

**LPA-1120-2017 and
LPA-1139-2017
Date of decision:11.01.2023**

... Appellants

Versus

... Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO,
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Pardeep Solath, Advocate for the appellants.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

M.S. RAMACHANDRA RAO, J. (ORAL)

These two LPAs are preferred by the appellants challenging common order dated 29.03.2017 passed in CWP-1017-2013 and CWP-20860-2012.

The stand of the appellants

In the said Writ Petitions the appellants, along with other persons, who are appointed as Veterinary Surgeons and retired from service on various dates prior to 22.08.2012, had questioned Haryana Government Notification dated 20.02.2009 whereby there was a revision in pay scales of HCMS officials granting them higher pay scales after rendering 10 years of regular satisfactory service and after rendering 15 years of regular satisfactory service, but similar benefit was not given to the appellants.

The Veterinary Surgeons then filed a representation and claimed the

Thereafter their pay scale was also revised vide notification dt. 22.08.2012 from the date of the said notification and they were granted higher pay scale after rendering 11 years of regular satisfactory service but limited to 25% of the cadre strength. Similarly, the next higher pay scale was granted after rendering 17 years of service which was further limited to 20% of the cadre strength.

The appellants contended that the Veterinary Surgeons were being discriminated against in the matter of revision of pay scales since the benefit was granted to the HCMS officers w.e.f. 22.02.2009, but to the Veterinary Surgeons it was granted from 22.08.2012; while HCMS officers were granted higher pay scales after rendering 10 and 15 years of regular satisfactory service without limiting it any cap in the cadre strength, Veterinary Surgeons were discriminated against by granting them next higher pay scale on completion of 11 and 17 years of regular satisfactory service by placing a cap of 25% and 20%, respectively on the cadre strength.

It was contended that both under the 5th Pay Commission Report and 6th Pay Commission Report commissioned by the Government of India, pay parity was being maintained between HCMS Officers and Veterinary Surgeons, but the State of Haryana had denied such parity under the notification dated 22.08.2012 to the Veterinary Surgeons.

The stand of the State/respondents

Written statement was filed by the State opposing the said plea. It is the contention of the State that the posts of Veterinary Surgeons and HCMS Doctors are not comparable; that their qualifications and job profiles are different; admission and study of the MBBS/MS/MD Course is more

rigorous than that of the Veterinary Surgeons; availability of MBBS/MD for HCMS is also less as compared to Veterinary Surgeons.

It is contended that after the general revision of pay scales w.e.f. 01.01.2016, there were demands of the Members of the Veterinary Surgeons cadre, which were considered by the Pay Anomaly Commission; and after considering all facts and circumstances, the Pay Anomaly Commission recommended improved pay scales for this cadre opining that there is no logic in the demand of the Veterinary Surgeons for complete pay parity with HCMS Doctors though in the past i.e., before 20.02.2009 their pay scales were identical. Reliance was placed on a Government notification dated 20.04.2001 which states as under:-

“It is on account of the dynamics of shifting emphasis from time to time that importance of different services and the nature of duties, and responsibilities assigned to different services keep changing in order to priorities & significance and the Government has to respond to such changes in duties and responsibilities. Resultantly, the pay scales of certain categories of posts are changed as compared with what it used to be historically depending upon their nature of job and responsibilities. For example, the Fourth Pay Commission recommended higher pay scales for the employees serving the Education and Health sectors as compared to what was provided to employees in these sectors in the past. As a matter of fact, the 5th & 6th Pay Commission has further given a boost to the teaching staff in various categories in its recommendations. Since the Government has to respond to such changing realities, what could have been (mis)understood and (mis)interpreted as “parities” the past, get disturbed in the process.”

It is contended that the Committee felt that the demand of the Veterinary Surgeons had to be examined on its own merit and not on the basis of the parity with HCMS Doctors and the recommendation was made in the manner indicated in the notification dt. 22.08.2012.

