C	
Essential Qualification	I) First or high second class degree in Botany from a recognized university. II) 2 years experience in Field work of Survey and collection of plants in a recognized Institute.	I) First or high second class degree in Chemistry from a recognized University. II) 2 years research experience in the concerned discipline after obtaining the degree in a recognized university.	I) Matric or equivalent II) Degree/Diploma in Homeopathy of minimum for years duration from a recognized statutory board/ university.	The clinical post of R.A. (H) converted to Asst. Research Officer (H) with scale of Pay of Rs.2000-3500 vide order No.V-27020/95/ Homeo dated 22.12.1995. Further, the post of ARO (H) was upgrade to RO (H) with scale of pay of Rs.8000-13500
Duties	As per requirements of the post	As per requirements of the post	As per requirements of the post	

	Field Botanist	R.A. (Chemistry)	R.A. (Homeopathy)	Remarks
Scale of Pay (Initial)	425-25-500-EB-15-56-20-700 (1400-2300)	425-25-500-EB-15-56-20-700 (1400-2300)	425-25-500-EB-15-56-20-700 (1400-2300)	
Essential Qualification	I) M.Sc.in Botany from a recognized University II) Aptitude for research	I) First or High Second Class Degree in the concerned discipline from a recognized University/Institute. II) 2 years Research/Teaching experience in the concerned discipline after obtaining the degree in a recognized University/Institute. OR First or high second class P.G.Degree in the concerned discipline from a recognized University/Institute	No Post exist	Recruitment rule for the post of Field Botanist and R.A. (Chemistry) revised with additional qualification in the light of the carrier advancement scheme vide letter No.V-27020/95/Homeo, dated 22.12.1995. Thereafter, the post of R.A. (Chemistry) has been abolished.
Scale of Pay (existing under 5th CPC)	5500-175-9000	Rs.5500-175-9000	No Post exist	

	Field Botanist	R.A. (Chemistry)	R.A. (Homeopathy)	Remarks
Present Scale of Pay (Revised under 6th CPC)	9300 -34800+ G.P. 4200	No post exist	No post exist	

Therefore, the claim of the petitioner seeking equal pay by comparing the post of Field Botanist post on par with Research Assistant (Chemistry) and Research Assistant (Homeopathy) is totally unsustainable. The nature of work, duties and responsibilities and the qualifications prescribed for the aforesaid posts are entirely different. Research Officer (Homeopathy) after upgradation from the post of Research Assistant (Homeopathy) comes under the category of Group "B".

8. It is contended by the learned Standing counsel appearing for the respondent that the post of Research Assistant (Homeopathy) having different nature of work, duties and responsibilities and are directly dealing with the lives of patients, and giving the treatment to them and rendering services in the National Health Program by providing health care to the patients cannot be equated on par with Field Botanist. The upgradation of the posts of Research Assistant (Homeopathy) into Assistant Research Officer (Homeopathy) has been approved by the Government of India as a policy decision without change of qualification or experience prescribed in the recruitment rules. The Assistant Research Officer (Homeopathy) and the Research Officer (Homeopathy) have been performing the core research duties of the Council whereas the Field Botanist is performing complementary duties in a supportive manner. Therefore, there is no violation of Article 14, 16 and 19 of the Constitution of India. Since the nature of work, duties and responsibilities for the Field Botanist and Research Assistant (Homeopathy) are held as different, the contention of the petitioner that there is discrimination between the post of Field Botanist and the Research Assistant (Homeopathy) cannot be accepted. In support of his contention, the learned counsel for the respondent relied on the decision of the Hon'ble Supreme Court in the case of MEWA RAM KANOJIA VS. ALL INDIA INSTITUTE OF MEDICAL SCIENCE AND OTHERS [AIR 1989 SC 1256].

9. The Hon'ble Supreme Court in MEWA RAM KANOJIA case (supra), held as follows:

"The doctrine of "Equal pay for equal work" is not expressly declared a fundamental right under the Constitution.

But Article 39(d) read with Articles 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the Constitution enjoins the State that where all things are equal, persons holding identical posts, performing identical and similar duties under the same employer should not be treated differently in the matter of their pay. The doctrine of "Equal pay for equal work" is not abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of "equal pay for equal work" is applicable when employees holding the same rank, performing similar functions and discharging similar duties and responsibilities are treated differently."

10. The Hon'ble Supreme Court in an identical issue, in State of Punjab & Others Vs. Jagjit Singh & Others (CIVIL APPEAL NO. 213 OF 2013 dated 26.10.2016) taking note of various judgments of the Hon'ble Supreme Court, laid down the law as under:

"42.(i)..... (ii)

(iii) The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (see - the Randhir Singh case¹). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see - the Federation of All India Customs and Central Excise Stenographers (Recognized) case³, the Mewa Ram Kanojia case⁵, the Grih Kalyan Kendra Workers' Union case⁶ and the S.C. Chandra case¹²).

(iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and

cannot claim the benefit of the principle of 'equal pay for equal work' (see - the Randhir Singh case¹, State of Haryana v. Haryana Civil Secretariat Personal Staff Association⁹, and the Hukum Chand Gupta case¹⁷). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see - the Federation of All India Customs and Central Excise Stenographers (Recognized) case³ and the State Bank of India case⁸). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of 'equal pay for equal work' (see - State of U.P. v. J.P. Chaurasia⁴, and the Grih Kalyan Kendra Workers' Union case⁶)."

11. This Court is of the view that the nature of duties and responsibilities for the post of Field Botanist and Research Assistant (Homeopathy) are not similar in nature and the educational qualifications prescribed for the two posts are also different. Therefore, the principle of equal pay for equal work is not applicable to the case in hand. The doctrine of equal pay for equal work would be applicable only when the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible. Therefore, there is no substance to

interfere with the impugned order passed by the second respondent.

12. In the facts and circumstances of the case and in the light of the judgment of the Hon'ble Supreme Court cited supra, the writ petition deserves to be dismissed and accordingly, dismissed. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1 THE SECRETARY TO THE GOVT OF INDIA,
MINISTRY OF AYUSH AYUSH BHAVAN,
B-BLOCK, G.P.O. COMPLEX, INA NEW DELHI-110023.
- 2 THE DIRECTOR GENERAL,
CENTRAL COUNCIL FOR RESEARCH IN HOMEOPATHY
61-65 INSTITUTIONAL AREA D-BLOCK OPPOSITE
JANAKPURI, NEW DELHI-110058.

+1cc to Mr.J.Madanagopal Rao, Advocate Sr.15899
+1cc to Mr.Rajkumar, Paul, Advocate Sr.16346

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