

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.1400/2004, CMP No.1401/2004.

Date of decision : 04.11.2010

Narinder kumar and others v. State of J&K and others.

Coram:

Hon'ble Mr. Justice Sunil Hali, Judge.

Appearing counsel:

Mr. Sunil Sethi, Sr. Adv. with Mr. Ravi Dogra, Adv. for the petitioners.

Mrs. Shaishta Hakim, Dy.AG for the respondents.

i/ Whether to be reported in : Yes/No.
Press, Journal/Media.

ii/ Whether to be reported in : Yes/No.
Digest/Journal.

The petitioners are working as Pharmacists and Theatre Assistants with the respondents, Health and Medical Education Department of the State Government and are claiming parity of pay and grade with the Sanitary Inspectors. The basis of such claim is that on their appointments as Sanitary Inspectors and Pharmacists, they have to undergo one year's compulsory training at AMT School and all of them are imparted similar training for similar period. It is further contended that pay scales of the post of Sanitary Inspectors and Pharmacists/Theatre Assistants was same i.e. Rs.220-430 (Rs.1200-2040 revised).

The Sanitary Inspectors are stated to have filed writ petition before this Court and on the basis of the judgment passed in their favour, they were placed in the higher pay scale of Rs.1760-3200 (pre-revised) where the petitioners

who were having the same qualification as that of Sanitary Inspectors were not given such benefit.

After having failed to seek parity with the Sanitary Inspectors, the petitioners are stated to have filed writ petition (SWP No. 2464/2001) which was disposed of vide order dated 02.03.2002 whereby directions are stated to have been issued to the respondents to consider the case of the petitioners. In pursuance to the directions of the Court, Order No.907-HME of 2003 dated 21.08.2003 came to be issued by the Government, whereby claim of the petitioners has been rejected. It is this order which is impugned in the present writ petition.

The directions issued by this Court in SWP No.2464/2001 was to accord consideration to the petitioners as has been done in case of Mohammad Yousuf Itoo and others vs. State and others in SWP No.3054/94 decided on 22.09.1998. In that writ petition the Court had directed to examine the case of the petitioners and in pursuance of the directions of the Court, their claim was not accepted by the Government and came to be rejected vide Government Order No.388 of 1999 dated 04.08.1999.

On the other hand, the stand of the respondents is that the case of the petitioners was examined in compliance to the directions of the Court dated 02.03.2002 and found that since the nature of job of Sanitary Inspectors is different than that of Pharmacists, therefore, the case of the petitioners in SWP No.2464/2001 is similarly circumstanced with petitioners in SWP No.3054/94, therefore, the claim put forth by the petitioners was found without merit and hence rejected. The respondents have further contended that Pharmacists have to look after the curative aspects of health care system whereas the Sanitary Inspectors have to

strengthen the preventive and promotive aspects of health care system and there is no equality and compatibility between these two posts. The question of doctrine of equality arises where employees are equal in every respect, in educational qualification, duties, functions and measures of responsibilities. Since functions and measure of responsibilities of both the posts are different so the petitioners cannot be treated at par with Sanitary Inspectors in respect of pay scales. The equation of pay is the prerogative of the Government and is to be determined by expert bodies who are the best judges to evaluate nature of duties and responsibilities attached to the posts.

I have heard learned counsel for the parties and perused the record.

There is no dispute with respect to the proposition that equality arises where employees are equal in every respect, in educational qualification, duties, functions and measures of responsibilities. The role of the Court cannot be extended to examine the issue regarding the nature of the duties, functions and measure of responsibilities performed by the petitioners which is the sole domain of the executive. Merely stating that the petitioners and Sanitary Inspectors were initially appointed in the same grade and had undergone same training is not sufficient to claim doctrine of equality. This issue is no longer res-integra.

In case titled State of Bihar and others v. Bihar Veterinary Association and others reported in 2008 AIR SCW 1920, their lordships while referring the judgment in S.C.Chandra and others at para no.4 held as under:-

“.... Finding out whether there is complete and wholesale identify, the proper forum is an expert body and not the writ court, as this requires extensive

evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. The courts must realize that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter which is for the executive to discharge. Granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences.

In case *S.C.Chandra and others v. State of Jharkhand and others* reported in 2007 AIR SCW 5480, wherein their lordships have held as under :-

“26. In our opinion fixing pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State. Realizing this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identify between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay).

27. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principles of equal pay for equal work cannot apply vide *Government of West Bengal v. Tarun K.Roy and others*, (2004) 1 SCC 347.”

From the import of the aforesaid judgments, it clearly emerge that merely appointing in the same grade and having to undergo same training is not sufficient to claim doctrine of equality. Equality arises where employees are

equal in every respect, in educational qualification, duties, functions and measure of responsibilities. In the present case, all that has been claimed is that they are working in the same pay scales and had undergone the same training would not be a ground to claim equal pay for equal work.

Regarding impugned order it clearly states that the cases of the persons on whose analogy is sought, has been rejected by the respondents, consequently claim of the petitioners cannot be accepted.

In view of the above, there is no merit in this petition, which is, accordingly, **dismissed** along with connected CMP(s).

(Sunil Hali)
Judge

Jammu.
04.11.2010
'Madan'