

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1743 of 2018

In
Civil Writ Jurisdiction Case No.18379 of 2015

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

... .. Appellant/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, Government of Bihar, Patna

... .. Respondent/s

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with
CIVIL REVIEW No. 417 of 2019
In
Letters Patent Appeal No.313 of 1998

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

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Health Commissioner, Government of Bihar, Patna.
3. Bihar State Basic Health Workers (Nyuntam) Sangh, through its President Sri Braj Kishor Naraian Singh, resident of Chirtagupta Path, Chandmari Road, Patna-20.
4. Sri Braj Kishor Naraian Singh, Son of Chhedi Singh, at present resident of



Chirtagupta Path, Chandmari Road, Patna-20.

5. Srinivas Prasad Srivastava, Son of Sri Mangal Lall, Resident of Sahpur Patti, P.O.-Shahpurpatti, District-Bhojpur.

... .. Opposite Party/s

Appearance :

(In Letters Patent Appeal No. 1743 of 2018)

For the Appellant/s : Mr. Ratnesh Kumar Singh, Advocate

For the Respondent/s : Mr. S.D. Yadav, AAG-IX

(In CIVIL REVIEW No. 417 of 2019)

For the Petitioner/s : Mr. Ratnesh Kumar Singh, Advocate

For the Opposite Party/s : Mr.S.D. Yadav, AAG-IX

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-09-2023

The issue agitated in the above cases is the pay parity claim raised by the Basic Health Workers (for brevity, ‘the BHWs’) as comparable to Auxiliary Health Workers (for brevity, ‘the AHWs’), the latter of whom is drawing a higher scale of pay.

2. A retired BHW has filed the appeal and the review; in an attempt to get over the rejection of the identical challenge made by the Association of BHWs before this Court. The learned counsel for the appellant also prayed that the review may be considered at first, especially since the pay parity claim has been found against BHWs by a Division Bench.



3. It is argued by the learned counsel for the appellant that the BHWs and AHWs discharge the very same duties and in that circumstance, there cannot be any discrimination between them with respect to the emoluments paid. It is asserted that the Government has recognized their duties to be similar and identical in which event there is no question of discriminating them and paying BHWs a lesser pay. Further, it is urged that the earlier writ petition filed by the Association numbered as CWJC No.6096 of 1992 was allowed by a learned Single Judge of this Court by order dated 26.03.1996, Annexure-3 produced in CWJC No.18379 of 2015, from which arises LPA No.1743 of 2018. An appeal filed as LPA No.313 of 1998 against Annexure-3 stood dismissed for default on 01.11.2006 as is evident from Annexure-7. In fact, prior to the dismissal of the LPA, the Fitment Committee had considered the issue and allowed the claim of parity between BHWs and AHWs. Later, the appeal dismissed for default was restored and a judgment passed, rejecting the claim, against which the review is filed. The counsel for the appellant asserts the principle of 'equal pay for equal work' and the admission of the Government that incumbents in both the posts discharge the very same duties.



4. The learned Additional Advocate General-IX Sri S.D. Yadav, points out that the decision of the Division Bench against which review is filed, has already been upheld by the Hon'ble Supreme Court. It is pointed out that the Fitment Committee and the Appellate Committee, headed respectively by a retired Judge of this Court and a retired Judge of the Hon'ble Supreme Court had found the claim to be not sustainable. It is urged that the mere fact of the duties being identical cannot be the sole reason to apply the principle of 'equal pay for equal work', especially when it depends upon various factors like, the source of appointment, the academic qualifications, the manner in which the appointments are made and so on and so forth. The learned Additional Advocate General asserts that both the appeal and the review are to be rejected. It is also submitted that the appellant who had continued in the pay scales applicable to BHWs cannot be heard to claim parity, after his retirement.

5. Admittedly, BHWs and AHWs are appointed based on different qualifications. While the AHWs were appointed from Matriculates, who have also put in a training of two years, the BHWs were sourced from Matriculates with Science who were imparted an intensive training course of



ten-and-a-half months. It is also to be stated that the Department, under which they worked found identity in the duties discharged by both BHW and AHW; which was not conceded to by the Fitment Committee nor was there any decision taken by the Government to confer such parity; though there were some isolated attempts so to do.

6. As far as the prior litigation is concerned, the Bihar State Basic Health Workers Sangh, an organization representing the cause of BHWs, was before this Court with CWJC No.6096 of 1992 claiming parity with AHWs. As we see from the judgment dated 26.03.1996, the Court had given the State sufficient opportunity by way of successive adjournments to apprise the Court of the result of a representation which was directed to be considered in an earlier writ petition. The State having failed consistently in placing the details and having conceded that the files are missing, the matter was considered on merits. It was found that there was no rationale behind the 5th Pay Revision Committee having not considered the recommendation of the State Government to grant similar pay scales for the two categories of employees. Immediately, we have to notice that what was relied on in the judgment was Annexures-2 and 3,



recommendations of the Government. A reading of the same indicates that considering the agitation carried on by BHWs, especially a *dharna* carried out in front of the Chief Minister's residence, a decision was taken to recommend pay parity to BHWs and AHWs. Annexure-3 is the recommendation placed before the 5th Pay Revision Committee which, however, stood declined. The judgment dated 26.03.1996 allowed the writ petition directing the BHWs to be placed in the same scale of pay as the AHWs.

