

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 10028 of 1993 (O&M)

Reserved On: 28.02.2023
Pronounced On: 03.07.2023

A.N.M's Association, Punjab and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.K.Malik, Senior Advocate
with Mr. Prabhjot Singh Warraich, Advocate
for the petitioner(s).

Mr. D.K.Singal, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. The petitioner Association along with its office bearers pray for the issuance of the direction to the respondents for grant of pay scale of ₹1410-2460 (initial start of ₹1,470/-) along with interest @ 18% per annum to be compounded annually to the members of the petitioner-Association who are working as Auxiliary Nursing and Midwife (hereinafter referred to as “the ANM”, later re-designated as the Multipurpose Health Workers (Female) (hereinafter referred to as “the MPHWF”). The entire basis of the case of the petitioners is on the fact that the pay scale of the Pharmacist (Previously known as “Compounder” or “Dispensers”) and Nursing Dai (re-designated as “Auxiliary Nursing and Midwife” and subsequently re-designated as “Multipurpose Health Worker (Female)”) was same from the

year 1962. It is claimed that in the year 1978, the Pharmacists were granted

the scale of ₹510-940, whereas the ANMs were granted the scale of ₹400-600.

2. By filing the detailed written statement, the State of Punjab has contested the petition while claiming that the qualification, job profile and the responsibilities of both the posts are separate and there is no conscious decision of the government to equate the posts of the MPHWF with the Pharmacists. Replication has been filed by the petitioners, whereas, counter to the replication has been filed by the State.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. While reiterating the aforesaid facts, the learned senior counsel representing the petitioners relies upon the judgment in *Kirpal Jeet v. The State of Punjab and Another 1987(4) SLR 594* and *Dr. Sukhdev Singh and Others v. The State of Punjab and Another 1991(2) SLR 336*, to contend that the direction is required to be issued for equation of the posts.

5. On the other hand, the learned State counsel, while drawing the attention of the Court to page 66 of the paper-book, submits that the qualifications, job profile and the responsibilities of both the posts referred to above are different.

6. This Court has considered the submissions while analyzing the arguments. It would be noted here that in the recent judgment passed by the Supreme Court in *State of Bihar and Others v. The Bihar Secondary Teachers Struggle Committee, Munger and Others (2019) 18 SCC 301*, after analyzing the entire case law on the subject, has laid down the following tests before the Court issues the directions to grant equation of

pay, which reads as under:-

“96. Analysis of the decisions referred to above shows that this Court has accepted following limitations or qualifications to the applicability of the doctrine of ‘equal pay for equal work’:-

96.1) The doctrine of ‘equal pay for equal work’ is not an abstract doctrine.

96.2) The principle of ‘equal pay for equal work’ has no mechanical application in every case.

96.3) The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.

96.4) The application of the principle of ‘equal pay for equal work’ requires consideration of various dimensions of a given job.

96.5) Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.

96.6) Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.

96.7) Equation of posts and salary is a complex matter which should be left to an expert body.

96.8) Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse

consequences.

96.9) Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

96.10) In a given case, mode of selection may be considered as one of the factors which may make a difference.”

7. In para 5 of the written statement, it has been pointed out that the petitioners who are working as MPHWS are given the uniform allowance, diet allowance, fixed travelling allowance and allowance for home delivery which is not payable to the Pharmacist. There is no denial to the aforesaid assertion of the State on behalf of the petitioners.

8. This Court has carefully read the judgment passed in ***Kirpal Jeet's case*** (*supra*). In that case, the Technical Assistant (Evaluation) sought the direction of the Court to grant pay parity with that of the Lecturer (Junior Scale). In that context, the Court held that the matter is fully covered by the judgment in ***Harsaran Singh v. The State of Punjab and Others 1984(2) SLR 384.***

9. In ***Dr. Sukhdev Singh's case*** (*supra*), a writ was issued to grant the pay scale to the Veterinary Assistant Surgeons equivalent to the pay scale of the Medical Officers and Dental Surgeons. The Court, after relying upon ***Kirpal Jeet's case*** (*supra*), allowed the writ petition.

10. At one point of time, the Courts were issuing directions to the State to grant same pay scale if previously the pay scales were same between the two posts, but subsequently, in revision, the aforesaid two posts were

granted the different pay scales. However, as already noticed, the Supreme Court in the recent judgment in *The Bihar Secondary Teachers Struggle Committee, Munger's case (surpa)* has laid down the certain tests. Hence, it would not be appropriate to follow the judgments passed by this Court in preference to the judgment of the Supreme Court. Under Article 141 of the Constitution of India, the law laid down by the Supreme Court is binding.

11. The learned senior counsel representing the petitioner has failed to draw the attention of the Court to any conscious decision taken by the government at any point of time equating the pay scale of the Pharmacist with that of the Multipurpose Health Worker (Female). The equation of the pay scales is a highly specialized work of the Experts who are the members of the Pay Commissions or Pay Anomaly Committees constituted from time to time. The Constitutional Court is not expected to issue directions in such matters unless the sufficient material is produced to support the claim.

12. Keeping in view the aforesaid discussions, this Court does not find it appropriate to issue the writ. However, the matter is left open for the Pay Commission or Pay Anomaly Committee to decide. Consequently, the present writ is disposed of.

13. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 03, 2023
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No