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

+ **W.P.(C) 3931/2020**

HEMANT KUMAR

..... Petitioner

Through: Mr. Joby P. Varghese, Adv.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Suparna Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **06.07.2020**

[VIA VIDEO CONFERENCING]

CMs No.14077/2020 & 14078/2020 (both for exemption)

1. Allowed, subject to just exceptions and as per the extant rules.
2. The applications are disposed of.

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3. The petitioner, working as Lab Assistant (Constable) in the respondent no.2 Sashastra Seema Bal (SSB), has filed this petition seeking mandamus directing the respondents to grant revised pay and other benefits to the petitioner in terms of the pay structure / pay fixation (PB 2800/ Pay Level 5) recommended for Lab Assistants under the 7th Central Pay Commission (CPC) recommendations, with effect from 1st January, 2016.
4. It is the case of the petitioner that, (i) the petitioner was earlier in the pay scale of Rs.5200-20200/- with grade pay of Rs.2000/-; (ii) the 7th CPC dispensed with the existing system of pay bands and grade pay and grade pay was recommended to be subsumed in the new pay matrix; the status of the employee, hitherto determined by grade pay was recommended to be

determined in terms of the 7th CPC recommendations, by the level in the pay matrix; a fitment factor of 2.57 was proposed to be applied uniformly for all employees; (iii) the recommendations of the 7th CPC were accepted and notified on 25th July, 2016; (iv) that even prior to the 7th CPC recommendations, the Ministry of Health & Family Welfare carried out cadre review of the laboratory staff and the same was finalized by the Ministry of Health and Family Welfare with the concurrence of the Ministry of Finance and under the restructured / revised entry level qualification, grade pay for Laboratory Assistant was revised to Rs.2,800/- in Pay Level 5; (v) the 7th Central Pay Commission noted the cadre review carried out by the Ministry of Health and Family Welfare and recommended administrative ministries to take appropriate steps for aligning the laboratory staff under their respective jurisdictions on the lines reflected in the cadre restructuring and review undertaken by the Ministry of Health and Family Welfare; (vi) the existing pay bands of Rs.2000/2400/2800 for Laboratory Assistant under the 7th CPC have been replaced with one pay band of Rs.2800/- and is subsumed in Pay Level 5; (vii) however the petitioner is still continuing and drawing salary under the old grade pay of pay band Rs.2000/- applicable to Lab Assistant prior to 7th CPC recommendations; (viii) the petitioner serves in hospitals run by respondent no.2 SSB and is involved in analysing samples of body tissue and fluids taken from hospital patients and performs the same work which his counterparts do in other hospitals and clinics working under other governmental departments; (ix) some of the other ministries also have undertaken cadre review on the same lines as Ministry of Health and Family Welfare; and, (x) the counterparts of the petitioner working in hospitals / institutions under the Ministry of Health & Family

Welfare are already taking benefit qua pay in terms of recommendations of 7th CPC but the same has not been extended to the petitioner inspite of revised Pay Rules having been notified by the Ministry of Defence qua its three services as well, in the year 2017 itself.

5. The counsel for the respondents appearing on advance notice states that, (a) the benefit of the recommendation of the 7th CPC have already been conferred on the petitioner and the multiplication/fitment factor of 2.57 has already been applied qua his pay structure; (b) as far as the claim of the petitioner for parity with the Lab Assistants under the hospitals of the Ministry of Health and Family Welfare is concerned, the entry level qualification for them is different from that applicable to the petitioner under the SSB Recruitment Rules; (c) it has been held in ***M.P. Rural Agriculture Extension Officers Association Vs. State of Madhya Pradesh*** (2004) 4 SCC 646 that when the entry level educational qualification is different, no parity can be claimed; (d) representations have been received from the petitioner as well as several others but owing to the prevalent Covid-19 situation could not be decided and the response could not be communicated to the persons making the representations; and, (e) to avoid multiplicity of litigation on this aspect, it is expedient that the petition is entertained and the detailed response of the respondents taken on record and adjudicated.

6. We are however of the view that the petitioner and others similarly situated as him, without knowing the reason why their claim is being denied, inasmuch as their representations have not being decided as yet, ought not to be made to raise a claim and be prejudiced in the matter of making a claim without knowing what they are up against. It is well nigh possible that the petitioner and others similarly situated as him, on receiving the response of

the respondents to their representations, are satisfied therewith and do not even feel the need for challenge.

7. Thus, instead of entertaining this petition as suggested, we deem it appropriate to dispose of this petition with a direction to the respondents to decide the representation of the petitioner as well as of others similarly situated as the petitioner, within six weeks as sought and with liberty to the petitioner to, if remains aggrieved from the decision, take remedies available in law.

8. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

JULY 06, 2020
‘gsr’..