

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.7775 OF 1997 (O&M)

Reserved on : 25.07.2022

Pronounced on : 26.08.2022

Dr. I.C. Mehta and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Suresh Kumar, Advocate
for Mr. Roshan Lal Sharma, Advocate
for the petitioners.

Mr. R. D. Sharma, D.A.G., Haryana.

ARUN MONGA, J.

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus for directing the respondents to grant benefit of revised pay to the petitioners at par with Medical Officers in Health Department of State of Haryana alongwith non-practicing allowance and incentive for higher qualifications for all purposes including for dearness allowance and declaring the petitioners as members of Class-I w.e.f. 09.04.1992.

2. Succinct facts first. Petitioners at the relevant time were serving as Medical Officers, Industrial Health in the Labour Department of the State of Haryana and are before this Court seeking parity with their counterparts working in the Health Department viz., entitlement to the

revised pay-scale, non-practicing allowance and benefit of higher qualifications etc. They claimed that since both sets of Medical Officers i.e. Labour Department as well as Health Department, had all throughout been continuing to enjoy same status of pay-scales and other benefits but subsequently according the benefit of revision of pay-scale only to the doctors deputed/working in the Health Department is thus arbitrary and illegal.

Concise facts which are not in dispute are that both the petitioners i.e., petitioners No.1 and 2 were selected as Medical Officers, Industrial Health in the Labour Department in the year 1988 and 1983 respectively. Petitioner No.1 though had been earlier selected by the Haryana Public Service Commission as a member of H.C.M.S. in the year 1981 and he worked in the Health Department pursuant thereto and he joined the Labour Department as Medical Officer, Industrial Health after being relieved therefrom.

3. Pledged case is that prior to creation of permanent post of Medical Officer in Joint Punjab in the Labour Department the first incumbent to be appointed as Medical Officer, Industrial Health in the year 1956 was the Medical Expert/Medical Officer from Health Department. Subsequently, the post of Medical Officer, Industrial Health was created permanently with the same qualification as those of a Medical Officer in Health Department. Pay-scale of both the sets of Medical Officer was identical. Reliance is placed on the relevant proceedings of debate during the 16th Session of Health Ministers Conference held in the year 1960 wherein it was deliberated as under:-

“The 16th Session of the Labour Ministers Conference decided that the States should be provided with

Medical Inspectors so that work of hazardous nature in chemical or other plants could be viewed from the health angle. Although a beginning has been made in some of the States, others have yet to comply. It is necessary that Medical Inspectors be appointed in all the States and that proper equipment required for the work could be made available to them so that they could provide the necessary service to industry. Each State should also have Industrial Hygiene Laboratories with adequate staff to enable them to undertake surveys and investigations.

Apart from this, State Governments have to take steps to appoint full-time certifying Surgeons so that medical examination of young persons and other workers employed in dangerous operations is undertaken as per the provisions of the Factories Act.”

4. The State of Haryana again revised the pay scales of HCMS doctors (class I and II) in the Health Department and Engineers from 01.05.1989 vide notification dated 02.06.1989 Annexure P-2. Thereby, the HCMS (class I and II) doctors/Medical Officers in the Health Department were given the revised pay scale Rs. 2200-4999+NP; 3000-4500+ NPA (after 5 years of regular service) 4100-5300+NPA (after 12 years of regular service). As against this, the gradation list Annexure P-1 of class I and class II officers of the Labour Department shows that Medical Officer, Industrial Health (class II) in the Labour Department was given the lower pay scale of Rs. 2000-60-2300EB-75-200-100-3500+NPA 25%. This created disparity because of the lower pay scale of the Medical Officer, Industrial Health vis-a-vis the higher pay scale given to HCMS Medical Officers in the Health Department. The anomaly/disparity seems to have been further accentuated by the

Finance Department vide instructions/letter dated 20.03.1992 (Annexure P-2A), whereby the rates of NPA and incentives for higher qualifications to the Doctors serving in HCMS (Class I and II) were changed as under:

- | | | | |
|----|--------------------------------------|---|----------|
| a. | For basic pay upto Rs.3000/- | - | Rs.600/- |
| b. | For basic pay Rs.3000/- to Rs.3700/- | - | Rs.800/- |
| c. | For basic pay above Rs.3700/- | - | Rs.900/- |

It was also decided to grant advance increment at the time of joining of service as per details given below:

Incentives for Higher Qualifications

Qualifications	No. of increments
a. One year House job after MBBS	One
b. One year Post Graduate Diploma Following by one year House job	Two
c. Post Graduate Degree after one year House job	Four

a) The above rates of Non-practicing allowance would also be admissible to doctors of Medical College & Hospital, Rohtak and the cadre of Dental Surgeons in the State Govt., and Medical College and Hospital, Rohtak.

b) It has also been decided that NPA would be treated as part of pay for all purposes including the purpose of calculation of Dearness Allowance.

5. Learned counsel for the petitioners would further argue that the first incumbent on the post of Medical Officer, Industrial Health in the year 1959 was placed in the pay-scale of Rs.250-25-750+50 as non-practicing allowance at par with the pay-scale of Doctors who were selected as PCMS Class II. The following table depicts that the pay scale of Medical Officers (Industrial Health) as well as Doctors in the Health

Department were same and both were placed on the same status as well as the same pay scale besides other benefits:

Year	Pay Scales for Medical Inspectors/Medical Officers in the Labour Deptt.	Scales of Pay for Doctors in the Health Department	Status
1969	250-75-750 + Rs.50 NPA	250-75-750 + Rs.50 NPA	Class - II
1.2.69	400-1100 + 33% NPA	400-1100 + 33% NPA	-do-
1.4.79	900-1700	900-1700	-do-
1.2.81	940-2000	940-2000	-do-
1.1.86	2000-3500+25% NPA	2000-3500+25% NPA	-do-

6. *Per contra*, learned State counsel would argue that mere equality in nomenclature of the post does not bestow any right to claim equal pay for equal work as there are so many other factors which are required to be considered i.e., the nature of duties, quality of work, area of operation, sense of responsibility etc. He would further argue that in the case in hand, the area of operation of the petitioners is only confined to the activities that pertain to the industries under the Factories Act, 1948 and that too to see the violations and to propose the establishment of infrastructure of hygiene and atmosphere at the work place. He relies upon catena of judgments of Hon'ble the Supreme Court in the matters of ***Kshetriya Kisan Gramin Bank vs. D.B. Sharma and others, AIR 2001 SC 168***, ***Union of India vs. Tarit Ranjan Das, (2003) 11 SCC 658*** and ***Hukam Chand Gupta vs. Director General of Council of Research and others, (2012) 12 SCC 666*** to contend that mere similarity in designation or qualification does not entitle anyone to claim equal pay for equal work and that other relevant factors i.e., nature of duties, responsibility, reliability, experience, confidentiality and requirement of functional needs, all are required to be taken into consideration and only the expert

bodies like Pay Commission and Pay Anomaly Committees or the post sanctioning authority are equipped to adjudicate upon such matters. He would further argue that the HCSM doctors are required to perform various different nature of duties, administrative, clinical and their nature of duties are much wider and vast than the duties performed by the petitioners, who are confined only to some industrial areas. The petitioners are not required to perform clinical, surgical and emergency duties to save the lives of the citizens but only to suggest and maintain hygienic condition in the factory premises.

7. I have heard the learned counsel for the parties and with their able assistance, gone through the record of the case.

8. Before proceeding further, it would be pertinent to reproduce the relevant part of additional affidavit dated 19.01.1998 of petitioner No. 1, which is as under:

“4. That the respondent No.2 Administrative Secretary referred the matter to the respondent no.1-Chief Secretary and after receiving the comments recommended that the case of anomaly in the two cadres required and the same should be rectified and by giving the pay scale at the time of revision of pay scale as was given to the doctors of Health Department.

