

(2006) 01 MP CK 0011
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2095 of 1993

Ravi Kumar Khare (Dr.) and others

APPELLANT

Vs

Municipal Council, Betul and others

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 94

Citation : (2006) 3 MPLJ 321

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Advocate : S.R. Tamrakar, for the Appellant; Harish Agnihotri, Government Advocate For respondent Nos. 4 and 5, for the Respondent

Judgement

R.K. Gupta, J.

The petitioners by way of filing the present petition before this Court have claimed a Writ of Certiorari for the quashment of communication dated 21st September 1992 which is Annexure P/II to the petition. The petitioners also claim a writ of mandamus against the respondents to extend to them the benefit of revised scale of pay of Rs. 1,800/- in accordance with Annexure P/2 issued under Rule 3 of M.P. Revision of Pay Rules, 1983 with effect from 1981 and then to pay to the petitioners all arrears of salary and emoluments on the basis thereof.

The claim of the petitioners is that they are the employees of different municipal councils and are functioning as Vaidyas. In the petition it is averred that the parity with regard to the pay scale was maintained with the employees of the State Govt. On this basis the petitioners claim parity with regard to the pay scale with the employees belonging to the State Govt.

In the present case the return has been filed by the respondents and in the return it is stated that the post of Vidya of the Municipal Council is a post included in M.P. Municipal Services (Scale of Pay and Allowances) Rules, 1967. These rules have been framed by the State Govt, in exercise of powers u/s 94 of

the M.P. Municipalities Act, 1961. According to the same all the Municipal Councils have been given the power to appoint the Vaidyas. It is also stated that the services of the employees belonging to the Municipalities are governed by the M.P. Municipal Employees (Recruitment and Conditions of Service) Rules, 1968. The State Govt, has also framed the rules known as M.P. Municipal Service (Scale of Pay and Allowances) Rules, 1967. These rules have been framed by the State Govt, in exercise of its powers u/s 95 of the M.P. Municipalities Act, 1960. The respondents have further stated that the emoluments including the pay scale of a municipal employee depend upon the sanction accorded from time to time by the State Govt. Since the State Govt, has not sanctioned the same pay scale to the petitioners employed in the Municipalities, therefore, cannot be given. It is also submitted in paragraph 8 of the return filed by the respondent No. 1 that the petitioners cannot be treated to be equivalent to the Ayurved Chikitsa Adhikari. According to the respondents the Vaidyas employed by the State Govt, are known as Ayurvedic Chikitsa Adhikari and the persons employed by the Municipalities are designated as Vaidyas.

The question in the present case is whether the petitioners those who are not employees of the State Govt, can claim their parity with regard to the pay scale, which is made applicable by the State Govt, to its Ayurvedic Chikitsa Adhikari.

The question with regard to applicability or giving a particular pay scale by claiming parity by different set of employees i.e. not being employed by the State Govt, and employed by different organizations working under the State would have a right to claim any parity.

There should not be any dispute with the method of recruitment of a Ayurvedic Chikitsa Adhikari employed by the State Govt., would differ in the case of recruitment of a Vaidya by a Municipality. The return filed by the respondents demonstrates that Ayurvedic Chikitsa Adhikari in the pay scale of Rs. 3000/- are recruited through the Public Service Commission and thereafter as the Vaidya appointed by the different Municipalities they are not recruited through the Public Service Commission. In this regard, the return filed by the respondents No. 4 and 5 is relevant wherein it is stated that conditions of service and recruitments of Ayurvedic Chikitsa Adhikari and Vaidyas are different and are not at par with the State Govt.

