

(2023) 03 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : ??Civil Writ Petition No.1599, 1686, 1687, 1688, 1695, 1696, 1851 Of 2020

Pankaj Kumar Lakhanpal & Ors

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 14
Relaxation Rules, 2006 — Rule 4

Citation : (2023) 03 SHI CK 0002

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Shrawan Dogra, Lovneesh Kanwar, Peeyush Verma, Satish Sharma, Devender K. Sharma, Tejasvi Dogra, Anup Ratta, Y. W. Chauhan, I. N. Mehta, J. S. Guleria, Rajat Chauhan

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. Since common questions of law and facts arise for consideration in all these petitions, therefore, the same were taken up together for hearing and are being disposed of by a common judgment.

2 For the sake of convenience and in order to maintain clarity, facts of CWP No. 1686/2020 are being referred to.

3 All the petitioners hold Bachelor's degrees in Veterinary Science and Animal Husbandry (B.V.Sc. & AH) and being duly qualified were appointed as Veterinary Officers on contract basis initially pursuant to advertisement issued by the Himachal Pradesh Public Service Commission (HPPSC) and thereafter their services have been regularized.

4 It is the specific case of the petitioners that the State had not made any appointment to the post of Veterinary Officer through HPPSC since 1998 and in

between 1998 to 2003 such appointments were made on ad-hoc basis, which were later on regularized as per policy of the State Government.

5 It is also the case of the petitioners that after the year 2003, the State had been making appointments to the post of Veterinary Officers on contract basis only and it was for the first time in the year 2010 that the respondent-State made appointments through HPPSC.

6 The Finance Department vide its notification dated 1.9.1998 effective from 1.1.1996 provided for 4-tier pay scale to the following categories serving in the State:

I. H.P. Administrative Services

II. H.P. Police Services

III. H.P. Health Services Class-I (Generalist)

IV. H.P. Health Services Class-I (Dental)

V. Animal Husbandry Veterinary Class-I services VI. Assistant Engineer

VII. Assistant Architect

VIII. Assistant Town Planner

Meaning thereby that the State for the purpose of revision of pay scale amongst others had equated the following categories:

I. H.P. Health Services Class-I (Generalist)

II. H.P. Health Services Class-I (Dental) and

III. Animal Husbandry Veterinary Class Class-1 Services

7 Further, the State Government vide notification dated 23.6.2000 framed the guidelines for implementation of 4-tier pay scale in respect of the above mentioned categories. Subsequently vide notification dated 9.8.2012, the respondent- State granted 4-tier pay scale in the revised pay scales in respect of Veterinary services as under:-

Pay Band

Grade Pay

Initial Pay

1

15600-39100 Entry Level

5400

21,000

2

15600-39100 after 4 years

6600

25250/-

3

15600-39100 after 9 years

7600

31320

4

37400-67000 after 14 years

8600

46000

8 All the officers from the post of Veterinary Officer to Deputy Director constituted a common service known as the H.P. Animal Husbandry and Veterinary Services Class-I (Gazetted Technical Services) and, therefore, on the basis of above pay scale pattern, according to length of service, the placement of each officer was to be determined on the basis of completion of 4, 9 and 14 years of service counted from the initial date of regularization in service. However, the respondent-State while counting such service ignored the service rendered by the petitioners prior to regularization on contract basis unlike their counterparts, who fall within the categories of H.P. Health Services Class-I (General List) and H.P. Health Services Class-I (Dental), constraining the petitioners to file these writ petitions for grant of the following substantive reliefs:-

(1) The impugned decision dated 28.02.2020 (ANNEXURE P-19) passed by respondent No.1 may be quashed and set aside;

(2) Cabinet Decision, if any, not granting due benefit to the petitioners as prayed for in this writ petition may also be quashed and set aside;

(3) The respondents may be directed to count entire service rendered by the petitioners on contract basis before their respective regularization may be counted for the purpose of grant of benefit under 4, 9,14 years (Assured Career Progression Scheme) pay scale on the pattern the same has been extended to other Medical Officers (General), Medical Officers (Dental) and Veterinary Officers (Regular);

(4) That the period of service of the petitioners for the purpose of grant of 4, 9,14 years (Assured Career Progression Scheme) pay scale may be directed to

be counted from the initial date of joining of the petitioners on contract basis with the respondent Department;

(5) That any other interpretation by the respondent State for not counting the contract service of the petitioners and depriving them of the benefit of such service for the benefit of 4, 9, 14 years (Assured Career Progression Scheme) pay scale may be read down in the manner that entire service including contract service before regularization is to be counted for the said service benefit and the arrear of amount be paid along with interest till the date of realization.

