
(2010) 09 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 12880 of 2002

Smt. Munmun Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0005

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—Heard Mr. Lata Sachindra Kumar, learned counsel for the Petitioner and counsel for the State.

In this writ application, the prayer of the Petitioner reads as follows:-

1. That through this Writ Application, the Petitioner seeks issuance of appropriate writ, order or direction for quashing of part of the report, regarding recommendation of revised pay scale of Senior Sister Tutors and Principal of Fitment Appellate Committee as well as Fitment Committee, whereby the the Fitment Appellate Committee, without considering the case of the petitioner, allowed the same recommendation of revised pay scale as recommended by Fitment Committee i.e. Rs. 5500-Rs.9000, instead of Rs. 7500-Rs. 12,000, which is the revised pay scale in Central Government for the similar post, after implementation of the report of 5th Pay Commission recommendation. The Petitioner further seeks a direction to the Respondents to fix the correct pay scale of the Petitioner with effect from 1.1.1996 in the revised pay scale of Rs. 7500-Rs. 250-Rs. 12,000, which is the central scale for similar post and quoted in paragraph No. 69.44 of the report of Fifth Pay Commission for Central Civil Services and grant the monetary benefits/ arrears of difference amount to be paid to the Petitioner alongwith revised increased uniform allowance @ Rs. 3,000/- per annum, washing allowance @ Rs. 150/- per month and nursing allowance @ Rs. 1,600/- per month, with effect from 1.4.1997, which is already recommends by the Fitment Committee and Fitment Appellate Committee in their reports.

2. Learned counsel for the Petitioner has highlighted that when there was a conscious Government decision to adopt the pay-scale of employees of corresponding rank of Central Government for the State Government employees, the Petitioner holding the post of Senior Sister Tutor, could not have been deprived of the fixation of pay-scale as being paid to the Senior Sister Tutor in the Central Government. In this context, he has placed reliance on a number of documents enclosed with this writ application as also the report of the Fitment Committee in paragraph No. 38.22.9 to show that in the Government of India, the pay-scale of staff for the category of Senior Sister Tutor was Rs. 2000-3200/- (pre-revised) and Rs. 6500-10500/- (revised) and as such, the decision of the State of Bihar to place the Petitioner and other Senior Sister Tutor in the scale of Rs. 1640-2600/- (pre-revised) and Rs. 5000-8000/- (revised) is wholly arbitrary.

3. There is no counter affidavit on behalf of the Respondents but then the learned counsel for the State on the basis of materials on record would try to justify such Government decision as with regard to the grant of pay-scale to the post of Senior Sister Tutor. He has sought to explain that there is a basic difference in the setup of the nursing cadre in the State Government as against the one which is prevailing in the Central Government.

4. In the opinion of this Court, the stand of the learned counsel for the State seems to be correct. This aspect was in fact examined by the State Government in the light of discussions made in the Pay Fixation Report of the Fitment Committee which after noticing the marked difference in the set up and pay-scale of the different posts in the nursing cadre in the Central Government and the State of Bihar had recorded as follows:-

38:22.10. As compared to the pay scales in the Centre the basic grade (Staff Nurse Grade-B) is lower in Bihar but then there are more levels in this State. For example, in the Dr. Ram Manohar Lohia Hospital, there are just three grades of Staff Nurse, Nursing Sister and Assistant Nursing Superintendent/Sister Tutor/Senior Sister Tutor whereas in Hospitals in Bihar there are Staff Nurses (Grades "B" and "A"), Nursing Sister, Assistant Matron, Senior Matron, Junior Sister Tutor, Senior Sister Tutor and State Nursing Superintendents. Therefore, it is clear that there are more levels in Bihar and secondly in the College of Nursing there are just two grades in Bihar of Clinical Tutor and Lecturer other than Vice-Principal and Principal but in the Rajkumari Amrit Kaur College of Nursing of Delhi there are Clinical Instructors, Tutor/Lecturer, Senior Lecturer, Professor of Nursing and Director other than Vice-Principal and Principal.

