

(2007) 08 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No's. 584 of 1989 and 3521 of 1994

Association of Chemists, M.S.E.B.

APPELLANT

Vs

Maharashtra State Electricity Board and Another

RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Citation : (2007) 6 ALLMR 71 : (2008) 3 BomCR 369 : (2007) 115 FLR 912 : (2008) 1 MhLj 124

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : V.D. Muley, in W.P. No. 584 of 1989 and C.P. Sen in W.P. No. 3521 of 1994, for the Appellant; R.K. Deshpande, for the Respondent

Judgement

R.C. Chavan, J.—These petitions, by Association of Chemists and Federation of Indian Pharmacists, working with respondent Maharashtra State Electricity Board, make out a grievance about injustice caused to them in the matter of pay scales.

W.P. No. 584/1989.

2. The petitioners in Writ Petition No. 584/1989, the Association of Chemists, is aggrieved because the respondent-Board disturbed their parity in pay scales with corresponding posts in engineering cadre, when revised pay scales were brought into force from 1-4-1980. It is not in dispute that prior to 1-4-1978, there was parity in the pay scales of Chargeman Grade-II with Laboratory Assistant, Chargeman Grade-I with Junior Chemist, Deputy Executive Engineer with Senior Chemist and Executive Engineer with Executive Chemist.

3. From 1-4-1978 the Assistant Shift Engineers started getting more pay than Junior Chemist and Senior Thermal Engineers were given higher pay scale than Senior Chemist. From 1-4-1980, however, the whole picture changed and except for the Executive Engineer and Executive Chemist the parity in all other posts was disturbed and the posts in the Engineering Department were placed in

substantially higher pay scales as compared to their counter-parts who were working as Chemists.

4. The Association of Chemists filed Writ Petition No. 46/1987 which was disposed of by judgment dated 10th March, 1988 upon a statement on behalf of respondent that the representations regarding disparity in pay scales of Chemists and Engineers will be considered by the Board.

5. The respondent Board has opposed the prayers petitions and claim for parity in both the petitions on following points:

(i) The parity between the Chemist and Engineers prior to 1-4-1980 was a mere co-incidence and that at no point of time the parity was not arrived at upon determination of said aspect by experts, or Pay Equivalence Committee.

(ii) Therefore, since the parity was a mere co-incidence there was no question of adhering to parity in vogue which fact was a sheer coincidence.

(iii) Conditions of service, qualification, duties, responsibilities and functions of engineers and chemists are not shown to be similar and therefore, there is no justification in making any claim for parity.

(iv) The wage revision in the Board depends on the kitty available for being shared by various groups of employees and this exercise is carried out after negotiations with the Association or Unions of employees.

(v) The President and Secretary of the Association of Chemists were amongst the parties to such various wage revision settlements including settlement dated 10th September, 1995 and had signed settlement and therefore, they were not entitled to have the issues reopened.

The respondent Board therefore, urged upon rejection of the claim of Chemists.

W.P. No. 3521/1994.

6. Writ Petition No. 3521 of 1994 is filed by the Federation of Indian Pharmacists. This petition represents a grievance about anomaly in the pay scales of Pharmacists working with respondent Electricity Board. According to the petitioner the Federation of Pharmacists employed by the respondent Board are required to possess minimum qualification prescribed by the Central Council of Pharmacy, which are on par with diploma holder engineers. Though the respondent was using designation of "Compounder" for Pharmacists, considering the qualification, nature of work and responsibility of the Pharmacists the petitioner Federation contended that the Pharmacists ought to have been given a scale commensurate with their qualification and experience and not that of Compounder.

7. This petitioner has referred to and relied upon the pay scales granted by the Central Government and other Governments to Pharmacists in their employment to demonstrate as to what are general parameters adopted in these

establishment and has sought direction to the respondent to revise pay scales of the Pharmacists so as to bring the same on par with those of Pharmacists working in the Governments or Public Sector Undertakings to overcome the disparity and arbitrariness in the matter of fixing the pay scales of the class of pharmacists.

8. The petitioners have also represented about the grievance that there is total absence of avenue of promotion considering specialised job and no higher ladder available and have presented it as a ground for better and comparable scales of pay.

9. In addition to the points opposing the petition of the Chemists, as regards the claim of Pharmacists opposing the petition, according to the respondent Board, the pay scales were settled after agreement with the workers' federation and after duly taking into consideration the qualification, nature of duties etc. The respondent Board contends that there can be no comparison between the employees of the Board and those working with Central Government or other organisation. It was also contended that the question of absence of promotional avenues could not be raised because the petitioners were aware of cadre structure and promotional avenues (or absence thereof) while accepting employment. The respondent, therefore, prayed for dismissal of the petition.