It is further contended that equation of posts and determination of the pay scales is the primarily function of the Executive, and not of the Judiciary and therefore ordinarily a Court should not enter upon the task of job evaluation and it should be generally left to expert bodies like Pay Commissions.

The impugned order passed by the learned single Judge in the WP

Learned Single Judge considered the contentions of the parties and dismissed the Writ Petitions by a common order dated 29.03.2017.

He opined that merely because the State Government had maintained pay parity on two occasions in the past by accepting recommendations of the Central Pay Commissions, it does not mean that for all times to come the same pay parity has to be maintained between the Veterinary Surgeons and HCMS Doctors; and that for the purpose of fixation of pay, the Government has to take into consideration various factors including educational qualifications, rigorousness of the course and other factors as enumerated in the written statement.

According to him, the Government had kept in view the nature of the qualification of the Veterinary Surgeons, the nature of their duties and considering other factors did not agree to maintain pay parity between the Veterinary Surgeons working in Animal Husbandry and HCMS Doctors for all times to come; it is the prerogative of the Government to make changes in the pay structures; and there was a conscious decision of the State Government to make some distinction between HCMS Doctors and Veterinary Surgeons.

The instant LPAs

Assailing the same these two Appeals are filed by the appellants.

Consideration by the Court

Admittedly pay parity was given to Veterinary surgeons with HCMS officers vide the notification dt. 22.8.2012 prospectively, but not from the date the revised pay scale was given to HCMS officers i.e from 22.2.2009.

Also while HCMS officers were granted higher pay scales after rendering 10 and 15 years of regular satisfactory service (ACPs) without limiting it any cap in the cadre strength, Veterinary Surgeons were granted the next higher pay scale on completion of 11 and 17 years of regular satisfactory service (ACPs) by placing a cap of 25% and 20%, respectively on the cadre strength.

Questions to be considered are :

“ (a) whether appellants are entitled to get revised pay scales from 22.2.2009?

(b) whether the difference in period of service prescribed to get the ACP scale between the HCMS and Veterinary Surgeons and cap imposed on number of persons who can get it are justified or whether it is discriminatory?”

The counsel for the appellants contended that the earlier decisions to maintain parity between Veterinary Surgeons and HCMS Doctors with regard to pay scales was a Cabinet decision and the same cannot be altered by respondent No.2 without concurrence of the Cabinet. He also placed reliance on the decisions of ***R. K. Aggarwal and others Vs.***

State of Haryana and others(2013(4) S.C.T. 286 (Punjab and Haryana))

and *Union of India and Others Vs. Balbir Singh and Turn & Another (AIR 2018 (SC) 206)*.

We may point out that no such pleading was raised in the Writ Petition and such a plea cannot therefore be entertained at this stage i.e. 11 years after the Writ Petition is filed for the first time.

Next it is contended by the counsel for the appellants that the Haryana Government had accepted the 6th Pay Commission Report of Government of India in toto and therefore the appellants and other retired Veterinary Surgeons should be treated on par with HCMS officers with regard to the pay scale w.e.f. 01.01.2006 and also ACPs.

We may point out that the appellants themselves had filed extract of the report of the Pay Revision Committee of the Haryana Government dated 23.12.2008 signed by the Chairman and three Members (as Annexure P-6 in CWP-1139-2017). It merely states that one of the aspects considered while making recommendations by the said Pay Revision Committee was also the 6th Central Pay Commission Report, but other aspects such as Government of India decisions, views of various Departments and Employees Associations in the State, were also taken into account. Thus this document does not support the plea of the appellants that the Govt. of Haryana had "adopted"/accepted in toto the 6th Pay Commission recommendations.

Counsel for the appellants however contended that there is no denial of the plea taken in Para-5 of the Writ Petitions by the appellants that the Government of Haryana had accepted in toto the 6th Pay Commission Report of the Government of India in the written statement of the respondents.

