
(2019) 09 JH CK 0103

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2983 of 2017

Dr. Anil Kumar Kamal And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Jharkhand Service Code, 2001 — Rule 28, 67, 68, 69, 70, 71, 72
Constitution Of India, 1950 — Article 14, 16, 19, 39D

Citation : (2019) 09 JH CK 0103

Hon'ble Judges : Dr. S.N.Pathak, J

Bench : Single Bench

Advocate : Shadab Bin Haque, Debarsi Mondal, Dr. A.K. Singh, Suresh Kumar

Final Decision : Disposed Of

Judgement

1. Heard the parties.

2. Petitioners, who were initially appointed by the erstwhile State of Bihar and subsequently allocated Jharkhand cadre where they are working on deputation in Rajendra Institute of Medical Science (for short "RIMS") and subsequently, were promoted as Assistant Professor and Associate Professor along with other employees directly recruited by RIMS, have approached this Court for a direction upon the respondents to grant equal pay and monetary benefits to the present petitioners, at par with other similarly situated Assistant/ Associate Professor of RIMS, who are discharging the same duties as has been discharged by the petitioners but they are getting higher pay-scale than that of the present petitioners.

Petitioners have further prayed for payment of arrears along with interest thereon from the date the petitioners are getting less salary and monetary benefits while working as Assistant/ Associate Professors.

3. Bereft of unnecessary details, the facts of the case in short is that petitioner No. 1 was initially appointed as Medical Officer by the erstwhile State of Bihar on

01.03.2000 and subsequently, petitioner No. 1 along with other Medical Officers was transferred to RIMS, Ranchi vide notification dated 05.10.2005. Thereafter, the Director, RIMS issued letter of appointment to the petitioner No. 1 vide order dated 23.06.2005 to the post of Resident Surgeon in RIMS in the pay-scale of Rs.6,500-200-10,500 and accordingly, the petitioner submitted his joining on 08.10.2005. Thereafter, vide memo dated 31.07.2008, the petitioner was promoted to the post of Assistant Professor in the pay-scale of Rs.10,000-15,200 and subsequently, he was promoted to the post of Associate Professor on 07.03.2017 w.e.f. 01.07.2016 under Assessment Promotion Scheme as per RIMS Regulation, 2014. It is the specific case of the petitioner No. 1 that though he was promoted to the post of Associate Professor but the scale of the said post was not given to him due to the fact that he was the employee of State Govt. and not of RIMS. The pay-scale of Assistant Professor is Rs.37400-67000 with Grade Pay of Rs.8700/- pre-revised and Pay-Scale of Associate Professor is Rs.37400-67000/- with Grade Pay of Rs.9000/- plus NPA under Assessment Promotion Scheme but it is the stand of respondent-RIMS that the said pay-scale is given only to those doctors who were directly recruited by RIMS in 2005 and onwards. It is the further case of the petitioner No. 1 that though he was already appointed in RIMS and also granted further promotions by the Authorities of the RIMS and he is also discharging the same duties what has been discharged by the Medical Officers recruited directly by the RIMS but he is getting less pay-scale than that of his entitlement.

Similarly, petitioner No. 2 was also appointed along with petitioner No. 1 on 01.03.2000 and vide notification dated 28.06.2003, he was posted as Medical Officer, RIMS along with several other persons. The petitioner No. 2 along with 13 other persons were regularized as Senior Resident in RIMS vide notification dated 31.05.2004, issued by the State Govt. Thereafter, on 12.07.2008, the petitioner No. 2 was promoted to the post of Assistant Professor and again promoted to the post of Associate Professor under ST category vide Office Order dated 28.10.2012

4. It is the specific case of the petitioners that though both the petitioners were subsequently absorbed by the RIMS and thereafter, promoted to the posts of Assistant Professor and Associate Professors but they were denied the pay-scale of the aforesaid posts, whereas, doctors directly recruited by the RIMS are getting the pay-scale of Assistant/ Associate Professors.

Aggrieved by the said illegal, arbitrary and discriminatory action of the respondent-RIMS, the petitioners have knocked the door of this Hon'ble Court for redressal of their grievances.

5. Mr. Shadab Bin Haque, learned counsel appearing for the petitioners submits that the respondents cannot be allowed to create class within class inasmuch as the respondent-RIMS is paying higher pay-scale to the Assistant/ Associate Professor directly recruited by it and lower pay-scale to the present petitioners, who are on life time deputation from the State Health Services. The respondents

are bound to bring the petitioners at par with other Assistant/ Associate Professors directly recruited by RIMS. Learned counsel further argues that action of the respondents in discriminating the petitioners is highly illegal, unjust, unconstitutional and improper since all the employees who are discharging equal/ same work are entitled for equality in the matter of salary and other monetary benefits. Learned counsel further argues that the claim of the present petitioners are legal and guaranteed under the provisions of Articles 14, 16 and 19 of the Constitution of India.

