
(2012) 05 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 961 of 1996

Gujarat State Pharmacist Association

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Citation : (2012) 53 GLR 2412

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Y.N. Oza with Ms. Sonal R. Shah, for the Appellant; Monali H. Bhatt, Govt. Pleader, for Respondent Nos. 1, 1-2-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—The petitioner is the Association of Pharmacist of Gujarat State and have invoked Arts. 14 and 16 of the Constitution for the relief of placing Sr. Pharmacist in pay-scale of Rs. 1640-2900 instead of Rs. 1600-2660, with effect from 1-1-1986 with all consequential and incidental benefits. The petitioner has relied upon the alleged anomaly in revision of pay-scales pursuant to recommendations of the First, Second, Third and Fourth Pay Commissions, whose recommendations have been incorporated into Revision of Pay Rules, from time to time.

2. It was vehemently argued by learned Counsel, Ms. Thula, that while Sr. Pharmacist were in the pay-scale of Rs. 1600-2660, the employees in other categories viz. Assistant Matron (Grade-III), Sister Tutor, Sr. Leprosy Supervisor, Sales Tax Inspector and Stenographers were in the lower pay-scale of Rs. 1400-2600 in the Revision of Pay Rules, 1987. While revising pay-scales in the year 1991, pay-scales of all other categories were revised to Rs. 1640-2900, whereas the cadre of Sr. Pharmacist was not given any pay revision and kept in the same pay-scale of Rs. 1600-2660. Therefore, an obvious anomaly and injustice had arisen, which was required to be redressed. Learned Counsel also relied upon report of the Committee constituted by the Pharmacist Council of

India regarding pay-scales and service conditions of the Pharmacist which was approved by Pharmacist Council of India on 19-4-1994; according to which the recommended pay-scale for Pharmacists was Rs. 1400-2600 and for Sr. Pharmacists it was Rs. 1640-2900. It was on that basis submitted that the revision of pay-scale in the later Revision of Pay Rules, 1987, was irrational, arbitrary and inconsistent with the recommendations of the Expert Committee constituted by the Pharmacy Council of India.

3. Relying upon affidavit of Additional Director, Medical Services, Gandhinagar, learned A.G.P. submitted that representations of the petitioner have been considered and rejected by a High Power Committee of the Government. The Third Pay Commission under the Chairmanship of Hon"ble Mr. Justice Ahmedi had submitted its report in May, 1982, and thereafter, an Empowered Committee had examined the report and finalized its report in July, 1986. During that period, the Fourth Central Pay Commission appointed by the Government of India submitted its report and the Government Employees' Associations had demanded acceptance of recommendations of the Fourth Pay Commission, and that demand was accepted by the State Government. Thereafter, the State Government constituted an Expert Committee under the Chairmanship of Hon"ble Mr. Justice S.A. Shah in October, 1986 and pursuant to its report the Gujarat Civil Services (R.O.P.) Rules, 1987, were issued to revise the pay-scales with effect from 1-1-1986. After introduction of the Gujarat Civil Services (R.O.P.) Rules, 1987, the Government received many representations in respect of perceived pay anomalies, and therefore, a High Level Committee under the Chairmanship of the then Minister Finance, was appointed in June, 1987. The High Level Committee examined all the representations in detail and found no anomaly in the pay-scale of Sr. Pharmacists.

4. Learned A.G.P. also submitted that according to the law settled by Division Bench decision of this Court (Coram : B.N. Kirpal, C.J. (as his Lordship then was), and R.K. Abhichandani, J.) in L.P.A. Nos. 226 and 227 of 1993, equation of post or equation of pay must be left to the executive. It was also submitted that pay-scale of Sr. Pharmacist was Rs. 1600-2660 and the pay-scale of Chief Pharmacist was Rs. 1640-2900, at the relevant point of time. Therefore, revising the pay-scale of the Sr. Pharmacists to Rs. 1640-2900 would create anomaly rather than remove it. It was also contended that fixation of pay-scales is a function of the executive and Court has no jurisdiction to interfere.

5. Since, the representations of the petitioner were admittedly required to be considered by a Committee appointed for removing anomalies, an order dated 24-9-2007 was made herein to place on record the terms of reference, wherein the Anomaly Committee had undertaken the exercise of considering various representations. It was recorded in the subsequent order dated 30-11-2007 that the learned Government Pleader had placed on record the terms of reference and decision of the Anomaly Committee, which was taken on record. Thereafter, the petition appears to have remained in a limbo and only adjournments were sought

and taken, from time to time.

6. It was seen from some of the pages of the discussion and decision of the Anomalies Committee, which were found on record, that the Committee considered the representations regarding revision of pay-scale of Chief Pharmacists and refused to recommend revision of their pay-scale from Rs. 1640-2900 to Rs. 2000-3200. Similarly, the representation for revision of pay-scale of Sr. Pharmacists-cum-Store Keeper was also rejected as no anomaly was found by the Committee. The reason why no anomaly was found in revision of pay-scales of Sr. Pharmacist-Cum-Store Keeper was that the pay-scale of other categories and cadres of employees in the Health Department were not comparable. Same consideration and reason applies to the comparison of pay-scale produced and canvassed before this Court. As far as the petitioner is concerned, it has sought to base its claim on the revision of pay-scales of other employees such as Assistant Matron (Grade-III), Sister-Tutor, Sales Tax Inspector and Stenographers. There was no basis for such comparison, except that during the operation of earlier Revision of Pay Rules, Sr. Pharmacists were accorded the pay-scale which was higher than those categories and cadres of employees.

7. By filing an affidavit of Additional Director (Medical Services) in the Office of the Commissioner of Health, Medical Services and Medical Education, it is made clear on behalf of the respondents that recommendations of the Pharmacy Council of India in respect of pay-scale of Rs. 1640-2900 were not binding to the State Government and the State Government had adopted its own policy for revision of pay-scales. It is denied that it was only in case of Sr. Pharmacists that pay-scale of Rs. 1640-2900 was not granted. If the claim of the petitioner were accepted, the scale of Sr. Pharmacists would come at par with the Chief Pharmacist, which would create a further anomaly. As held by this Court (Coram : R.K. Abhichandani, J.) in Spl. C.A. No. 2402 of 1988, while fixing the pay-scale, vertical relativity is an important factor which has to be kept in mind and it would be obviously unjust to prescribe the same pay-scale for both the lower and higher posts. Under the circumstances and for the reasons recorded hereinabove, the reliefs prayed in the petition cannot be granted. Hence, the petition is dismissed. Rule is discharged with no order as to costs.