

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

LPA NO. 1282 OF 2023 (O&M)

DATE OF DECISION : 26.02.2024

**A.N.M's Association and another
Versus**

...Appellants

State of Punjab and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

**Present : Ms. Anju Arora, Advocate,
For the appellants.**

LAPITA BANERJI, J.

Consideration in the present appeal is of an order dated July 03, 2023 passed by the Hon'ble Single Judge in CWP No.10028 of 1993, whereby the appellants/writ petitioners prayer for issuance of a direction on the respondents for grant of scale of pay of Rs.1410-2460 (initial start of Rs.1470/-) along with interest @ 18% per annum to be compounded annually, was rejected.

2. The members of the petitioner No.1-Association are working as Multi Purpose Health Workers (Female) for short, MPHWs (F) previously designated as Auxiliary Nursing and Midwifery (for short, "ANM") and before that designated as Nursing Dais. The petitioners' claim that in 1962 when they were working as Nursing Dais, their scale of pay (75-100) was at par with the Compounders (75-100). In 1962, the Nursing Dais were re-designated as 'ANMs' and the Compounders were re-designated as 'Pharmacists'. In 1978, an anomaly was created whereby the Pharmacists were given a higher scale of pay (510-900) and

the ANMs were given a lesser scale of pay (400-600) and so the petitioners prayed for pay parity with the Pharmacists.

3. The respondent-State contested the writ petition by filing a detailed written statement stating that neither the qualifications nor the job profile nor the responsibilities of the two posts were same and there was no conscious decision by the government to equate the post of MPHWs (F) with the post of Pharmacists.

4. The Hon'ble Single Judge came to the finding that it was not brought to the notice of the Court that a conscious decision was taken by the government for equating the pay scale of the Pharmacists with that of MPHWs (F). The equation of pay scale is a highly specialised work of the experts who are members of the pay commissions or pay anomaly committees constituted from time to time and constitutional Courts should not normally issue directions in such matters unless sufficient materials were produced before it to support the claim.

5. Furthermore, the Single Bench referred to the decisions relied on by the petitioners in *Kirpal Jeet v. The State of Punjab and another* 1987 (4) SLR 594 which relied on *Harsaran Singh v. The State of Punjab and others* 1984 (2) SLR 384 and observed that at one point of time the Courts were issuing directions to the State to grant same pay scale in the event the same was previously granted to two different posts, however, the recent judgments of the Hon'ble Supreme Court of India in *State of Bihar and others v. The Bihar Secondary Teachers Struggle Committee, Munger and others* 2019 (18) SCC 301, laid down the law succinctly which was a binding precedent under Article 141 of the Constitution of India.

6. This Court has taken into consideration the arguments made by the parties and materials placed on record. It appears that from 1978 onwards there was a difference in pay scales between Pharmacists and ANMs. The said difference was also continued by the 3rd Pay Commission in 1986. Pursuant to the recommendations of the 3rd Pay Commission, the Pharmacists were granted a pay scale of Rs.1410-2460 (initial start of Rs.1470/-), whereas the ANMs were granted pay scale of Rs.950-1800 (initial start of Rs.1000/-). Perusal of the written statement would show that for the post of Pharmacists a candidate's basic qualification had to be 10+2 Pre-Medical (for undergoing pharmacy training), whereas for undergoing ANM training the educational qualification was only Matric. The Pharmacists posted in civil hospitals were required to work around the clock whereas the ANMs did not have to perform such duties. It was also further stated that period of training for Pharmacists was two years whereas for ANMs was one and a half years.

7. This Court has also noted that the petitioners were given due chance of representation and hearing before the 3rd Pay Commission. The pay commission, being an expert body, is best suited to analyse the nature of work and responsibilities of the post and it is not for the Court to determine the same on averments made by the parties on affidavits. The similarity of scale, effort and responsibility had to be proved by the petitioners who were alleging discrimination and since the contentions of the petitioners were rejected by the 3rd Pay Commission, it would not be prudent for the Court to get into the same. Furthermore, this Court agrees with the stand taken in the written statement that since there was no pay commission at the time the written statement was filed, the petitioners

were not entitled to equity or parity of pay scale with the Pharmacists but as and when a pay commission is appointed for revision of pay for the Punjab government employees, the petitioners could claim for revision of their pay as canvassed in the writ petition.