9 The respondent-State has contested these petitions by filing reply wherein preliminary submissions have been made to the effect that the contractual services of the petitioners (Veterinary Officers appointed on contract basis) on the analogy of Medical Officers (appointed on contract basis) in the Health and Family Welfare Department for the purpose of granting 4-tier pay scale cannot be counted as the petitioners are dealing with animals, whereas the Doctors of Health Department are dealing with humans where stakes are much higher and the duties and responsibilities are round the clock and thus are not equivalent.

10 Moreover, all the appointments are made on contract basis in the State and such services are regulated as per the terms and conditions prescribed in the agreement as well as column No. 15-A of the Recruitment and Promotion Rules of the concerned post.

11 It is averred that there is no such provision in the terms and conditions for appointment on contract basis to count the services rendered on contract basis for the purpose of granting the benefit of 4-tier pay scale.

12 Further, the job specification of MBBS doctors and Veterinary Officers are quite different. The decision to count the contractual services of Medical Officers for the benefit of 4-tier pay scale was taken by the State with a view to provide good medical facilities to people of the State even also in the far-flung areas. There is no parity between the MBBS doctors and Veterinary Officers. It is also averred that principle of equal work for equal pay is also not applicable in the instant case(s).

13 Lastly, it is averred that the responsibilities of MBBS doctors are more onerous in comparison to that of Veterinary Officers and there is valid distinction in the working and nature of operation between the MBBS Doctors and Veterinary doctors, hence the contractual services of the petitioners for grant of 4-tier pay scales cannot be counted.

14 We have heard the learned counsel for the parties and have also gone through the material placed on record.

15 At the outset, we need to refer to certain judgments rendered by this Court, which have important bearing on the outcome of these petitions.

16 In CWP(T) No. 2773/2008, titled as Dr. Arun Sirkeck and Ors. vs. State of

Himachal Pradesh, decided on 27. 5.2009, this Court categorically held that the Veterinary Officers appointed on contract basis cannot be discriminated by the State by not counting the ad-hoc service at par with the Medical Officers serving in the Himachal Pradesh Health Services Class-I (Generalist) and (Dental) and accordingly, the State was directed to count the services of the Veterinary Officers on ad- hoc basis for all intents and purposes. It shall be apt to reproduce relevant observations, which read thus:-

"Petitioner No.1 was appointed on 30.7.1988. He has worked uninterruptedly till the date of his regular appointment on 18.6.1992. This appointment cannot be termed purely as stopgap or fortuitous or ad hoc. Similarly, petitioner No.2 was appointed on ad hoc basis as Veterinary Officer on 30.7.1988. He has also completed four years till his regular recruitment through the Himachal Pradesh Service Commission on 22.6.1992. This period can also not be excluded for the purpose of granting the benefit under Annexure A-1. Petitioner No.3 has also worked for a considerable period of two years from 23.9.1993 to 13.3.1995. It would be erroneous to exclude the services which the petitioners have rendered on ad hoc basis for the purpose of counting seniority for the release of four tier pay scales. They were in possession of essential educational qualification at the time of their recruitment. They have been clubbed together with seven remaining services of the State as per Annexure A-1.

In the present case, the petitioners are similarly situated vis-à-vis the Medical Officers serving in the Himachal Pradesh Health Services Class-I (Generalist) and (Dental). They could not be discriminated against by the State Government by not counting their ad hoc services at par with the Medical Officers serving in Himachal Pradesh Health Services Class-I (Generalist) and (Dental). The explanation given for not according this benefit to the petitioner is flimsy and artificial. The petitioners cannot be denied this benefit only on the ground that they have not furnished bonds at the time of their initial appointment on ad hoc basis. What was to be seen in fact by the respondents was that whether they have continuously worked on ad hoc basis till their regularization or not. The petitioners though appointed on ad hoc basis have worked uninterruptedly and they have been recruited on regular basis on the recommendations made by the Himachal Pradesh Public Service Commission. The Medical Officers serving in the Himachal Pradesh Health Services Class-I (Generalist) and (Dental) were appointed on ad hoc basis and their services were subsequently regularized on the basis of the recommendations made by the Himachal Pradesh Public Service Commission. The explanation made by the respondent-State on the basis of non-furnishing of bonds is artificial. Rather, it is a case of invidious discrimination. The petitioners have been clubbed together as per Annexure A-1 and they could not be discriminated against by the respondent-State for the purpose of grant of four tier pay scales. The services rendered by the petitioners on ad hoc basis till their regularization are required to be counted. The very idea of furnishing the bonds by the Medical Officers or for that matter by any employee is to serve the State for a particular period. In the present case, without furnishing bonds, the

petitioners have worked uninterruptedly on ad hoc basis as Veterinary Officers.