5. That respondent no.2 considered the matter as per noting from 12.8.93 to 24.8.1993 and had sent the same note to Finance Department for approval thereof. The true translation of the same is reproduced as under:-

“HARYANA GOVERNMENT

The officers may kindly peruse at the pre-page-34 the advice of the Chief Secretary (G.S.I. Br.). This case relates to the grant of pay scales to the Engineers and Doctors working in the Labour Department at par with Engineers and Doctors working in Public Works/ Health Department. The previous facts in respect of this case may please be seen at page-27. The qualification of the employed Engineers/ Doctors of Labour Department are at par/ similar with the appointed Engineers/ Doctors of the Public Works/ Health Department. Therefore, it is proposed to give the same pay scale as sanctioned to the officers in the Public Works/ Health Department. The proposed pay scales will

cause an insignificant financial burden of Rs.7395/- p.m. The information in this respect may please be seen in the statement given at pre-page 29-30.

2. If approved, as per advice of the C.S. the case may be sent to the Finance Department with the request that the Engineers/ Doctors posted in the labour Department be given the same pay scales as allowed to Engineers and Doctors of Public Works Department. After the approval from the Officers the note for Finance Department (Pay revision Branch) in duplicate will be submitted. For approval please.

Sd/-

12.8.93.

S.O.L. Sd/-

13.8.93.

U.S.L.E.

Sd/-

Received on

16.8.93.

16.8.93.

F.C.L.E. Sd/-

18.8.93

U.S.L.E. Sd/-

19.8.93

SOL Sd/-

19.8.93.

IL

The note in duplicate for the Finance 108714/ 18.08.1993. Department (Pay Revision Branch) is FCLE 19.8.93 placed at Flag 'Ka'. As per above approval 'Ka' be sent to the F.D.

Karan Singh Dalal

Pay Revision Branch

Sd/-

Serial No.1189

23.8.93

Dated: 26.8.93

SOL U.S.L.E.

Sd/-

Sd/-

Sd/-

24.8.93

24.8.93

25.8.93

FD (Pay Revision)."

9. The aforesaid contents of petitioner's affidavit have not been controverted.

10. Following facts/position thus emerge from the record:-

- (a) The post of Medical Officer, Industrial Health was created in Labour Department of joint Punjab. Prescribed qualifications for direct appointment to Haryana Civil Medical Service in Health Department as also to the post of Medical Officer, Industrial Health in Labour Department were/are the same namely (i) degree of MBBS or its equivalent recognized by

Medical Council of India; (ii) adequate knowledge of Hindi; (iii) candidates having experience of Industrial Occupational diseases, possessing Industrial hygiene practical experience of working in the factories will be preferred. As and when required by the Government, the appointee shall have to qualify in the short/long term course in Industrial hygiene at Calcutta/Bombay in any of the approved institutions and failure to qualify in the said course shall entail withholding of his annual increment.

- (b) In fact the first incumbent on post of Medical Officer, Industrial Health in Labour Department was taken from the Health Department. He was placed in the then pay scale of Rs.250-25-750+50 as non practicing allowance at par with PCMS-II doctors of Health Department.
- (c) On selection by the Haryana Public Service Commission, petitioner No. 1 was appointed and had joined as member of HCMS in Health Department in 1981. Later, he was selected as Medical Officer, Industrial Health in the Labour Department and joined as such on 09.02.1988. Thus, for joining the post of Medical Officer, Industrial Health in the Labour Department on 09.02.1988, petitioner No. 1 had foregone his seniority from 1981 and consequential promotional opportunities in the Health Department. Obviously, he did that to gain some benefit and not for loss. Petitioner No. 2 was directly appointed as Medical Officer, Industrial Health in the Labour Department in November, 1983.