10. The Board had appointed a committee for assessing the overall work of Chemists' cadre and to recommend as to how to meet the grievance represented by them. This committee has furnished its report which is filed by the respondent on record with pursis dated 29-10-2004. The committee has in no ambiguous terms supported the demand for higher pay made by Association of Chemists. Appointment of the Committee and its report are admitted facts. The respondent Board did not restore the parity between Chemists and Engineers. It is factual that the respondent Board has refused to accept the recommendations of the Committee. This however is without revealing the reasons thereof or alternate modalities to find out in what manner justice could be done to these cadres.

11. We have heard learned Advocate Shri V.D. Muley, for the Association of Chemists learned Senior Counsel Shri C.P. Sen for the petitioner Federation of Pharmacists in respective petitions and learned Advocate Shri R.K. Deshpande for the employer Electricity Board.

12. The learned Advocates for the parties took us through the pleadings and annexures and then through various decisions of the Apex Court and this Court on the question of judicial intervention in administrative matters.

13. As regards the claim of Pharmacists the learned Senior Counsel Mr. Sen submitted that the pay scales prescribed by the respondent are ridiculously low and the respondent had no compunctions in equating the Pharmacists, who possess Diploma in Pharmacy with Lineman-C, who in fact, enters the service as helper without any qualification, and then gets promoted as Lineman. The learned Senior Counsel pointed out that the pay scales for Pharmacists with the

respondent Board are ridiculously low as compared with those prescribed for Pharmacists in Central or State Governments as may be seen from the pay scales placed on record. He submitted that equating Pharmacists with Lineman-C amounts to adding insult to injury.

14. Considering the qualification at the entry point and any amount of credit that can be given to the job of a helper who gets promoted as Lineman may earn higher pay scale, however simultaneous lowering of pharmacists to lineman's cadre for pay scale obviously proves total failure to consider comparative merit and standing of these two classes-cadres. We are satisfied that no consideration has been given for the higher qualification which Pharmacist has to acquire for being employed.

15. The learned Senior Counsel Mr. C.P. Sen for the Federation of Pharmacists relied on judgment of the Supreme Court in *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, to support his contention that when the decision of the Government is patently irrational, unjust and prejudicial to a Section of employees the Courts can interfere in the matter of prescribing pay scales. The learned Senior Counsel pointed out that this decision was followed by the Apex Court in *K.T. Veerappa and Others Vs. State of Karnataka and Others*, .

16. The learned Senior Counsel for the Federation of Pharmacists submitted that in order to ensure that the employees are properly motivated there have to be some channels of promotion for removing stagnation. He submitted that the existing cadre structure of Pharmacists is extremely de-motivating and the grievance of the petitioners in this behalf needs to be considered. For this purpose the learned Senior Counsel drew our attention to the observation of the Supreme Court in paragraph 22 in the judgment in *V. Jagannadha Rao v. State of A.P.* reported at (2001) 10 SCC 401. The Hon'ble Supreme Court had observed that it would be in the interest of administration to have channel of promotion for every service, so as to avoid stagnation at a particular level, so that there would not be any discontentment amongst the employees in the department concerned.

17. Learned Senior Counsel Shri C.P. Sen then relied upon the judgment in *State of Haryana v. H.C.S. Personal Staff Association*, showing that fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge, but is not beyond the pale of judicial review the approach should be of restraint, and interference would be warranted only when the difference is patently irrational, unjust and prejudicial to the employees.

18. In *Randhir Singh Vs. Union of India (UOI) and Others*, , on which learned Advocate Mr. Muley for the petitioner in Writ Petition No. 584/89 placed reliance, recognised enforceability of the principles of equal pay for equal work. The Court observed that equality clauses in the Constitution must mean something to everyone and if a vast majority of people get paid unequally for the work they put in, equality clauses would have no meaning.

19. In *Shri Alvaro Noronha Ferriera and Others Vs. Union of India and Others*, the Apex Court recognised the necessity of treating the District Judges in Goa and Delhi equally in the matter of pay and rejected the argument that different pay scales were justified because of some differences in pendency of cases at the two places.

20. Learned Advocate Mr. Muley then placed reliance on judgment in *State of U.P. and Others Vs. U.P. Sales Tax Officers Grade II Association*, to support his contention that groups of officers having same pre-revised pay scales ought to have been given same revised pay scales. In that case the Supreme Court had held that keeping in view the nature, duties and functions of the two groups of officers they were equal and therefore, had to be given the same revised pay scales.

21. Learned Advocate Mr. R.K. Deshpande for the respondent-Board urged¹ that the principle of "equal pay for equal work" would apply only to persons working with the same employer. Every employer would have a different paying capacity and different set of duties and responsibilities for groups of employees who may share a common nomenclature with those employed elsewhere. Therefore, the petitioner federation cannot, as of right, claim pay scales on par with pharmacists employed by Central or State Governments by invoking principles of "equal pay for equal work".

Learned Advocate Mr. R.K. Deshpande for the respondent Board relied upon the judgment of this Court in *B.K. Bhosale v. Union of India* reported at 2007(3) M.L.J. 528 and *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, pointing out the limitations on the power of judicial review in administrative matters.