Thereafter their services were regularized and they are working as Veterinary Officers with the respondent-State.

The learned Senior Additional Advocate General has strenuously relied upon Annexure R-IV dated 12.1.2004. This letter would apply prospectively. The rights accrued to the petitioners on the basis of Annexures A-2 and A-3 cannot be taken away by a letter dated 12.1.2004. The petitioners are entitled to be treated at par with the doctors serving in the Himachal Pradesh Health Services Class-I (Generalist) and (Dental) on the basis of Annexures A-2 and A-3."

17 In another matter relating to non grant of Non Practicing Allowance (NPA) to Veterinary Officers working on contract basis at par with the medical Officers (Generalist) as well as Medical Officers (Dental), a learned Single Judge of this Court in CWP No. 124/2011, titled as Abhinav Soni vs. State of H.P, held the same to be discriminatory and consequently the Veterinary Officers were held to be entitled to NPA on basis of parity.

18 The respondent-State thereafter assailed the aforesaid judgment by filing LPA No. 720/2011, titled as State of Himachal Pradesh vs. Abhinav Soni, which came to be decided on 27.7.2015 by the learned Division Bench of this Court, to which one of us (Justice Tarlok Singh Chauhan) was party. The Court specifically held that the respondent-State could not make distinction to deny NPA to the Veterinary Officers simply on the basis that the MBBS doctors deal with human beings, whereas Veterinary Officers having the same qualification and same degree are dealing with animals as is evident from paras 14 and 15 of the judgment which read as under:-

14. How distinction can be made between a MBBS Doctor, who deals with human being and a Veterinary Officer, who is also having the same qualification and same degree, but is dealing with animals.

15. Thus, it appears that the decision made by the writ respondents-appellants herein is not sustainable in the eyes of law, rather, is discriminatory.

While dismissing the appeal filed by the respondent-State, it was observed as under:-

26. Keeping in view the facts of the case read with the tests laid down by the Apex Court from time to time and the discussions made hereinabove, we are of the considered view that the State-writ respondents have made discrimination on the following grounds:-

(i)NPA has been granted to the Veterinary Officers appointed on regular basis, but not to the Veterinary Officers appointed on contract basis despite the fact that they are performing same job, are discharging same duties and responsibilities.

(ii) The Medical Officers, who came to be appointed on contract basis, were given

the benefit of NPA, but was denied to the writ petitioners-respondents herein, i.e. the Veterinary Officers appointed on contract basis.

27. Having said so, we hold that the Veterinary Officers appointed on contract basis are also entitled to NPA right from the date of filing of the writ petition, as directed by the Writ Court/learned Single Judge.

19 What would thus be evident from the aforesaid discussions so far is that this Court has already recognized parity between MBBS doctors and Veterinary Officers in the matters of counting of ad-hoc service and also grant of NPA to the Veterinary Officers at par with the MBBS doctors.

20 However, the moot question is whether the respondent-State can deny the grant of 4-tier pay scale to the Veterinary Officers that too at the flimsy ground, which has otherwise been rejected i.e. only on the ground that the petitioners are dealing with animals and the doctors serving in the Health and Family Welfare Department are dealing with humans. The answer clearly is in the negative, more particularly, when this contention has expressly been rejected by this Court while adjudicating and deciding the aforesaid LPA No. 720/2011.