6. To buttress his arguments, learned counsel appearing for petitioners places heavy reliance on the following decisions:-

(I) Bihar State Beverages Corp. Ltd. and Ors. Vs. Naresh Kumar Mishra & Ors. [(2019) 5 SCC 110];

(II) State of Punjab & Ors. Vs. Jagjit Singh & Ors. [(2017) 1 SCC 148];

(III) Prashant Kumar Mishra & Ors. Vs. State of Jharkhand & Ors., judgment delivered on 20.06.2017 by this Court in W.P.(S). No. 4162 of 2013

7. Per contra, counter-affidavit has been filed. Learned counsel appearing for the respondent-State argues that as per the provisions of Rule-12 of the RIMS Regulation, 2014, the doctors who are working and posted in RIMS before 2002 though posted in RIMS but they have to be treated as the employees of the State Govt. and their appointment is considered to be on lien/ deputation in RIMS till their superannuation and they are entitled for the promotion in the RIMS but they are not entitled for any deputation allowances. Learned counsel further argues that as per Rule-13 of the RIMS Regulation, 2014, the employees of the RIMS, who have been appointed by the RIMS itself, are entitled for the pay and allowances as per RIMS Regulation, 2014 but the doctors, who have been appointed by the State Govt. and are working on deputation/ lien in the RIMS, their pay, salary, allowance, DACP etc. are to be given by the State Govt. as per their norms. Further, as per Rule-24 of the RIMS Regulation, 2014, pension, GPF and other retiral benefits are to be granted by the State Govt. to the doctors who are working under RIMS but are appointed by the State Govt. Learned counsel lastly submits that in light of the aforesaid facts, the petitioners are not entitled for the reliefs as claimed by them in the instant writ application.

8. Dr. A.K. Singh, learned counsel appearing for the respondent-RIMS opposing the contention of the learned counsel for the petitioners, argues that after coming into force of the RIMS Act, 2002; RIMS Rules, 2002 and RIMS Regulation, 2014, the service conditions of an employee of RIMS including the pay, allowances and other financial benefits payable to him, are governed by the provisions contained in these enactments/ statutes only. Learned counsel further argues that Rule-13 (ii) of the RIMS Regulations, 2014 provides that all the government doctors appointed originally by the State of Bihar/ Jharkhand and were working on deputation basis in RIMS in 2002, when Rajendra Medical College and Hospital (RMCH) was converted into Rajendra Institute of Medical

Science (RIMS) will continue to work in RIMS till their retirement. Further, they would be entitled to be considered for promotion which falls due while on deputation in RIMS but they would not be entitled to claim any deputation allowances, etc. and they shall be entitled for pay and allowances (DACP) as per Rule 28 and 67-72 of the Jharkhand Service Code. Learned counsel further argues that the petitioners and a large number of doctors in RIMS have not tendered their resignation or taken voluntary retirement from Jharkhand Health Services and they themselves have not opted for the pay and allowances and other financial benefits on the pattern of AIIMS, New Delhi and this is the reason why the petitioners are not being given the pay and allowances similar to those doctors who have opted for AIIMS pattern of payment after severing their links from Jharkhand Health Services through resignation/ voluntary retirement or by virtue of having been directly appointed by RIMS. The mode of appointment and conditions of service of the present petitioners are entirely different from those with whom they are claiming parity in the matter of pay and allowances.

9. To buttress his arguments, learned counsel appearing for respondents-RIMS places heavy reliance on the following decisions:-

(I) Punjab State Electricity Board and Anr. Vs. Thana Singh & Ors. [(2019) 4 SCC 113];

(II) Punjab State Power Corp. Ltd. Vs. Rajesh Kumar Jindal & Ors. [(2019) 3 SCC 547];

(III) State of Punjab & Ors. Vs. Jagjit Singh & Ors. [(2017) 1 SCC 148]; &

(IV) National Aluminum Co. Ltd. & Ors. Vs. Ananta Kishore Rout & Ors. [(2014) 6 SCC 756].

10. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered opinion that the core issue to be decided in instant writ petition is as to whether the petitioners are entitled for the same pay-scale which the Doctors appointed by RIMS, who are similarly situated to that of the present petitioners, are getting ?