- (d) On periodical revision of pay scales from 1969; 01.04.1979; 01.02.1981 and 01.01.1986, the pay scales and the non-practising allowance of Medical Officers Industrial Health in the Labour Department were kept and continued at par with those of the doctors in the Health Department till 30.04.1989.
- (e) The petitioners had thus a legitimate expectation of continuity and maintenance of the long standing parity of pay scale of the post of Medical Officer, Industrial Health since its creation and appointment of the first incumbent in 1956 in the Labour Department with the those of the doctors in the Health Department.
- (f) The State of Haryana again revised the pay scales of HCMS doctors (class I and II) in the Health Department and Engineers from 01.05.1989 vide notification dated 02.06.1989 Annexure P-2. Thereby, the HCMS (class I and II) doctors/Medical Officers in the Health Department were given the revised pay scale Rs. 2200-4999+NP; 3000-4500+NPA (after 5 years of regular service) 4100-5300+NPA (after 12 years of regular service). As against this, the gradation list Annexure P-1 of class I and class II officers of the Labour Department shows that Medical Officer, Industrial Health (class II) in the Labour Department was given the lower pay scale of Rs. 2000-60-2300EB-75-200-100- 3500+NPA 25%. This created disparity because of the lower pay scale of the Medical Officer, Industrial Health vis-a- vis the higher pay

scale given to HCMS Medical Officers in the Health Department.

- (g) It appears that at the time of revision of pay scales from 01.05.1989 vide order dated 02.06.1989 Annexure P-2 and subsequent grant of additional benefits vide letter/instructions dated 20.03.1992 Annexure P-2A, these facts and circumstances – as at (a) to (i) were either not brought to notice of or else they did not receive the due and deserved consideration at the hands of the competent authority. As a result, the anomaly arose and Medical Officer Industrial Health (class II) in the Labour Department was given the lower pay scale of Rs. 2000-60-2300EB-75-200-100-3500+NPA 25% vis-à-vis the higher pay scales as mentioned above given to the HCMS (class I and II) doctors/Medical Officers in the Health Department.
- (h) As shown in additional affidavit dated 19.01.1998 of petitioner No. 1, it had been recommended and proposed by respondent No. 2 vide note dated 12.08.1993/24.08.1993 that the doctors posted in the Labour Department be given the same pay scales as allowed to the doctors in the Health Department. Obviously, respondent No. 2 was then satisfied that the Medical Officers Industrial Health in the Labour Department deserved the same pay scales as allowed to the doctors in the Health Department. Of course, this proposal/recommendation of respondent No. 2 did not materialize.

- (i) However, when the petitioners knocked at the door of this Court by filing this petition for redressal of their grievance, the respondents (including respondent No. 2) changed track, adopted a legalistic approach and contested the claim saying that it is the absolute prerogative of the employer to fix/revise the pay scales of various posts and decide the question of parity of posts in one department with posts in another department.

11. Undisputedly, it is the absolute prerogative of the employer to fix/revise the pay scales of various posts and decide the question of parity of posts in one department with posts in another department. At the same time, it is to be remembered the State has to be a model employer. Its approach/decision affecting the employees should be rational, reasonable and fair to avoid undue heartburn and frustration to the employees. One of the known principles to be kept in view for revision of pay scales is that as far as possible, the existing pre-revision horizontal and vertical relativity of the various posts, their status and pay scales should not be disturbed.

12. In the light of aforesaid facts and circumstances, this Court is of the opinion that the petitioners' claim for restoration of parity with their counterparts in the Health Department deserves to be sympathetically re-considered for fresh decision by the respondents. For this purpose, a committee may be constituted which should include respondent No. 2, the concerned competent authority of the Finance Department and others, if any, deemed necessary for the purpose and after considering the report/recommendation of the

Committee so constituted, the respondents may take a fresh decision in this behalf.

13. Accordingly, the writ petition is disposed with a direction that the petitioners' claim for restoration of parity with their counterparts in the Health Department be re-considered for fresh decision by the respondents, by constituting a committee which should include respondent No. 2, the concerned competent authority of the Finance Department and others, if any, deemed necessary for the purpose by the respondents and after considering the report/recommendation of the Committee so constituted, a fresh decision in this behalf be taken on the petitioners' claim for restoration of parity with their counterparts in the Health Department. Necessary exercise be completed and fresh decision be taken within four months from the date of receipt of certified copy of this order.

14. Pending civil miscellaneous application, if any, also stands disposed of.

August 26, 2022
ashish/mahavir

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No