

(2010) 07 DEL CK 0178

In the Delhi High Court

Case No : Writ Petition (C) No. 2713 of 1992

K.O. Mathai

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Pharmacy Act, 1948 — Section 31, 32, 33

Citation : (2010) 07 DEL CK 0178

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Ankur Chhiber, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—This matter has been on the Regular Board and has been repeatedly called since re-opening of the court on 1st July, 2010. There has been no appearance on behalf of the petitioner despite the matter being displayed in the cause list and posted on the board of this court. Even today, the matter was called earlier in the day and passed over as there was no appearance for the petitioner.

2. In this background, learned counsel for the respondents has submitted that during the pendency of the writ petition on 30th September, 2001, the petitioner made an unconditional request for voluntary retirement from service which was accepted by the respondents. As such, the petitioner has voluntarily retired with effect from 30th September, 2001. It is submitted that the petitioner may consequently not be interested in the prosecution of this case. Be that as it may be, the writ petition was filed in 1992 and has remained pending since. We are therefore not inclined to keep it pending any further.

3. We have accordingly carefully examined the record and find that the writ petitioner has complained that he has been wrongly denied an opportunity for promotion and has prayed for a direction to the respondents for payment of a

salary equal to that which is paid to ASI/Pharmacist (Qualified) w.e.f. 1st January, 1986 and a further direction that the respondents be directed to remuster him and treat the petitioner as an ASI/Pharmacist (Qualified).

4. The petitioner was enrolled as Constable (GD) in the Border Security Force ('BSF' hereafter) on 1st June, 1973. On completion of his basic training at the BSF Academy, Tekanpur, he was posted to the 24 battalion, BSF. During the course of his service, the petitioner attended a training course relating to duties of a nursing assistant at 148 Base Hospital of the Indian Army between 15th July, 1979 to 15th April, 1980 while he was deployed with the 24 Battalion, BSF.

5. The petitioner has premised his claim of eligibility for appointment to the said post in the writ petition on his having also successfully completed a medical assistant diploma course from the Jammu & Kashmir Medical Faculty undertaken by him through the SMGS Hospital at Jammu.

6. As per the extant recruitment rules, we find that the respondents had a policy of employing persons on the posts of Pharmacist (Qualified) and Pharmacist (Unqualified). The relevant extract of the recruitment rules has been set out in the counter affidavit. So far as the essential qualification for Pharmacist (Qualified) are concerned, the rules provide as follows:

PHARMACIST, QUALIFIED (ASSTT-SUB-INSPECTOR)

i) Matriculation or equivalent.

ii) Degree or diploma in pharmacy granted by an institutions of the Central or State Govts or an institution recognised by the Central or State Govt.

or

Diploma in pharmacy of which the period of training is 2 yrs, followed by an internship of 4 months.

iii) Possessing the qualifications under Sec-31 and 32 of the pharmacy Act, 1948 and registered u/s 33 of the said Act.

iv) Must possess the following physical standards:

a) Minimum height - 167.5 cms

b) Minimum Chest - 80 cms (Unexpanded)

measurement - 85 cms (expended)

7. So far as the post of Pharmacist (Unqualified) is concerned, these rules provide the essential qualifications as follows:

PHARMACIST, UNQUALIFIED (ASSTT-SUB-INSPECTOR)

i) Matriculation or equivalent.

ii) Possessing the qualification specified in clause (d) of Section 31 of the

Pharmacy Act, 1948 and registered U/S 33 of the said Act.

iii) Must possess the following physical standards:

a) Minimum height - 167.5 cms

b) Minimum Chest - 80 cms (Unexpanded)

measurement - 85 cms (expanded)"

8. The above recruitment rules therefore prescribed different essential qualifications for these two posts and also drew a distinction between the pay scale which was admissible to the two posts. The Pharmacist (Qualified) was in the pay scale of Rs.1350-2200/-whereas Pharmacist (Unqualified) was in the pay scale of Rs.1200-1800/-. The channel of appointment to the two posts is stated to be different. As per the rules which were in vogue, the posts of Pharmacist (Unqualified) are filled up by appointment of personnel from Constable (General Duty) of the BSF after having undergone the nursing course and gaining experience in compounding and disbursing medicines while deployed at BSF unit hospitals after having got themselves registered as Pharmacist through remonstration .On the other hand, the Pharmacist (Qualified) are enrolled directly from the open market.