We do not agree with the said contention since the plea of the appellants is not supported by any evidence and Annexure P-6 does not support their plea.

Also the tone and tenor of the written statement clearly suggests that the Government had reserved to itself, in the notification issued on 20.04.2001, its prerogative to disturb certain parities which were in existence in the past on account of shifting emphasis from time to time on importance of different services, nature of duties and responsibility assigned to different services and changing in order of priorities of the State Government. The written statement specifically states that the post of Veterinary Surgeons are not comparable with HCMS Officers and pay parity, therefore the same was not maintained.

Counsel for the appellants then relied on the decision of the Supreme Court titled as ***State of Punjab and Others Vs. Senior Vocational Staff Masters Association & Others*** (2017) 9 SCC 379).

In the said decision it was held as under:

“25. since the very inception, the educational qualification for appointment as Vocational Masters had been a degree or a diploma with three years’ experience as both the qualifications were placed on a par. All persons were appointed by a common process of selection and they teach the same classes, performing the same work. No distinction can be brought about between the persons so appointed. It is only subsequently that the appellants designated some of the Vocational Masters as Vocational Lecturers and brought about an artificial distinction between the two. Even on account of redesignation of the degree-holders and postgraduates as Vocational Lecturers, there was no change in the responsibilities and the financial matters as between the degree-holders and diploma-holders before the alleged notification which fact is duly admitted by the State. There is no distinction between the Vocational Lecturers and Vocational Masters and they form one unified cadre and class. There cannot be any discrimination between

similarly situated persons, whether by way of a government notification or any amendment in the Rules. As far as nature of work is concerned, it is stated that the Vocational Masters are discharging their duty in the Senior Secondary Schools in the engineering/non-engineering trades and have the technical qualifications while the Vocational Lecturers are also discharging the same duties in the same schools. Both Vocational Masters and Lecturers are teaching the same classes i.e. 10 + 1 and 10 + 2 and hence the nature of work, responsibilities and duties being identical and the pay scales were also kept identical since 1978 onwards.

26. The principle of equality is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39-A, 43 and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice-social, economic and political, by inter alia, minimising monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of the 4th Pay Commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eye of the law if no reasonable justification is offered for the same.

27. We are conscious of the fact that a differential scale on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of employees are treated as equal initially, they should continue to be so treated unless a different treatment is justified by some cogent reasons. In a case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continued to be identical as they were initially laid down, then the Court shall be reluctant to

accept the action of the authority in according a differential treatment unless some good reasons are disclosed.”

The ratio in the above judgment is that if two categories of employees are treated as equal initially they should continue to be so treated unless a different treatment is justified by some cogent reasons, and that *if the basic qualifications and job requirements continued to be identical* as they were initially laid down, then the Court should be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed.

We are of the opinion that the said decision is distinguishable. Unlike in the said decision, Veterinary Surgeons and HCMS Doctors have different educational qualifications and different nature of duties. So the said posts are not comparable, and cannot be said to be on parity. So merely because in the past at some point of time pay scale parity was provided for, there is no bar on the State Government to change the said pattern and treat them differentially by giving them revised pay from different dates and ACPs on completion of different periods of service and with a cap on number of Veterinary Surgeons who should get them.

The decision of this Court titled as ***State of Punjab and others Vs. Er. R.K. Aggarwal and others*** (dt. 29.07.2019 in LPA-1991-2014) cited by the counsel for the appellants is also distinguishable because in that case there was a claim for parity of pay scale between Engineers working in Public Work Department and Junior Engineers working in the Soil Conservation Department, and the Court held that uniformity in pay structure should be maintained for all common categories who have

identical qualification and discharge same or similar duties which is not the case in the instant appeals.

So points (a) and (b) are answered against the appellants.

For the aforesaid reasons, we do not find any merit in the appeals and the same are accordingly dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

11.01.2023
Sonia

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No