11. The issue regarding 'equal pay for equal work' fell for consideration before the Hon'ble Apex Court and in catena of decisions the Hon'ble Apex Court summarized the issue to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39-D of the Constitution of India. The Hon'ble Apex Court in para-30 in case of SAIL Vs. Dibyendu Bhattacharya, reported in (2011) 11 SCC 122 has held that:

"30., the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the

skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the concerned posts. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties."

Further the Hon'ble Apex Court in case of S.C. Chandra Vs. State of Jharkhand, reported in (2007) 8 SCC 279 has held as under:

"33. It may be mentioned that 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. Hence, the Court should exercise judicial restraint and not interfere in such executive function vide Indian Drugs & Pharmaceuticals Ltd. vs. Workmen, Indian Drugs and Pharmaceuticals Ltd. (2007) 1 SCC 408.

34.

35. 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 identity 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).

36. 14. 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 principle of equal pay for equal work cannot apply vide Government of West Bengal vs. Tarun K. Roy and others [(2004) 1 SCC 347]."

12. In case of State of Punjab & Ors. Vs. Jagjit Singh & Ors., reported in (2017) 1 SCC 148, the Hon'ble Apex Court has held as under:

42.1 The 'onus of proof', of parity in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see - the Orissa University of Agriculture & Technology case [(2003) 5 SCC 188], Union Territory Administration, Chandigarh v. Manju Mathur[(2002) 6 SCC 72], the Steel Authority of India Limited case [(2011) 11 SCC 452], and the National Aluminum Company Limited case[(2014) 6 SCC 756]).

42.2 The mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of 'equal pay for equal work'.

Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see - the Randhir Singh case [(1982) 1 SCC 618], and the D.S. Nakara case[(1983)1 SCC 305]).

42.3 The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (see - the Randhir Singh case(supra). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see - the Federation of All India Customs and Central Excise Stenographers (Recognized) case [(1988) 3 SCC 91], the Mewa Ram Kanojia case [(1989) 2 SCC 235], the Grih Kalyan Kendra Workers' Union case [(1991) 1 SCC 619]; and the S.C. Chandra case [(2007) 8 SCC 279])

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

13. In the instant case, the present petitioners, who are appointed by the Health Department of the State Govt., are on deputation/ lien in RIMS. Admittedly, RIMS has its own regulations framed on the basis of the regulations of the AIIMS. However, the nature of the duties performed by the present petitioners are similar or not to that of the doctors directly appointed by the RIMS has to be examined by an Expert Body. Admittedly, there cannot be a class within class and there cannot be irrational classifications. For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity. Only on the ground that the present petitioners have been appointed differently and their employers are different, they cannot be discriminated. For understanding the controversy, it is necessary to understand the ingredients which govern the principle of 'equal pay for equal work'. The principle of 'equal pay for equal work' would not automatically be invoked merely because the subject and reference posts have the same nomenclature but the duties and responsibilities has to be examined.

14. As has been held above and more particularly in case of State of U.P. vs. J.P. Chaurasia [(1989) 1 SCC 121]), the Hon'ble Apex Court unequivocally held that

in the matter of equation of posts or equation of pay, the same should be left to the Executive Govt., who can determine the same by the Expert Bodies like, the Pay-Commission and such Commission would be the best judge to evaluate the nature of duties and responsibilities of posts and if such determination by a Commission or Committee is made, the Court should normally accept it and should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

15. In view of the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, this Court is also of the view that the matter be left with the Executive Govt. to get it determined by an Expert Body, like, Pay-Commission to evaluate the nature of duties and responsibilities.

16. Since by order of this Court passed in W.P.(S). No. 1820 of 2017, the State Govt. vide its order dated 05.11.2018 has already constituted a High Power Committee to look after the cases of pay-anomalies of the employees of State of Jharkhand, I hereby direct the petitioners to approach the concerned Department with a representation annexing all relevant documents, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of such representation, the same shall be referred to High Power Committee, constituted in compliance of Court's order dated 23.02.2018, passed in W.P.(S). No. 1820 of 2017. The High Power Committee shall verify the facts and entitlement of the petitioners and recommend the cases of the petitioners to the concerned Department for grant of benefits of pay-scale, as per their entitlement, in accordance with law. On receipt of such recommendation, the concerned Department shall pass a reasoned order and extend the benefits to the petitioners, if entitled, within a further period of four weeks.

17. The writ petition stands disposed of with the aforesaid observations and directions.