The question in this regard would also depend upon the qualitative difference in regard to degrees of reliability and responsibility. The Apex Court in the case of Tarsem Lal Gautam and another vs. State Bank of Patiala and others, AIR 1989 SC 30 considered this question with regard to parity in the pay scale between the two sets of employees, and the Apex Court concluded that the qualitative difference of degree of reliability and responsibility would be a factum to be considered between the two sets of employees for applying the principles of parity or the principles of equal pay for equal work enriched under Article 39(d) of the Constitution of India. The Apex Court in the case of State of West Bengal and Others Vs. Monirujjaman Mullick and Others, again considered the question

with regard to parity and laid down a principle that method of recruitment would also be a distinctive factum for not applying the rule of parity or the principle of equal pay for equal work. Again in the case of Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, , the Apex Court laid down a principle that courts cannot fix a particular pay scale and classification made by the State Govt, in relation to the parity or disparity. Parity is to be seen in the light of mandate of Article 14 of the Constitution of India. In cases where the disparity is found to be in violation of Article 14 of the Constitution of India then the courts can exercise its powers of judicial review. Another relevant judgment in this regard is AIR 1998 SC 32 Associate Banks Officer's Association vs. State Bank of India and others. It was the case where the employees of subsidiary banks were claiming the same pay paid by sponsored banks to its employees. While considering the question of parity the Apex Court held that availability of pay which was prevailing with the sponsored bank not being the same with the subsidiary Bank, the parity cannot be claimed.

On the basis of the aforesaid judgments as discussed above, if the present case is also perused then the petitioner in the petition has not shown that the classification is contrary to Article 14 of the Constitution of India. Petitioners being the employees of an autonomous bodies have no right to claim the parity with the employees of the State Govt. Thus a classification of an employee belonging to an autonomous body and the employees belonging to the State Govt, cannot be kept at par as these two categories of employees cannot be included in one classification particularly when there is no material placed before this Court as to how the fixation of the lower pay scale to the petitioners than the employees of the State Govt, is arbitrary.

The employees employed by the Municipalities are governed by the rules with regard to their pay scale as framed by the State Govt, in exercise of its powers under Sections 94 and 95 of the M.P. Municipalities Act, 1961. The said enacting powers to frame rules does not contemplate for providing the same set of service conditions to the employees of the Municipalities which are prevailing in the State Govt.

The method of recruitment in the present case is also different. The employees holding the post of Ayurvedic Chikitsa Adhikari in the pay scale of Rs. 3000/- are to be recruited through the Public Service Commission and the petitioners as such are not recruited by the Public Service Commission. The qualitative difference of degrees is also different. An Ayurvedic Chikitsa Adhikari being the employees of the State Govt, has to serve to any place within whole State of M.P. It is the condition of service, the petitioners being the employees of the Municipalities are concerned, they have no such responsibility. More so, the qualitative work of the State Govt, employed in the State would also differ in cases of the employees employed in Municipal Council, therefore considering this aspect also, the petitioners have not been able to demonstrate any aspect which

is similar to the employees of the State Govt.

The capital structure with regard to staff or employees employed by the State Govt, would also differ with the employees of the Municipalities. Municipality is a very small unit and strength of the Municipal Council is also very small. The resources for governing the capital of the Municipality would certainly be smaller than the State Govt. Keeping in view all these factors the petitioners being the employees of the Municipality i.e. smaller unit will have no right to claim parity with the employees of the State Govt.

Apart from the aforesaid, it is also to be seen whether this Court can exercise powers under Article 226 of the Constitution of India, would have power to fix a particular pay scale. The Apex Court has held in the case of Supreme Court Employees Welfare Association (supra) that courts cannot fix a particular pay scale. It is to be done by an expert body such as pay commission. It is now for the pay commission or the expert body to consider all these factors for providing a particular pay scale, therefore, claim of the petition in the present petition cannot be accepted.

However, since the employer of the petitioner i.e. different Municipalities have stated in the petition that they have no objection against grant of pay scale to the petitioners at par with the State Govt, subject to sanction accorded by the State Govt. It is now for the State Govt, or the Municipal bodies to consider and decide the question for grant of pay scale to the petitioners at par with the Ayurvedic Chikitsa Adhikari. This court cannot adjudicate upon all these questions in this petition. Petitioners may approach the State Govt, by making necessary facts and grounds for claiming the parity. Petition is thus disposed of accordingly.