21 Apart from above, stand of the respondent-State is otherwise not tenable in view of the judgment rendered by learned Division Bench of Delhi High Court in W. P. (C) No. 2780/2011, titled as Dr. Chandra Shekhar Sahukar vs. Union of India, decided on 14.10.2014, wherein Veterinary Doctors like in the instant cases were being discriminated and singled out from the benefit of Dynamic Assured Career Progression mechanism (DACP) only on the ground that the duties being performed by the medical practitioners i.e. GMMOs were distinct from Veterinarians. It shall be apt to reproduce paras 27, 29, 30 & 31 of the judgment, which read as under:-

27. The respondent's argument is primarily hinged on executive supremacy in policy making, in the area of determining conditions of service, such as career progression programmes. This argument, when made, ordinarily prevails. However, when this is to be tested against a constitutional value such as the guarantee of equality and protection against discrimination, the principle which the Courts adhere to is that if the complaint establishes an apparent classification, that has to be justified. At the superficial level, no doubt, medical practitioners, i.e GDMOs of the CHS can be said to be distinct from veterinarians. Yet what is important is that both the Fifth CPC in its report (Paragraph 55.291) and the Sixth CPC in its report (Paragraph 3.8.25) recommended complete parity in respect of pay, allowances and "career prospects" to all categories of doctors. This was concededly W.P.(C) 2780/2011 Page 13 understood by the UOI to mean complete parity in such matters, to justify grant of such parity or equivalence to dentists and "Dental doctors" who, like the veterinarians did not find express mention in this regard. Having thus extended benefit to one category of medical practitioners- i.e. dentists- without any discussion, but the mere extension of the logic underlying the CPC's recommendation, the UOI should have shown why

veterinarians differed and did not deserve such parity. Here too there is no explanation, save the power of the executive authority to formulate policy.

29. Having recognized a parity in regard to almost all matters, such as pay-scales, emoluments, Non-Practising Allowance, etc, singling out veterinarians for exclusion-which, in the present case, amounts to hostile discrimination- from the benefit of the DACP, offends Article 14. If viewed from the background of the circumstance that the expression "complete parity" occurring in the Fifth CPC recommendation was interpreted in both the letter and the spirit, in the W.P.(C) 2780/2011 Page 14 case of dentists, who got that benefit of the DACP, only on the strength of such phrase, whereas the veterinarians were denied that benefit without any reason at all, the discrimination is aggravated; it is utterly arbitrary.

30. The respondent's argument, i.e that veterinarians are classifiable differently from the other doctors, is, in the opinion of the court, a tenuous and unmerited one. This court here recollects the decision in *Roop Chand Adlakha and Ors. v. Delhi Development Authority & Ors.* [1988] Supp (3) SCR 253, a decision of the Supreme Court, which deals with the process of classification and points out how classification itself can produce inequality:

"19.....The process would be constitutionally valid if it recognises a pre-existing inequality and acts in aid of amelioration of the effects of such pre-existent inequality. But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow-up or magnify in-substantial or microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification. The presumption of good faith in and of constitutionality of a classification cannot be pushed to the point of predicating some possible or hypothetical but undisclosed and unknown reason for a classification rendering the precious guarantee of equality "a mere rope of sand."

XXXXXX XXXXXX XXXX"

31. In the present case, there is no reason at all to say that veterinarians are different from other classes of medical and dental W.P.(C) 2780/2011 Page 15 practitioners- for the purpose of denying the DACP benefit- when they are treated at par with those categories in the matter of pay scales, allowances, special perks like Non-Practising Allowance, etc. Consequently, it is held that the respondents acted in a discriminatory manner in refusing to extend the DACP to the petitioners and other veterinarians. The impugned orders of the CAT are accordingly set aside; a direction is issued to the respondents to ensure that the DACP is granted to Veterinary Officers on the basis of the CPC's recommendations' implementation to GDMOs and Dental Doctors from the date the latter category (Dental Doctors) were given that benefit.

22 On the basis of the aforesaid judicial pronouncements, we have no hesitation

in concluding that the respondent- State while denying the benefit of 4-tier pay scale to the petitioners from the initial date of appointment at par with the medical officers have indulged in hostile discrimination and thereby violated Article 14 of the Constitution of India.

23 There are other reasons to hold the action of the respondent-State to be discriminatory. Firstly, the respondent-State itself had extended the benefit of 4-tier pay scale to Medical Officers serving in the Himachal Pradesh Health Services Class-I (Generalist) from their initial date of appointment. However, similar benefits were not extended to the Medical Officers serving in the Himachal Pradesh Health Services Class-1 (Dental). Then this action of the respondent-State was challenged by the Medical Officers (Dental) in O.A. No. 5053/2015, titled as Dr. Bhim Chand and ors. vs. State of H.P. & ors., decided on 23.12.2016, wherein the learned erstwhile H.P. Administrative Tribunal held the petitioners therein to be similarly situated with the Medical Officers, who had been granted 4-tier pay scale after taking into consideration the services rendered by them on contract or ad-hoc basis and the respondent-State, in its wisdom, did not assail the aforesaid judgment and rather chose to implement the same. This issue is otherwise no longer res integra and covered by the judgment of the Delhi High Court in Dr. Chandra Shekhar Sahukar's case, more particularly, by the observations and findings recorded in para 27 thereof (supra).

