
(1988) 07 AHC CK 0004
In the Allahabad High Court
Case No : Writ Petition No. 474 of 1983

Krishna Chand Misra

APPELLANT

Vs

The Government of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 27-07-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 1 AWC 314

Hon'ble Judges : S. Saghir Ahmed, J; R.R. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Saghir Ahmed, J.—The Petitioner, who is a Physio-Therapist in the District Hospital, Faizabad, is claiming through this petition filed under Article 226 of the Constitution of India, parity in the scale of pay with the Physio-Therapists posted in the State Medical Colleges.

2. Initially the scale of pay of the Physio Therapists/Occupational Therapists was Rs. 350-700/-. In November 1980, the Second Pay Commission submitted its report to the State Government recommending that the scale of pay applicable to Physio Therapists/Occupational Therapists be revised to Rs. 625-1170. But the Government by G.O. dated 13-9-1982, of which a copy has been filed as Annexure 3 to the writ petition, fixed the pay scale of Physio Therapists/Occupational Therapists working in the District Hospitals at Rs. 570-25-770-EB-30-980-EB-30-1100 while by another G.O. dated 12-10-1982 it fixed the pay scale of Physio Therapists/Occupational Therapists working in the State Medical Colleges at Rs. 625-30-835-EB-30-925-35-1065-EB-35-1240. It is the G.O. dated 13-9-1982 which has been challenged in this petition on the ground, inter alia, that the Physio Therapists/Occupational Therapists belong to one cadre and their nature of duties being similar; they are entitled to be paid their salary in the pay scale fixed for Physio Therapists/Occupational Therapists working in the State Medical Colleges.

3. Opposite-parties have filed a counter-affidavit in which, inter alia, they have stated as under:

3. That the contents of paragraph 1 of the writ petition are not admitted as stated. It is stated that Physio Therapists and Occupational Therapists constitute separate cadres, it is further stated that some posts of Physio Therapists and Occupational Therapists are also sanctioned for Associated Hospitals of State Medical Colleges in U.P. other than those sanctioned for District Hospitals, in different pay scales viz. 625-1240 and Rs. 570-1100 respectively. Thus, the posts are also not inter-transferable.

5. That with regard to the contents of paragraphs 3 and 4 of the writ petition it is stated that the State government after due consideration-of the recommendations made by the Pay Commission issued orders for revision of the Pay Scales of the Physio Therapists/Occupational Therapists from Rs. 350-700 to Rs. 625-1240 for those who are posted at State Medical Collges and their associated Hospitals as would be evident from the perusal of Annexure No. IV to the writ petition, the reason being that the Associated Hospitals of the Medical Colleges are the referral hospitals who have to deal with the complicated/acute oases referred to them by the District Hospitals.

6. That with regard to the contents of paragraph 5 of the writ petition it is submitted that the State Government has rightly revised the pay scale of Physio Therapists/Occupational Therapists posted at District Hospitals from Rs. 350-700 to Rs. 5 70-1100 after due consideration of the recommendations of the Pay Commission.

7. That with regard to the contents of paragraph 6 of the writ petition it is submitted that the Pay Scale of Rs. 625-1240 are for the posts of Physio Therapists/Occupational Therapists posted at Medical Colleges and their Associated Hospitals for the reasons stated in reply to paragraphs 3 and 4 of the writ petition.

8. That the contents of paragraph 7 of the writ petition are denied. The State Government has the right to accept or to reject tbe recommendations of the Pay Commission. As such no wrong has been done by the Government in allowing tbe pay scale of Rs. 625-1240 to the Physio Therapists/Occupational Therapists of Medical Colleges.

9. That the contents of paragraph 8 of the writ petition are denied being vague and misleading. As already stated above in reply to paragraphs 3 and 4 of tbe writ petition the Physio Therapists/Occupational Therapists of the Medical Colleges have to deal with the patients referred to them by the District Hospitals. As such the Therapists of tbe District Hospitals cannot claim to be placed on the same footing as that of the Medical Colleges. Needless to say that the Physio Therapists/Occupational Therapists of the Medical Colleges are found to be more dexterous and able in their profession than those posted at District Hospitals.