9. The duties which are assigned to the Pharmacist (Qualified) are different from those which are assigned to Pharmacist (Unqualified). The respondents have further pointed out that as the Pharmacist (Unqualified) do not have the requisite professional qualification and consequently are required to work under the supervision of either a qualified pharmacist or medical officer additionally and for this reason, they are not given independent responsibility initially.

10. So far as the claim of denial of an opportunity of promotion and achievement of a higher pay scale is concerned, the respondents have pointed out that on successful completion of ten years of service as an unqualified pharmacist, as per the recruitment rules, the petitioner had been given a pay scale which is equivalent to that of a Pharmacist (Qualified) after being cleared by a Departmental Promotion Committee.

11. Our attention is drawn to the pronouncement of the Supreme Court reported at S.C. Chandra and Others Vs. State of Jharkhand and Others, wherein a similar question had arisen in the context of school employees. The Supreme Court had rejected the challenge to the action of the respondents in providing for different pay scales for same work being done by two sets of employees for the reason that their educational qualifications were different. On this issue, the observations of the court in paras 26, 27, 28 & 36 are relevant and read as follows:

26. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in

subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.

27. Thus, in *State of Haryana v. Tilak Raj*, it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity, e.g., a daily rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

28. In *State of Haryana and Ors. v. Charanjit Singh and Ors* discussing a large number of earlier decisions it was held by a three-Judge Bench of this Court that the principle of equal pay for equal work cannot apply unless there is complete and wholesale identity between the two groups. Moreover, even for finding out whether there is complete and wholesale identity, 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. Hence in recent decisions the Supreme Court has considerably watered down the principle of equal pay for equal work and this principle has hardly been ever applied in recent decisions.

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36. 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 v. Tarun K. Roy and Ors.*

The Apex Court placed reliance on the other prior judgments reported at *State of Haryana and Others Vs. Charanjit Singh and Others*, etc. etc., ; *Dhirendra Chamoli and Another Vs. State of U.P.*, ; *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, ; *Randhir Singh Vs. Union of India (UOI) and Others*, ; *State of Haryana and Another Vs. Tilak Raj and Others*, ; *State of U.P. and Others Vs. Ministerial Karamchari Sangh*, ; *State of Haryana and Others Vs. Jasmer Singh and Others*, ; *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, & *Government of West Bengal Vs. Tarun K. Roy and Others*, on the issue of equal pay for equal work.

12. The above narration would show that so far as the assertion of the petitioner based on identity of the nature of duties, pay scale and the essential qualifications for the post of Pharmacist (Qualified) and Pharmacist (Unqualified) is concerned, the same is not supported by the applicable recruitment rules. The petitioner has not placed any material which would enable this court to come to a

different conclusion.

For this reason, the prayer of the petitioner who was appointed as Pharmacist (Unqualified) for payment of salary on the same post as was being drawn by Pharmacist (Qualified) is unjustified and legally not tenable.

13. From a reading of the above judgment, it is evident that even if it were to be held that there was identity of work which has been done by the Pharmacist (Qualified) and Pharmacist (Unqualified), the recruitment rules has prescribed different sets of essential qualification. The very fact that the Pharmacist (Qualified) would be holding better and higher qualification than the Pharmacist (Unqualified) would by itself be sufficient justification for a differential pay scale for the two posts.

For all these reasons, we find no merit in this writ petition which is hereby dismissed.