

**(1987) 03 PAT CK 0014**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 796 of 1981**

Dr. Mathura Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 10-03-1987

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 162, 226, 227  
Homoeopathy Central Council Act, 1973 — Section 3

**Citation :** (1987) 35 BLJR 742 : (1987) PLJR 832

**Hon'ble Judges :** S.S. Sandhawalia, C.J;S.K. Jha, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

S.K. Jha, J.—The alleged invidious discrimination between the Ayurvedic and Unani Medical Officers on the one hand and the Homeopathic Medical Officers on the other by the State Government has pinched the petitioners impelling them to come to their aid through the process of a writ to be issued by this Court and for the redressal of the grievances of the Homeopathic Medical Officers, who are the petitioners here for compelling the State Government to treat them at par with the Unani Medical Officers and the Ayurvedic Medical Officers. They have, therefore, invoked in this writ application under Articles 226 and 227 of the Constitution the aid of Articles 14 and 16 of the Constitution and prayed for issuance of a writ of mandamus to command the respondents to give them a parity with the doctors of two other specialities, namely, the Unani and Ayurvedic medicines. There are thirteen petitioners in all While respondent No. 1 is the State of Bihar, respondent No. 2 is the Health Commissioner, Bihar, respondent No. 3 is the Director of Health Services. (Indigenous Medicines and Homeopathy) Patna, and respondent No. 4 is the Deputy Director, (Homeopathi (Medicines), Health Department of the State Government of Bihar, Patna. Consequentially, they have prayed for quashing that part of the Government Order/Resolution, dated 3-5-1978, which relates to the petitioners and is contained in Annexure-1 to the writ application.

2. The point involved in this writ application is very short and simple, but before dealing with it, some facts are not worthy, relevant as they may be. The petitioners are 4 year's Diploma holders in Homeopathic Medicines and are presently serving in the different Dispensaries in the services of Health Department of the Government of Bihar. The writ application has been filed in a representative capacity by the State Homeopathic Medical Officers' Association of which petitioner No. 1 is the Secretary, petitioner No. 3, Dr. Bachchu Prasad Singh, is the Vice-President and petitioner No. 6, Dr. Mahesh Kumar, is the Treasurer and petitioner No. 7, Dr. Sahdeo Rajak, is a member of the Executive Committee. We are not concerned with the different places at which the petitioners are posted, since that is immaterial for the purpose of deciding this case, Previously, there was no provision for teaching of any Degree Course in any Homeopathic College in the State and the 4 year's Diploma Course known as D. H. M. S. had always been treated as the requisite qualification for appointment against Class I and Class II posts in the Health Services of the State of Bihar that is the allegation of the petitioners. On the contrary, such doctors as had qualified after having undergone 4 year Degree Course in Unani Medicines are called degree-holders though the Homeopaths having undergone 4-year identical course are called as Diploma-holders. Be that as it may, the fact is admitted that such of the doctors on the Unani side of the medicines are Degree holders whereas 4-year Course undergone by Homeopaths are Diploma-holders. In the year 1971, the State Government decided to have State Homeopathic Dispensaries in the rural areas of the State and for that purpose, a large number of posts of Medical Officers (Homeopaths) was created in the same scale as that of Vaidyas and Hakims, i.e. in the pay-scale of Rs. 160-280. Subsequently, the aforesaid pay-scale of Rs. 296-460 and the Homeopathic Medical Officers along with Vaidyas (Ayurvedic doctors) and Hakims (Unani doctors) were placed in the same scale of pay. Thereafter, the Health Department of the State Government by the Resolution contained in Memo No. 1213, dated the 3rd May, 1978 revised the scale of pay of the Vaidyas and Hakim and the Homeopathic Medical Officers whereby the pay-scale of Vaidyas and Hakims was revised from Rs. 296-460 to Rs. 610-1155, the pay-scale of the Homeopathic Medical Officers was fixed from Rs. 296-460 to Rs. 400-660 only. A copy of the aforesaid resolution has been annexed and marked Annexure-1 to the writ application. Pursuant to the above resolution, the State Government in the Health Department, again by its resolution contained in Memo No. 565 dated 9-12-80, declared the posts of Vaidyas (Ayurvedic doctors) and Hakims (Unani doctors) as gazetted in the Health Services Cadre to the exclusion of the Homeopathic Medical Officers. A copy of the aforementioned resolution is marked Annexure-2 to this writ application Again by an order of the Government in the Department of Health contained in Memo No. 31, dated 10-1-1981, issued under the signature of the Joint Secretary, the Vaidyas and Hakims were re-designated as Ayurvedic Medical Officers and Unani Medical Officers, respectively, and, as a matter of fact the change in the designation of the Homeopathic Medical Officer was once again also ignored. This resolution has been marked as Annexure-3 to the writ