12. That with regard to the contents of paragraph 11 of the writ petition it is stated that the services of Physio Therapists/Occupational Therapists posted as the District Hospitals may be transferred to Medical Colleges if found suitable for that post and nothing wrong has been done if Sri. Ravish Kumar Srivastava, Physio Therapist has been posted in Medical Collge. The Petitioner will be dealt according to the Rules applicable to him and he will not be put to financial loss in any way. As such the averments made. To the contrary in the paragraph under reply are denied.

13. That the contents of paragraph 12 of the writ petition are denied. No representation of the Petitioner or other Therapists is available in the records of the Medical Directorate. The Therapists of the District Hospitals are not entitled to the pay scale of Rs. 625-1240 which is allowed to the Therapists of the Medical Colleges for the reasons mentioned above in reply to paragraphs 3 and 4 of the writ petition.

4. On the basis of the averments contained in the paragraphs of the counter-affidavit extracted above, it is contended by the learned Standing Counsel that the Petitioner is not entitled to be paid his salary in the scale of payment for Physio Therapists/Occupational Therapists in the State Medical Collges as the cadre is different and the incumbents working in the District Hospitals cannot be transferred to the State Medical Colleges. Moreover, it is further contended that the nature of duties performed by the Physio Therapists/Occupational Therapists in the State Medical Colleges require greater expertise and are more dexterous and able in their profession than those posted in the District Hospitals.

5. The Petitioner has filed a rejoinder-affidavit in which he has controverted the allegations set out in the counter-affidavit. He has filed a copy of the GO. Dated 10-6-1985 as Annexure 5 to the rejoinder-affidavit which indicates that in the Employees State Insurance Dispensaries also Government has fixed the pay scale for the posts of Physio Therapists/Occupational Therapists at Rs. 625-1170. He has also filed copies of letters of the Director, Health and Family Planning, U.P., Lucknow in which also it is mentioned that the cadre of Physio Therapists working in the State Medical Colleges and the District Hospitals is one and their duties are also similar. These letters are Letter No. 4/D/2/1847 dated 8-2-83 and Letter No. 4D/2/Writ/374/83/10671 dated 30-6-83.

6. The Petitioner has also filed a supplementary-affidavit dated 10-3-1987 in which he has, inter alia, stated as under:

4. That the State Government, while implementing the recommendations of the 2nd Pay Commission, for the reasons best known to them, without any notification for creation of separate cadres for the purposes of District Hospitals, E.S.I. Dispensaries and State Medical Colleges, created different pay scales, creating discrimination in the post of Physio Therapist and Occupational Therapist, posted at District Hospitals, or E.S.I. Dispensaries vide their G.O. dated 13-9-1982 placing them in the pay scale of Rs. 570-1100; while vide

another G.O. dated 12-10-1982 for Physio Therapists and Occupational Therapists serving and posted at State Medical Colleges Rs. 625-1240 though the work and duties and functions and responsibilities assigned and discharged by Physio Therapists serving at District Hospitals or E.S.I. Dispensaries and those at Medical Colleges being one and the same, irrespective of the fact that the posts are inter-se transferable.

5. That though the Physio Therapists and Occupational Therapists posted at State Medical Colleges are attached and posted in various departments such as Orthopaedic, Neurology, Psyciatry, Plastic Surgery, Physical Medicine Departments while the Physio Therapists and Occupational Therapists discharge more onerous duties at tbe District Hospitals and render service to the ailing masses referred by the various sections/departments of the District Hospitals as an independent section/department. The therapy accorded by them includes the diagnosis as well as the treatment to the patients. The G.O. dated 18-10-1984 recognising the services of the Physio/Occupational Therapists as independent service of his section/department under the control of the Superintendent is being annexed herewith as Annexure 8 to this affidavit (Annexure-1 to 4 being appended to the writ petition and Annexure 5 to 7 to the Rejoinder Affidavit).

6. That from tbe Annexure-8 the G.O. dated 18-10-1984 the independent services rendered by the Physio/Occupational Therapists at the District Hospitals makes it abundantly clear that they discharge more onerous duties than that what are discharged by tbe Physio Therapists and Occupational Therapists attached to the various departments in tbe State Medical Collges though tbe nature of work, duties and responsibilities perform by them is the one and the same.