5. As a matter of fact, this aspect of the matter in the alleged anomaly. in the pay fixation was also gone into by the Fitment Committee in the backdrop of historical perspective of the constitution of cadre as is evident from the following excerpts in paragraph No. 38.22.11 of the report:-

38.22.11. The Fitment-cum-Pay Revision Committee discussed in detail the representation submitted by the Trained Nurses Association and having

considered their pay scales in the Centre and in the State recommended that the Staff Nurse Grade-A and Nursing Sister will get the replacement scale of the scales recommended by the Anomaly Removal Committee of 1985 but the Committee appreciated the difficult nature of the course prescribed for Nurses and the arduous duty that they have to perform. Regarding the scales in the Rajendra Medical College Hospital, Ranchi for the Nursing teaches the Fitment-cum-Pay Revision Committee considered it unable to recommend the scale of Vice-Principal and Principal as available in the Rajkumari Amrit Kaur College of Nursing to similar posts in the Ranchi College because the State Nursing College at Ranchi was a fledgling, set up only in 1988 and had only six posts with one Principal, one Vice-Principal and two each in the categories of Lecturer and Clinical Tutor. The Fitment-cum-Pay Revision Committee also recommended at Chapter 15, paragraph 94 that the post of Staff Nurse Grade-A should not be filled by promotion from such categories of personnel who have not completed the required three and half years training eligible criteria for the Staff Nurse Grade-B or A but only Staff Nurses. The Pay Anomaly Removal Committee also considered in detail the pay scale of the Nursing Services at paragraph 13.56.1 to 13.56.12 and had recommended no change in the pay scales.

6. The aforesaid detailed consideration in the context of pay fixation has got very important bearing, inasmuch as, the two things are of paramount importance in the matter of fixation of pay. One being qualification and the other being number of promotional avenues in the cadre of Nurses. As is clear that while in the Central Government, the Nurses are only in three tier the post available in the Bihar Government set up is virtually in six tiers and, therefore, re-grouping them for the purposes of adopting the Central Government pay-scale was absolutely necessary. The said aspect, in fact, has again been considered in detail as would be evident from reading of paragraph No. 38.22.13 to 38.22.15, wherein, the Committee had made the following observations:-

38.22.13. In view of the above discussion we recommend that no Staff Nurse Grade-A will either be appointed or promoted for the designated as Staff Nurse Grade-A if he or she does not have the required eligibility as prescribed by the Bihar Government. These Staff Nurse will be in the pay scale of Rs. 5000-8000 as in the Centre. Those who do not have the requisite qualification will neither be promoted in the pay scale of Rs. 1640-2900 as has been recommended by the Health Department, nor will be in the revised pay scale of Rs. 5000-8000 and instead they will draw replacement scales and be phased out through retirement. Nursing Sister will be in the scale of Rs. 1640-2900 as in the Centre and the same scale will be available to Clinical Instructor, the first tier of teachers in the Nursing College at Ranchi. Assistant Matron and other categories in the scale of Rs. 1640-2900 as well as others in the higher scale of Rs. 1800-3330 like Senior Matron, Senior Midwife, Senior Sister Tutor, Senior Public Health Nurse will be in the pay scale of Rs. 1640-2900 because that is structure is in the Centre. As there is probably no post of Assistant Nursing Superintendent or Nursing Superintendent in Bihar, that scale of Rs. 6500-10500 will be available to the

State Nursing Superintendent. We find that there is no post of Deputy Nursing Superintendent in Bihar and hence the scale of Rs. 7500-12000 will not be available to the Nursing Service, There is also no post of Chief Nursing Officer in Bihar and hence the scale of Rs. 10000-15200 is also not recommended. We also do not find any post of Nonresident Nurses who only work in the Out Patient Department in Central Government Hospitals.

38.22.14. The Lecturers in Nursing College of Ranchi will be in the scale of Rs. 6500-10500 provided the Clinical Instructor are in the scale of Rs. 1640-2900. The Tutors in Rajkumari Amrit Kaur College of Nursing as well as Lecturer and Senior Tutors are in the revised scale of Rs. 6500-10500. If more posts are created in the Training College for Nurses at Ranchi then the scale of Vice-Principal and Principal in Rajkumari Amrit Kaur College of Nursing would be made available to the Nursing College at Ranchi. In the Rajkumari Amrit Kaur College of Nursing there are 20 Clinical Instructors, 10 Tutors, 104 Group-D posts, 71 Group-C posts, 9 Field posts of Group-B and 6 Group-A posts. The higher scales of Vice-Principal and Principal is justified for the Delhi based Rajkumari Amrit Kaur College of Nursing and since we have not been provided with the cadre strength of the Nursing College for Nurses at Ranchi, we are unable at this stage to recommend the higher pay scales. Hence we would only recommend for the Vice-Principal, Nursing College, Ranchi the scale of Rs. 6500-10500 and for the Principal Nursing College, Ranchi the pay scale of Rs. 8000-13500.

