

W.P.A. 12105 of 2015

**Sri Abhijit Banerjee & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Ujjal Ray
Mr. Sk. Abdur Rahim

.... for the petitioners

Mr. Alak Kr. Ghosh
Mr. Arijit Dey

...for the KMC

In the writ petition order dated 2nd December, 2014 passed by the Municipal Commissioner, Kolkata Municipal Corporation is under challenge whereby the Municipal Commissioner being the respondent no. 3 has spurned the prayer of the petitioners to grant identical scale of pay which was enjoyed by the Medical Technologist (Laboratory) (Gr-III) and Medical Technologist (Radio Diagnostics) (Gr-III) who are working in Subordinate Health Services under the Government of West Bengal.

Mr. Ujjal Roy, learned advocate has strenuously argued while throwing challenge to the order dated 2nd December, 2014 passed by the respondent no. 3 that petitioners who were working as Laboratory Technicians and X-Ray Technicians in the Kolkata Municipal Corporation (hereinafter referred to as “KMC”) were discharging identical duties similar to the duties which

were performed by their counterparts working in the Subordinate Health Services under Government of West Bengal. Therefore, petitioners are entitled to receive identical scale of pay like that of the employees working under Subordinate Health Services Government of West Bengal.

In order to substantiate the claim of the petitioners circular letter dated 18th August, 2021 issued by the Director of Health Services, West Bengal has been relied upon which is at page 25 of the affidavit-in-reply used by the petitioners. In laying stress on the relevant part of the impugned order dated 2nd December, 2014 it has also been submitted that had there been proper deliberations before the 4th Pay Commission then necessary recommendations could have been issued by the 4th Pay Commission in order to bring parity in between the scales of pay of the petitioners and their counterpart working under Subordinate Health Services Government of West Bengal.

Lastly, reliance has been placed on the judgment of the Apex Court reported in **(1982) 1 SCC 618 (Randhir Singh Vs. Union of India & Ors.)** in order to substantiate the claim of the petitioners.

KMC is represented by Mr. Alak Kr. Ghosh, learned advocate who has opposed the prayer of the petitioners by placing reliance on the order of the respondent no. 3 dated 2nd December, 2014 and has also made

submission in order to defend the decision of the respondent no. 3.

For better understanding of the claim laid by the petitioners in the present case relevant prayers couched in the writ petition are required to be considered and as such prayers (a) and (b) of the writ petition are quoted herein below:

- “a) A writ and/or writs in the nature of mandamus do issue directing the respondents to withdraw, cancel, set aside, rescind and recall the impugned order dated 2nd December, 2014 passed by the Municipal Commissioner, Kolkata Municipal Corporation whereby the prayer of the petitioners for higher scale of pay at par with the State Government employee was rejected;*
- b) Writ or writ in the nature of Mandamus directing the respondents to grant the petitioners the benefit of higher scale of pay at par with State Government employee on the doctrine of equal pay for equal work since the petitioners are discharging similar duties, shouldering similar responsibilities like that of State Government Employees;”*

Petitioners have precisely challenged the legality and validity of the order of the respondent no. 3 dated 2nd December, 2014 and at the same time have prayed for sanction of identical scale of pay as being enjoyed by Medical Technologist working under Subordinate Health Services. In order to appraise the prayer of the petitioners to grant identical scale of pay primarily two tests are required to be applied first is whether both the categories of employees working in two different establishments were required to possess similar educational qualification for their appointment in the

relevant posts and secondly whether nature of job of these two categories of employees are similar or not.

Having perused the order dated 2nd December, 2014 passed by the respondent no. 3 it appears that respondent no. 3 has considered the aforesaid two criteria in details in order to find out whether the aforesaid two considerations are fulfilled or not. While trying to find answer to the first criterion relating to requisite qualification an employee is required to possess at the time of recruitment in two different establishments it has been recorded by the respondent no. 3 that for being appointed as Laboratory Technicians and X-Ray Technicians in KMC the requisite qualification at the material point of time was Madhyamik Examination pass from the West Bengal Board of Secondary Education or its equivalent and diploma/certificate as Laboratory Technicians from recognized institutions. Whereas for recruitment of Medical Technologist in Subordinate Health Services requisite qualification was High Secondary Pass (10+2) or its equivalent with Physics, Chemistry and Biology and two year diploma in Laboratory Technology recognized by the Government of West Bengal or one year diploma course in Laboratory Technology from any institution/university recognized by the Government of West Bengal where basic qualification for undergoing the said course is B.Sc.