24 Secondly, the State has otherwise indulged in invidious discrimination inasmuch as some of the veterinarians like the petitioners have also been extended the same benefit of grant of 4-tier pay scale from their initial date of appointment, as is evident from the letter dated 17.6.2013 which reads thus:-

File No. AHY-B(7)-1/2008

Government of Himachal Pradesh Department of
Animal Husbandry

From:

The Additional chief Secretary (AH) to the
Government of Himachal Pradesh

To:

The Director of Animal Husbandry
Himachal Pradesh Shimla- 5

Dated the Shimla 171002 17.06.2013

Subject: Regarding grant of Four Tier Pay scale to the Veterinary Officers.

Sir,

On the recommendation of the Departmental Promotion Committee, I am

directed to convey the approval of the Government for the grant of higher pay scales admissible in accordance with the instructions issued by the Finance Department vide their letter No. Fin (PR)B(7)59/2010 dated 09.08.2012, after completion of 4,9 and 14 year service in a cadre, in the following manner to Veterinary Officers:-

Veterinarians to whom the higher pay scale is to be granted on completion of 14 years of service on one post i.e. Rs. 37400-67000+ 8600 Grade Pay.

Sr. No.

Name and Designation

Date of ad- hoc/regular appt.

Date of completion of 14

years

Date from which higher scale is

due on notional basis

Higher pay scale on notional basis from due date and actually from 9.8.2012

i.e. date of issue of restoration

of orders.

1

Dr. Asha Devi

V.O.

30.9.1993

29.9.2007

1.1.2012

Rs. 37000-

67000 + Rs.8600

grade pay with initial start of

46000/-

2

Dr. Ravinder Singh

Thakur V.O.

21.8.1998

20.8.2012

1.1.2013

-do-

25 A faint attempt was made by the learned Advocate General to argue that the Medical Officers governed by the Himachal Pradesh Health Services Class-I (Generalist) were granted 4-tier pay scale from the initial date rendered on contractual basis because of relaxation of the Rules granted by the government and it is more than settled that such relaxation cannot be claimed as a matter of right.

26 Strong reliance in support of such contention is placed on the judgment rendered by the Hon'ble Supreme Court in State of U.P. vs. Vikash Kumar Singh (2022) 1 SCC 347, more particularly in para 7.1 thereof which reads as under:-

7.1 The learned Single Judge thereafter while quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019 has issued the writ of mandamus commanding or directing the competent authority to grant relaxation in qualifying service, which as such was permissible under Rule 4 of the Relaxation Rules, 2006. The word used in the Rule 4 of Relaxation Rules, 2006 is "MAY". Therefore, the relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service. Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were prepared absolutely in consonance with the Rules, 1990 and Rules, 2006. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are not sustainable in law.

27 We find this submissions to be totally untenable for more than one reason. Such as, there is no relaxation granted (at least no such document has been placed on record by the respondent-State) when similar benefit of 4-tier pay scale was granted to the Doctors governed by H.P. Health Services Class-I (Dental).

28 Lastly and more importantly, it was the respondent-State itself, who, after careful consideration, had identified aforesaid 8 categories by treating services at par for limited purpose for grant of 4-tier pay scale. Obviously, then there cannot be any inter se discrimination in the officers falling under these categories so as to deny the veterinarians the benefit of 4-tier pay scale from the initial date of appointment.

29 In view of aforesaid discussions and reasons, we find merit in all these

petitions and the same are allowed. Accordingly, the impugned decision dated 28.2.2020 is quashed and set aside. Consequently, the decision taken by the cabinet rejecting the claim of the petitioners, which otherwise is bereft of any reasons, is also quashed and set aside. The respondent-State is directed to count the services rendered by the petitioners on contract basis before their respective regularization for the purpose of benefit under 4-tier pay scale on the same pattern as has been extended to the Medical Officers (Generalist) and (Dental) and Veterinary Officers (Regular). The monetary benefits be paid within a period of 90 days from the date of the judgment failing which the respondent-State shall be liable to pay interest @ 7.5% thereon till its realization. Pending application(s), if any, stand disposed of.