According to learned Advocate Mr. R.K. Deshpande, further, the committee appointed by the respondent for revamping the Chemist cadre too had observed that the pay scales of persons holding posts in various cadres of Chemists ought to be revised. Therefore, it cannot be said that the claim for better pay scales is entirely groundless, though it may not be fully justified. Shri Deshpande, learned Advocate for the respondent Board submitted that the question of revamping the cadre of Chemists and improvement of pay scales of Chemist is entirely different issue and has nothing to do with the parity. It is true that the report of the Committee which has been filed on record by the respondent does not show that the recommendations are based only on the aspect of parity with engineers. The report shows that higher qualifications were proposed to be prescribed for various posts of Chemists and the recommendations about higher scale of pay are made in that context.

22. Shri Deshpande, learned Advocate for the respondent-Board reiterated that since the parity was itself a mere co-incidence and not based on any deliberations and conscious evaluation of qualification and duties. It was therefore, not necessary to mechanically or blindly continue with the parity. He

submitted that the disparity has its origin in rationalisation and reduction of pay scales, is natural in view of difference in qualifications and duties in two groups of employees. According to learned Advocate Deshpande the petitioners have not been able to show that there exists any parity on any count, and also that parity has not been established after any exercise of evaluation of qualification and duties of the two groups of employees, the fact that parity did exist till 1980 cannot be denied) yet it is according to him as noted earlier an act of sheer coincidence.

23. The claim of the petitioner Federation that Pharmacists working with respondent Board ought to be paid on par with their counter-parts working in Central or State Governments or Public Sector Undertakings is, however, unfounded.

24. There can be no doubt about the proposition that revision of pay scales in an organisation like the respondent would depend upon the kitty available and adjustments if any would have to be made within the kitty. It does not however follow that groups of employees with larger number could be allowed to garner a major part of the kitty for their own benefit by sacrificing primary interest of small groups of employees.

25. Whenever a settlement is likely to disturb an existing internal relativity it would be necessary for the authorities settling wage revision be guided by reason and reasons, both, before disturbing the internal relativity and/or parity. The material placed on record on behalf of respondent Board in the petition of Chemists does not disclose any reason as to why the Board had to part with and disturb the parity of pay structure of Chemists on one hand with engineers as in existence before.

26. All that is, obvious is that the cadre of employees represented in the petition have such poor numerical figure that they can get adversely influenced by the mammoth majority of technical and field staff who have taken away major chunk of kitty as the cost and sacrifice of those having no voice in inter-se sharing.

27. All the same, we do find that the pharmacists employed by the respondent Board have been treated unjustly by being bracketed with employees in the grade of Lineman and others which cadres are in no manner comparable with the cadre of pharmacists though pharmacists are entitled for being placed at higher scale of pay. Similarly, chemists too have been kept on lower pedestals and lower pay scale than what they may be entitled. The importance of job undertaken by this class of employees cannot be undermined and they need to be given higher scale of pay.

28. As a good employer, respondent would without doubt consider the hidden cost that any employer has to pay for having chunks of employers labouring under a feeling of being denied just pay package. Nothing rankles human heart more than a brooding sense of injustice, yet we find that the respondent has remained totally unmindful to those aspects.

29. After having considered the precedents cited in the context of the anomalies in the pay scales pointed out by the petitioners in two petitions, we find that the petitioners have been treated unjustly by the respondent employer in the matter of pay scales.

30. We believe that the anomalies which should have better been neutralised had the respondent-employer, who, after considering all the relevant factors, including the kitty available, implications of such revision on settlement arrived at between the unions, would endeavour to prescribe a just compensation package for the petitioners, which we see has not just been neglected but is even strongly opposed which approach we strongly disapprove.

31. We, however, find that in exercise of powers of judicial review it may not be permissible for us to direct the respondent to grant higher scales and to open up channels of promotion on the lines on which such channels exist in Central or State Governments or Public Sector Undertakings. But we hope that as a good employer, interested in having a motivated work force, the respondent would duly consider these aspects as well.

Due to limitations emerging from versatile facts within which the compared cadres are placed. While this Court with no ambiguity concludes that the cadres of chemists and compounder have been dealt with unjustly and unfairly as to what scale of pay be given to them will have to be done by a body of experts based on points of reference on which the board found that report of first committee was deficient. Therefore, it would not be permissible for us to issue mandamus to undo unjust treatment meted to the employees subject-matter of this petition.

32. In this view of the matter, we dispose of both these writ petitions, ejecting the respondent to consider the grievance of the petitioners in the two petitions, in the light of our observations and take appropriate decisions in the matter, as early as possible and in any case, within a period of six months after giving appropriate hearing to the petitioners and others who are likely to be affected.

Rule is made absolute in the above terms. In the circumstances, however, we direct the parties to bear own costs.