8. This Court finds no reason to differ with the stand taken by the respondent-State in the written statement and the observations made by the Hon'ble Single Judge as the directions passed in the ***State of Bihar*** (*supra*) has to be followed in cases of pay parity. Such directions are as follows :

“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.”

9. Beneficial references are made to few judgments to appreciate the consistent view of the Hon’ble Supreme Court. In a recent judgment, ***State of Madhya Pradesh v. R.D. Sharma, 2022 (13) SCC 320***, it has been held by the Hon’ble Apex Court that the consistent view of the Court was that the equation of posts and determination of pay scales is primary function of the executive and not the judiciary. Therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the pay commissions. Such job evaluation exercise may include various factors including the relevant dates and scales for evaluating performance of different groups of employees and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it is more prudent to give such task of equation of posts and determination of pay scales to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error has crept in while fixing the pay scale of a given post and Court’s interference was absolutely necessary to do such injustice.

10. In ***State of Haryana v. Haryana Civil Secretariat Personal Staff Association, 2002 (6) SCC 72***, it has been held that “equal pay for equal work” is not a fundamental right vested in an employee though it is a constitutional goal to be achieved by the government. In ***State of West Bengal v. West Bengal Minimum Wages Inspectors Association, 2010 (5) SCC 225***, the Hon’ble Apex Court while setting-aside the judgment

of Division Bench held that it was well settled that parity could not be claimed merely on the basis that at an earlier point in time the *subject post* and the *reference category post* were carrying the same scale of pay. In fact one of the functions of the pay commission is to identify the posts which deserve higher scale of pay than what was being enjoyed with reference to their duties and responsibilities and extend such higher pay scale to those categories of posts. The relevant paragraphs are extracted hereinafter:

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22. The claim in the writ petition was not based on the ground that subject post and reference category posts carried similar or identical duties and responsibilities but on the contention that as the subject post holders and the holders of reference category posts who were enjoying equal pay at an earlier point of time, should be continued to be given equal pay even after pay revision. In other words, the parity claimed was not on the basis of equal pay for equal work, but on the basis of previous equal pay.

23. It is now well settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts.

24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.

25. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the

benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust.

26. The respondents have neither pleaded nor proved that the holders of post of Inspectors (Cooperative Societies), Extension Officers (Panchayats) and KGO-JLRO (Revenue Officers) were discharging duties and functions similar to the duties and functions of Inspector, AMW. Hence, the prayers in the original writ petition could not have been granted. In fact, that is why the learned Single Judge rightly held that whether the posts were equivalent and whether there could be parity in pay are all matters that have to be considered by expert bodies and the remedy of the respondent was to give a representation to the authority concerned and the court cannot grant any specific scale of pay to them.

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11. In that case also the 3rd Pay Commission did not accept the representation of the Inspectors/AMWs seeking a higher pay scale like the petitioners in the present case. The claim in the present case is only on the basis that *subject post* holders/ANMs at present MPHWs (F) at an earlier point in time were enjoying equal pay with the holders of *reference category post* holders (Pharmacists/Compounders) and should have continued to be given pay parity even after pay revision. In other words, parity is primarily claimed on the basis of *previous equal pay* and not on the basis of *equal pay for equal work* which was not permitted in *State of West Bengal (supra)*.

12. In *The Secretary, Finance Department v. West Bengal Registration Service Association*, AIR 1992 SC 1203, way back in 1993, it was held as under :

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12. We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the

executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made

by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice.
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13. In ***Union of India V. Indian Navy Civilian Design Officers***

Association, 2023 SCC Online SC 173, the settled position is reiterated.

Relevant extract reads as follows :

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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.

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14. Furthermore, this Court also notices that out of 09 writ petitioners, only 02 have preferred the present appeal. The appellant No.1 is a registered association whereas appellant No.2, who is claiming to be the President of the appellant No.1 association is aged 68 years and has long retired as an ANM. In such circumstances, the *locus standi* of the appellants to maintain the present appeal is also seriously doubted.

15. In view of the aforesaid discussion, this Court is of the view that the judgment and order of the Hon'ble Single Judge does not suffer from any infirmity and merits no interference. Consequently, the appeal is disposed of in terms of the impugned order dated July 3, 2023 whereby the grievance raised in the writ petition was left open to be considered by the pay commission or pay anomaly committee, if approached. Connected applications, if any, are also accordingly disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

FEBRUARY 26, 2024
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Whether speaking/reasoned : Yes
Whether reportable : No