7. The said judgment was placed before the Fitment Committee as is evident from the extract of its report, produced by the petitioner himself in CWJC No.18379 of 2015 as Annexure-10 along with I.A. No.6675 of 2018. The Fitment Committee elaborately considered the issue and also noticed the Pay Anomaly Removal Committee of 1990 which had discussed the case in detail. It was noticed that AHWs appointed earlier in the higher pay scale were interchangeable with the Extension Educators, latter of whom were Graduates. The AHWs were Matriculates with two years training and even at that time, the Health Department was of the view that the nature of work of AHWs was comparable to the work of BHWs. However, the Committee of 1990 was not in favour of



upgradation of the pay scales of BHWs and it was recommended that no further appointments should be made to the post of AHWs and the designation abolished.

8. The Fitment Committee, whose recommendation is produced as Annexure-10, also considered the duties and responsibilities and nature of work of the BHWs and AHWs. It was noticed that the AHWs right from 1947 was at a higher pay scale than the BHWs. AHWs were Matriculates who had undergone two years training under the Public Health Institute while the BHWs were Matriculates with Science and ten-and-a-half months training, which training was not in the standard of the training undergone by the AHWs. The Committee specifically noticed the second, third and fourth Pay Revision Committees, all of which consistently found that there was no case for pay parity. It was also noticed that in the Fitment Cum-Pay Revision Committee Report of the State Government it was observed that the Health Department had reported to the Committee that BHWs are posted in Health Sub-Centres and under the National Malaria Eradication Programme with in-service training being only for one year, while the nature of the work of AHWs were comparable to the Health Workers themselves. The 5th Pay Revision Committee



was of the opinion that the BHWs and AHWs cannot be equated. The 5th Pay Revision Committee had even opined that the Health Department should clarify how it was held that the nature of work of AHWs and BHWs would be similar, especially considering the earlier Pay Revision Committee recommendations. In fact, the Pay Revision Committee specifically refers to the *State of U.P. v. J.P. Chaurasia, AIR 1989 SC 19* to find that the nature of duties being comparable cannot be the sole consideration for equating pay scales.

9. The Fitment Appellate Committee also by a report, an extract of which is produced as Annexure-11, rejected the claim of pay parity. We are perfectly conscious of the fact that the recommendations of the 5th Fitment Committee were in conflict with the directions issued by the learned Single Judge. However, the same would not have any effect as of now since the appeal was restored and the Division Bench set aside the judgment of the learned Single Judge.

10. We have looked at the judgment passed by the Division Bench in LPA No.313 of 1998 dated 04.12.2008, highlighting the distinguishing factors; already mentioned by us hereinabove, and the recommendation of the Anomaly



Removal Committee being not in favour of pay parity between the BHWs and AHWs. The contention of the BHWs that their qualification is higher insofar as insistence for Matriculation with Science and the syllabus of training for ten and half months having included the entire syllabus of training of AHWs, was noticed. It was held that BHWs and AHWs from inception had different pay scales and though the qualification for AHWs is Matriculation, the two years training places their essential requirement at a higher pedestal than that of BHWs. Rejecting the contention of the entire syllabus being imparted to BHWs, it was held that ten and a half months programme cannot be comparable to a two years training programme. It was held that due to the differentiation in qualification and the resultant quality and value of work, BHWs and AHWs cannot be kept in the same pedestal. The learned Division Bench reiterated the well settled principle of Courts not interfering with the scales of pay granted on the basis of recommendations from expert bodies, like Pay Revision Committee and Pay Anomaly Committee; unless there are exceptional circumstances.

11. ***J.P. Chaurasia*** (Supra) was extracted to find that the equation of posts or equation of pay should be left to



the Executive Government and determined by expert bodies, who are to evaluate the nature of duties and responsibilities of posts. A determination by a Commission or Committee should not be tinkered with on a claim of equivalence; except when the claim for parity is disallowed on extraneous considerations, was the principle highlighted. ***State of Haryana v. Tilak Raj, (2003) 6 SCC 123*** was also referred to and relied upon, wherein it was held that equal pay for equal work is a concept which requires complete and wholesome identity between a group of employees, claiming identical pay scales with another group who is already earning such higher pay scales. Reliance was also placed on ***S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279, Governemnt of West Bengal v. Tarun K. Roy, (2004) 1 SCC 347***, to hold that merely for reason of the nature of work being the same irrespective of educational qualification, mode of recruitment, experience and other relevant factors, the principle of 'equal pay for equal work' would not apply. ***State of Bihar v. Bihar Veterinary Association, (2008) 11 SCC 60***, held that Courts should not ordinarily upset the recommendation of expert bodies like Fitment Committee.

12. We have to remind ourselves that we are not



sitting in appeal from the judgment of a co-ordinate Bench. In the review, the contours are very clear and interference is possible only if there are mistakes apparent on the face of the record. We find absolutely no ground to review the well considered judgment of the Division Bench in LPA No.313 of 1998. The review petition hence would stand rejected.

13. The LPA arises from a writ petition filed by the petitioner, after his retirement, for pay parity between the BHWs and the AHWs. The appellant's contention is that he was not aware of the dismissal of the earlier litigation initiated by the Association of BHWs. Be that as it may, now the review has been rejected, there is no question of consideration of the claim of parity in a writ petition filed by one of the employees, whose Association had failed to succeed in a similar claim raised in a writ petition. It is also to be noticed that the appellant is a person who has been drawing pay from the date of his appointment as entitled to BHWs; quite distinct and lower from that entitled to AHWs. The appellant speaks of many unrepresented memorials having been made before the authorities for pay parity. He admittedly did not take up a challenge before a court of law, any time when he was in service. He has chosen to claim pay parity after his retirement



and asserts that it is a continuing injury, which he is entitled to agitate. We are, however, not satisfied that the appellant’s claim for parity can be allowed, especially in the context of another Division Bench judgment, nor his claim can be addressed at this distance of time after the retirement itself.

14. The Letters Patent Appeal also stands dismissed.

15. Ordered accordingly.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

AFR/NAFR	NAFR
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