application. Formerly, there was only a 3-year Diploma Course for the study of Homeopathy, but later on, the period was extended by one year and the Diploma was awarded only after 4-year Course to the Homeopaths re-designating them as D.H.M.S. whereas the previous nomenclature of D.H.M.S. Course was known as D.M.S. Course. According to the petitioners, the Government has always been treating D.H.M.S Course in Homeopathy at par with the Degree in Unani system of Medicines as well as Ayurvedic system of medicines and, therefore, in the matters of appointment in the service of indigenous medicines under the State Health Services in Bihar, the three kinds of Medical Officers were treated on equal footing and were always provided with the same avenues in the matters of appointment, promotion and pay-scale. It is further alleged by the petitioners that the Government of India in the Ministry of Health and Family Welfare has also declared that the D. H. M. S. qualification awarded by the Bihar University is equivalent to a Degree of a recognised University and on such declaration by the Health Department of the Government of India, the D. H. M. S. Homeopathic doctors have been provided equal status in matters of employment in all the States of the country as well as under the Central Government in all services which the Degree of a recognised University is the requisite qualification. What has pinched the petitioners is the impugned difference in the pay scale of the Unani and Ayurvedic Medical Officers on the one hand and D.H.M.S. Homeopathic Medical Officers on the other. The further allegation of the petitioner is that in the Regulation of the Central Council of Homeopathic Education under Sub-section (i) (j)(k) of Section 3 of Homeopathic Central Council Act, 1973, the qualification prescribed for appointment of Principal, Professors and Lecturers in Degree Colleges of Homeopathy in the country is either a Degree of Homeopathy or a 4 year Diploma Course. Pursuant to the above regulation, the Government of Bihar advertised the post of Deputy Director of Homeopathy in the Directorate of Indigenous Medicines and Homeopathy in the services of the Health Department of the State Government, which is a Class I post and the qualification prescribed was, inter alia, a 4 year. Diploma Course in Homeopathic Medicines from a recognised Homeopathic College. A copy of the advertisement No. 121/78, in this behalf, which was published in a local Daily newspaper "Aryavarta" has been marked Annexure-11 to the writ application. In pursuance of the aforesaid advertisement, one Chakradhar Paswan holding a 4 year Diploma Course in Homeopathic Medicines has already been appointed as Deputy Director, Homeopathy, in the Directorate of Indigenous Medicines in the Health Services of the Government of Bihar. Thus, the petitioners complain of the discrimination between the persons similarly situate depriving them from the benefit of the higher pay-scale, status and other privileges which, under the law, would have accrued to them. It is, therefore, attacked that the decision of the State Government to place the Vaidyas and Hakims in the pay-scale of Rs. 610-1155 by making their posts gazetted and re-designating them as Ayurvedice Medical Officers and Unani Medical Officers on the one hand while placing the Homeopathic Medical Officers as non-gazetted in the scale of Rs- 400-660, on the other as is submitted on behalf of the petitioners is absolutely arbitrary,

discriminatory and prejudicial to the interest of the petitioners and the Homeopathic Medical Officers similarly situate. It is further said that the decision of the State Government denying the gazetted status and pay-scale to the petitioners was violative of the fundamental rights as enshrined in Articles 14 and 16 of the Constitution.

