

CWP-22922-2016

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2023:PHHC:160452

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

CWP-22922-2016

Date of Decision:14.12.2023

SUKHWINDER KAUR AND ANR

..... Petitioners

Versus

**SANT LONGOWAL Institute OF ENGINEERING AND
TECHNOLOGY AND ANR**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Kartikey Chaudhary, Advocate
for the petitioners.

Mr. Vivek Singla, Advocate with
Ms. Urvashi Singh, Advocate
for respondent No.1.

Mr. Parminder Singh, Advocate for
Mr. Vivek Chuhan, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Article 226 of the Constitution of India are seeking setting aside of order dated 17.08.2016 (Annexure P-6) whereby claim of the petitioner for Grade Pay equal to similarly situated employees has been rejected.

2. The petitioners are working as Staff Nurse with respondent No.1 i.e. Sant Longowal Institute of Engineering & Technology (Deemed University) (for short 'Institute'). The petitioners, since 1986, are getting pay scale at par with Staff Nurses working with the Government of India.

The Government of India accepted recommendations of 6th Central Pay

Commission (for short 'CPC'). The recommendations were implemented w.e.f. 01.01.2006. The respondent, an autonomous body, also adopted recommendations of 6th CPC. The Staff Nurses working with Government of India, as per 6th CPC are entitled to Grade Pay of Rs.4,600/- whereas petitioners have been extended Grade Pay of Rs.4,200/-. The Registrar of Institute vide communication dated 12.09.2013, taking note of 6th CPC, requested the Ministry of Human Resources Development, Government of India to look into the matter. In the said communication, it was specifically mentioned that in terms of 6th CPC, the petitioners are entitled to Grade Pay of Rs.4,600/- because they are having qualification at par with Staff Nurses working with other Government Organizations. An agenda came to be put up before Board of Management which in its meeting dated 13.01.2014 considered the issue and directed the concerned official to supply information as required by Ministry. The respondent No.2-UOI vide communication dated 17.08.2016 rejected claim of the petitioners on the ground that education qualification prescribed for the post of Staff Nurse in Institute is not similar to Staff Nurse in Jawahar Novodaya Vidyalayas and Post Graduate Institute of Medical Education and Research (PGIMER), thus, petitioners are not entitled to Grade Pay at par with other Staff Nurses.

3. Learned Senior Advocate for the petitioners submits that petitioners up to implementation of 5th CPC were getting pay scale equal to Staff Nurses of other Organizations, however, without any plausible reason, the petitioners after implementation of recommendation of 6th CPC have been extended Grade Pay of Rs.4,200/- whereas equally situated employees are getting Grade Pay of Rs.4,600/-. The

discrimination is stark and it is violative of Article 14 of the Constitution of India.

4. Per contra, learned counsel for the respondents submits that concerned Ministry has issued Office Memorandum dated 30.09.2008 wherein question of pay scale of employees of quasi Government Organizations and autonomous bodies has been considered. The Government has decided that autonomous bodies are free to adopt recommendations of 6th CPC and there is no objection in adopting the Central Civil Services (Revised Pay) Rules, 2008, however, revised pay structure as incorporated in Section I and II of Part A of First Schedule to the Rules alone be adopted. As per Section I and II of Part A of Central Civil Services Revised Pay Rules, 2008, the petitioner are entitled to get Grade Pay of Rs.4,200/-. The Court cannot decide question of pay scale of employees. It is the Pay Commission which is Competent Authority to decide pay scale of employees working with different Organizations. In support of his contention, he relies upon judgment of Supreme Court in ***Union of India Vs. Indian Navy Civilian Design Officers Association and another 2023 (2) SLR 118.***

5. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

6. From the perusal of record, it is quite evident that respondent-Institute is of the opinion that petitioners are having qualification equal to qualifications of Staff Nurses working with other Organizations. The Institute is also of the opinion that petitioners deserve pay scale at par with Staff Nurses working with Government of India, however, Government of India has turned down claim of the petitioners

by impugned order dated 17.08.2016. The documents of the respondent-Institute relied upon by the petitioners are prior in time than impugned order, thus, it cannot be held that Government of India has not considered documents of the petitioners or respondent-Institute after decision of Government of India is forming different opinion.

The Supreme Court in ***Indian Navy Civilian Design Officers Association and another*** (supra) has considered a similar question. The Court has held that doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a Court of Law. The equal pay must be for equal work of equal value. The question of posts and determination of pay scale is the primary function of the Executive and not of the Judiciary. The Courts, therefore, should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commission which undertakes rigorous exercise for job evaluation. The relevant extracts of the judgment read as:

“3. As per the further case of the respondent-Association, up to the Fifth Central Pay Commission, all the pay scales of all the disciplines and all grades were the same, however, after the recommendations of the Fifth Pay Commission, the pay scale of Rs.7500-12000 was fixed for the CTOs, whereas the pay scale of Rs.7450-11500 was fixed for the JDOs. Since the pay scales of the feeder cadre had remained the same in all the disciplines, the respondent-Association had made representation to the appellant for the grant of revised pay scale of Rs. 7500-12000 to the JDOs as allowed to the CTOs (Design) consequent upon the implementation of the Fifth Central Pay Commission. The Ministry of Finance having rejected the respondent's proposal for upgradation of the pay

scale, the respondent-Association had filed the O.A. No. 1730 of 2003 before the Tribunal. The Tribunal vide the order dated 01.11.2004 disposed of the said O.A. with direction to the appellant to consider the parity of pay scale of JDOs along with CTOs by evaluating their duties and responsibilities and to pass a detailed speaking order.

14. In view of the afore-stated legal position, it clearly emerges that though the doctrine "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of Law, the equal pay must be for equal work of equal value. The equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional

avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service.

15. So far as the facts of the present case are concerned, it is not disputed that the Recruitment Rules governing the JDOs are as per the SRO 367 dated 08.12.1996, as amended by SRO 246 dated 21.11.2002, whereas the Recruitment Rules governing the CTOs (Design) are as per the SRO 132 dated 12.05.1982. The probation period in case of CTOs is longer than that of JDOs. The duties and responsibilities of both the posts are different and the promotional avenues also have different duration and different criteria. There was not a single error, much less grave error pointed out by learned Senior Advocate. Mr. Khurshid, in the fixation of the pay scales for the JDOs and CTOs, which would have justified the interference of the Tribunal.

16. Much emphasis was placed by the learned senior advocate Mr. Khurshid on the noting made by the Officer of the Naval Department in the file recommending pay scale of JDOs equivalent to that of CTOs, however, it may be noted that a noting recorded in the file is merely an expression of opinion by a particular officer, and by no-stretch of imagination such noting could be treated as a decision of the Government.”

7.

In the light of afore-cited judgment, this Court cannot direct

respondents to grant Grade Pay to the petitioners at par with Staff Nurses working with other Central Government Organizations, however, in the light of letters of the respondent-Institute, the petitioners are at liberty to pursue their grievances with Government of India and respondent-Institute.

8. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

14.12.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>