7. That under G.O. dated 10-6-1985 (Annexure-5 to the writ petition) separate cadre of medical services bas been created for tbe ESI Dispensaries under the direct control of the Secretary to Government, U.P., Labour Department and under that G.O. also the pay scale for the Physio Therapists/Occupational Therapists opting to join the services also the pay scale accorded is Rs. 625-1170 though the nature of work, job and responsibilities performed by them remains the same as performed by tbe Physio Therapists and Occupational Therapists posted or working at district hospitals and ESI dispensaries or the State Medical Colleges.

7. From the facts set out in the writ petition, counter-affidavit, rejoinder-affidavit and the supplementary affidavit, it appears that Physio Therapists/Occupational Therapists working in tbe State Medical Colleges as also in the District Hospitals constitute one class, their duties are similar and they belong to the same department and are also inter-transferable. That being so, the Physio Therapists/Occupational Therapists working in the District Hospitals have to be paid their salaries in the scale identical to those working in the State Medical Colleges as in tbe matter of salary they cannot be discriminated particularly when they belong to the same department, and perfrom similar duties.

8. In support of his contention that the Petitioner who is working in the District Hospital can be differently treated in the matter of salary, learned Standing Counsel has placed reliance on a decision of the Supreme Court in *Dr. C. Girijambal Vs. Government of Andhra Pradesh*, in which the Supreme Court, *inter alia*, observed as under:

Dealing with the first contention we would like to observe at the outset that the principle of equal pay for equal work cannot be invoked or applied Invariably in every kind of service and certainly it cannot be invoked in the area of professional services when these are to be compensated. Dressing of any injury or wound is done both by a doctor as well as a compounder, but surely it cannot be suggested that for doing this Job a doctor cannot be compensated more than the compounder. Similarly, a case in Court of Law is argued both by a senior and a junior lawyer, but it is difficult to accept that in matter of remuneration both should be treated equally. It is thus clear that in the field of rendering professional services at any rate the principle of equal pay for equal work would be inapplicable.

9. The principles laid down by the Supreme Court in the above case cannot be invoked in the instant case where the qualifications of the Physio Therapists/ Occupational Therapists working in the District Hospitals as also in the State Medical Colleges are the same, they belong to the same department and perform similar duties.

10. The learned Standing Counsel has also placed reliance on a decision in *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, wherein it was laid down that differentiation in pay scales among government servants holding same posts and performing similar work on the basis of difference in degree of responsibility, reliability, confidentiality etc. was valid. This decision will also not apply to the facts of the present case as in the instant case the Petitioner as also his adversaries working in the State Medical College constitute one class and perform similar duties under the same employer. The opposite parties have failed to show that the duties performed by the physiotherapists in the State Medical Colleges are of greater responsibility than those in the Government hospitals.

11. The assertion in the counter-affidavit that Physio/occupational therapists posted in the Medical Colleges have to deal with the patients referred to the Medical Colleges by the District Hospital or that they are more dexterous and able than those posted in the District Hospital cannot justify a differential treatment, particularly as the terms "dexterous" and "able" are vague.

12. However, in our opinion the Instant case is squarely covered by the decision of the Supreme Court in *P. Savita v. Union of India* AIR 1985 SC 1124. In this case the Supreme Court, on a consideration of earlier decisions laid down that where all relevant considerations are the same, persons holding identical posts and discharging similar duties cannot be treated differently.

13. We may also refer to a decision of this Court in *Devendra Prakash Goel v. The State of U.P.* 1984 (2) LCD 277 in which, relying upon the decision of the Supreme Court in *Randhir Singh v. Union of India* AIR 1982 SC 879, it was found that the classification of the Senior Lab. Assistants working in the Medical Colleges and those working in the hospitals was irrational, arbitrary and discriminatory. It may be pointed out that *Randhir Singh's* case (supra) has been relied upon by their Lordships of the Supreme Court in *P. Savita's* case, referred to above.

14. In a very recent decision in *Jaipal and Others Vs. State of Haryana and Others*, , the Supreme Court once again reiterated the principle of "equal pay for equal work" with the observation that where both the classes of persons perform similar functions and duties under the same employer, they would be entitled to the same salary.

15. This decision also, in our opinion, covers the controversy in question.

16. For the reasons stated above, we allow the petition and quash the G.O. dated 13-9-1982 contained in Annexure-3 to the writ petition and direct that the Petitioner shall also be paid his salary in the pay scale of Rs. 625-1240 applicable to the Physio Therapists/Occupational Therapists working in the State Medical Colleges. There shall be no order as to costs.