3. Subsequently, a supplementary affidavit has also been filed by the petitioners merely highlighting the fact that a letter had been issued by the Secretary, Central Council of Homeopathy (C.C.H.) bearing No. 14-14/80 C.C.H. dated 17-11-81 addressed to the Central Secretary of the State Homeopathic Medical Officers' Association, Bihar, Patna, a copy of which has been marked Annexure-17 to the writ application. In that letter, the Central Council of Homeopathic Medicines have also said that there is no bar in giving pay-scale of Rs. 610-1155 to Diploma-holders in Homeopathy or appointing them as gazetted officers in the services and giving them powers of drawing and disbursing officer. The Council have further stated that the Diploma-holders (D.H.M.S.) and equivalent are appointed in the Central Government Services as Class I Officers enjoying all privileges and powers of drawing and disbursing officers. The local authorities in the State of Bihar, it is stated, also treated the Diploma in D. H, M. S. as equivalent to the Degree Course in Ayurvedic and Unani Medicines and have prescribed the same scale of pay, i.e. the pay-scale of Rs. 610-1155 (unrevised) for Vaidyas, Hakims, and Homeopathic Medical Officers also. This fact is also supported by an advertisement issued by the Zila Parishad, Hazaribag, for appointment of Homeopathic Medical Officers under the services of the Parishad and the qualification prescribed therein was D.H.M.S. in the pay-scale of Rs. 610-1155. A copy of the advertisement issued in a local English Newspaper "Indian Nation", dated 17-1-1982 has been marked Annexure-18 to the writ application and annexed to the supplementary affidavit. It is further alleged that the respondents, even after the admission of the writ application of the petitioner on 26-1-81, discriminated between the Homeopathic Medical Officers on the one hand and the Ayurvedic and Unani Medical Officers on the other by issuing further orders declaring the Vaidyas and Hakims as drawing and disbursing officers and depriving the petitioners of the said privileges and benefits.

4. A counter-affidavit has been filed on behalf of the State wherein, it has been stated that it was decided on the basis of the respective qualifications inasmuch as the Homeopathic Medical Officers were Diploma-holders ; whereas Ayurvedic and Unani Medical Officers were Degree-holders." There was no question of any reduction in pay and rank of the petitioners, rather their pay has also been increased, from Ps. 296-460 to Rs. 660. It has further been stated in the counter-affidavit that there was only one post of the Deputy Director, Homeopathy, in the scale of pay of Rs. 1250-1850 having basic qualification of Intermediate Science and D. H. M. S, The State Government is governed by the Indian Medicine Central Council Act, 1970, which has recognised the 4-year Degree" Course in Unani equivalent to Degree Course. The posts carrying pay-scale of Rs. 610-1155 has been declared as gazetted and, later on, designated as Ayurvedic and Unani