Therefore, on comparative analysis of the two separate educational qualifications required for being

appointed in two different establishments it appears that when for being appointed in KMC as Laboratory Technicians/X-Ray Technicians basic qualification which was needed was Madhyamik Examination (Class X) pass whereas for being appointed as Medical Technologist under Subordinate Health services requisite basic qualification was Higher Secondary (10+2) pass in addition thereto the specification of diploma is also not similar. In case of appointment in KMC one year diploma was sufficient whereas in case of appointment of Medical Technologist in Subordinate Health Services two year diploma in Laboratory Technology was required and duration of the course of diploma may be one year where the candidate is having basic qualification of B.Sc pass. Therefore, having considered the requisite qualifications for being recruited in two different establishments it can safely be concluded that requisite qualifications are not similar.

The respondent no. 3 also found that the nature of job which was rendered by the employees in two different establishments is also different and it has been recorded that the employees under Subordinate Health Services were accountable for wider range of function and job specifications as compared to KMC employees. KMC Laboratory Technicians dealt mainly with jobs related to collection, preparation and testing of blood and sputum samples only whereas Medical Technologist (Laboratory) under Subordinate Health Services were engaged in

preparation of samples and identification of bacteriological, serological and other pathological works related to urine, stool, seminal fluid etc. It is also recorded in the impugned order that X-Ray Technicians employed in KMC and Health Department also were catering different duties, when KMC employees were engaged in duties related X-Ray only as required in the KMC infrastructure while State employees performed wider range of radiographic works related to X-Ray machines, telegram therapy machine, radium and cobalt tubes and needle etc.

Having considered the aforesaid differences as highlighted by the respondent no. 3 in nature of job which was performed by the employees of two different establishments and the difference in requisite educational qualifications for being recruited this Court does not find that petitioners are entitled to receive identical scale of pay as enjoyed by the Medical Technologist working under Subordinate Health Services, Government of West Bengal.

Though an attempt has been made by the learned advocate representing the petitioners to rely upon circular dated 18th August, 2021 since impugned order was passed by the respondent no. 3 on 2nd December, 2014 subsequent circular dated 18th August, 2021 having no retrospective operation cannot come in aid of the petitioners.

It has also been contended on behalf of the petitioners that had there been proper deliberations before the 4th Pay Commission then the situation could have been different but that is not the case made out in the writ petition touching upon consideration of the recommendation made by 4th Pay Commission. This Court has already in the preceding paragraph has quoted the relevant prayers which are not related to consideration of the deliberations before the 4th Pay Commission or for implementation of the recommendations of 4th Pay Commission in order to consolidate pay of the petitioners being employees of KMC.

Reliance has been placed on **Randhir Singh** (supra) but in consideration of the ratio laid down in the said judgment it appears that Court was considering the different pay scales enjoyed by the petitioner working as driver-constable in the Delhi Police Force and the drivers in the service of Delhi Administration. The Apex Court decided the issue taking note of the stand taken by the respondents that since the two group of employees were working in two different departments of the government is enough to fix different scale of pay by the respondent authorities irrespective of duties and responsibilities. Apex Court found that the criteria relating to upgradation of the scale of pay of the petitioner in consideration of the scale which was enjoyed by other group of employees were fulfilled since it was recorded

that all things are equal and the persons were holding identical posts ought not to be treated differently in the matter of their pay merely because they belong to two different departments. It was also held therein if the officers of the same rank performed dissimilar functions and the powers, duties and responsibilities of the posts held by them vary such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same. Here the case in my hand is completely different where respondent no. 3 demonstrated by passing the impugned order dated 2nd December, 2014 that requisite qualification for being appointed is different so far employees of two different establishments are concerned and their nature of work is also different.

In aforesaid conspectus this Court does not find any flaw in the order of the respondent no. 3 dated 2nd December, 2014.

Accordingly, the writ petition stands dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)