Medical Officers. The scale of pay given to the Homeopaths was of a non-gazetted rank and, as such, their posts were excluded from being declared as gazetted ones and, consequently, from being re-designated as Homeopathic Medical Officer. At the time of revision of pay of the officers of the Indigenous system of medicines and Homeopathic system of medicines, the pay-scale of Degree-holders as Rs. 400-C60. With regard to the reply to the statements made in paragraphs 31 to 37 of the writ application, the deponent has stated and submitted that the respondents and no information about the pay-scale of the Ayurvedic, Unani and Homeopathic doctors in the their States of India, which have been catalogued in paragraphs 31 to 37 of the writ petition. As a matter of fact, I must confess, even I am at a loss, as to what courses of studies are adopted elsewhere other than in the State of Bihar with regard to the three respective categories of the Indigenous Medical Officers and as to what are their qualifications, nature of duties, importance of work and other such matters. As an instance, it has been given in the counter-affidavit that on the basis of the recommendation of the 4th Pay Revision Committee of the State Government, prior to 1-4-1981. the pay-scale of Lady Health Visitors and Staff Nurse, Grade-A, was Rs. 296-460, but as per the recommendation of the Pay Revision Committee, their pay-scale of Rs. 690-965 for Lady Health Visitors and Rs. 730-1,000 for Staff Nurse, Grade A, was fixed. The Homeopathic Doctors' Association, as a matter of fact, represented to the 4th Pay Revision Committee for giving pay-scale to them as was given to the Ayurvedic Unani Medical Officers, The Pay Revision Committee recommended the pay-scales of Rs. 850-1860 for Homeopathic Doctors and Rs. 1,000-1,823 for Ayurvedic/Unani Medical Officers, Thus, it will be seen that the Pay Revision Committee itself presumably found that there was something distinctive about the Ayurvedic/Unani Medical Officers within which category the Homeopathic Medical Officers were not embraced. The object and the nexus were, thus, not the same for the purpose of classification. The Central Council of Homeopathy of India is a mere recommending body for this purpose and has no jurisdiction to dictate any State Government for sanctioning specific pay-scale for Homeopathic Doctors. All other facts are either irrelevant or incidental for the purpose of this case.

5. The only question then to be answered is as to whether there has been any prejudice caused to the petitioners, which may be said to be violative of the sanctuary formed and framed by Articles 14 and 16 of the Constitution. In my considered view, there is none. Admittedly, the petitioners are all Diploma-holders, whereas the two other types of Indigenous Doctors, namely, the Ayurvedic and Unani Medical Officers are Degree-holders. Admittedly again the 4th Pay Revision Committee itself recommended different pay-scales for the two types of Medical Officers, namely, the Ayurvedic and Unani Medical Officers, on the one hand, and the Homeopathic Diploma-holders, on the other. The Members of the 4th Pay Revision Committee must have been at least more aware of the nature of work and duties to be performed by the two classes of Medical Officers. Therefore, it cannot be argued that the principle of similar pay for similar work

will be attracted. Furthermore, the recommendations made either by the Pay Revision Committee or by the Central Council of Homeopathy still remain in the realm of recommendations and are not statutory orders to be obeyed and commands to act as by any State Government. Having weighed all the pros and cons of the matters, the State Government had taken a decision both in regard to the pay-scale and with regard to their status namely, the Gazetted and Non-gazetted posts. No allegation of mala fide -malice in fact or in law can be said to have been made out in this case. It is a matter of public policy and taking an over-all view of the picture, the State Government passed a resolution/order as incorporated in Annexure-J. The previous pay-scales of all the three types of Indigenous Medical Officers pales into insignificance once their pay-scales and status have been revised. There is" nothing in the action of the respondents on which an onslaught of law can be made, muchless of any infraction of any constitutional mandate. I am not in the least convinced that the petitioners had similar work as Medical Officers, who have been designated as Ayurvedic or Unani Doctors. The impugned resolution orders of the respondents, therefore, cannot be said to be arbitrary or discriminatory at all. Nothing has been brought on the record to establish that all the three types of Medical Officers are doing similar types of work, it is now too well established that the Constitutional Code of equality and equal opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of others. Classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. If persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications ? The answer is obviously yes. Classification must be truly founded on substantial differences which distinguished persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved. Judicial scrutiny can therefore, extend only to the consideration whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an enquiry permissible, it would be open to the Courts to substitute their own judgment for that of the legislature or the rule making authority on the need to classify or the desirability of achieving a particular object. Reference may be made to the case of. The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, . Differentiations of cadres is not a function of the Court. It can be done either by the legislature or by a rule duly framed under Article 309 or under the executive powers of the State under Article 162 read with Article 166 of the Constitution. I cannot, therefore, transgress the limits of my constitutional jurisdiction.

6. Judging, therefore, from any point of view, I find no merit in this application. It is, accordingly, dismissed, but, in the circumstances of the case, I shall make no order as to costs.

S.S. Sandhawalia, C.J.

7. I agree.