38.22.15. In the Centre the Nursing course is of 3 years in General Nursing Programme after 10+2 and it is the same for the Nurses in Bihar and therefore, the basic grade needs to be upgraded from Rs. 1400-2300 to Rs. 5000-8000 only for trained Nurses Grade "A" and not for Staff Nurse Grade "B" who have only a two years training after matriculation. However as has been pointed out at paragraph 52.58 of the 5th Pay Commission Report a Matron or Nursing Supervisor in the pay scale of Rs. 6500-10500 is only for Hospitals which cater to bed strengths of about 500-600 and Chief/Principal Nursing Officer is only to be created if the bed strength in Hospital is from 750-1000. For Hospitals with less than 500 beds a Matron or a Nursing Supervisor need not be created and the higher pay scale given to Matrons in small Hospitals is not justified and we recommend that the Health Department should undertake this exercise before notifying the pay scales. As regards the allowances for Nurses we will be submitting our recommendations separately.

7. The aforesaid detailed consideration, in fact, would leave nothing for speculation that the matter had received full attention of the Fitment Appellate Committee for recommending the pay-scale of different tiers of post of Nurses including the post of Senior Sister tutor in the State of Bihar and the resultant decision arrived at by the State Government for fixation of pay of Senior Sister Tutor in the prevailing scenario of the State of Bihar was not vitiated from any angle. As a matter of fact, when the issue was raised by the Petitioner and other similarly situated persons before the Fitment Appellate Committee, it had again

made an independent study and review of all the recommendation of the Fitment Committee and had upheld the reasoning given by the Fitment Committee on the ground of identification of relevant post and recommendation made on equivalent pay-scales. The following passage of the decision of the appellate Fitment Committee, in fact, would go to show that the matter raised by the Petitioner in this writ application had received full consideration even at that stage;

Nursing Personnel

Post revised Pre-Scale Scale Revised Demand

Nurse Pay scale, Promotion avenue and allowances as per the Centre

27. The Trained Nurses Association of India through its President Shayama Ghosh have demanded that there cadre should be given promotional avenues, pay scales and allowances at par with the Centre. Demand on similar lines have been received from Bihar State Nurses Association through its Secretary, Meera Kumari and individual petitions from Smt. Ramawati Kumari and Smt. Munmun Mishra, P.M.C.H., Patna, Smt. Rachel George. D.M.C.H. and Smt. Savitri Agrahari. From paragraph 38.22, Volume-II of the Fitment Committee Report it appears that the Fitment Committee had studied the Nursing Cadre in several Central Government Organizations had concluded that Staff Nurses will be in the pay scale of Rs. 5000-8000. as in the Centre. The Fitment Committee further observed that-

Those who do not have the requisite qualification will neither be promoted in the pay scale of Rs. 1640-2900 as has been recommended by the Health Department, nor will be in the revised pay scale of Rs. 5000-8000 and instead they will draw replacement scales and be phased out through retirement. Nursing Sisters will be in the scale of Rs. 1640-2900 as in the Centre and the same scale will be available to Clinical Instructor, the first tier of teachers in the Nursing College at Ranchi. Assistant Matron and other categories in the scale of Rs. 1640-2900 as well as others in the higher scale of Rs. 1800-3330 like Senior Matron. Senior Midwife, Senior Sister Tutor, Senior Public Health Nurse will all be in the pay scale of Rs. 1640-2900 because that is the structure in the Centre. As there is probably no post of Assistant Nursing Superintendent or Nursing Superintendent in Bihar, that scale of Rs. 6500-10500 will be available to the State Nursing Superintendent. We find that there is no post of Deputy Nursing Superintendent in Bihar and hence the scale of Rs. 7500-12000 will not be available to the Nursing Service. There is also no post of Chief Nursing Officer in Bihar and hence the scale of Rs. 10000-15200 is also not recommended. We also do not find any post of Nonresident Nurses who only work in the Out Patients Department in Central Government Hospitals.

28 Thus, it is clear that the Fitment Committee have identified relevant posts in the Central Government and recommended equivalent pay scales there can be no ground for complain. No change is, therefore, recommended.

8. A question, therefore, would arise as to what would be the extent of judicial review of such recommendation and decision taken by the expert body, namely, Fitment Committee and the Fitment Appellate Committee? Time without number, it has been held by the Apex Court and this Court that pay fixation or pay revision is the job of expert in which there would be a very limited scope of judicial review wherein only an apparent discrimination or the shocking decision can only be subjected to review.

9. Reference in this connection may be made to the judgment of the Apex Court in the case of Delhi Veterinary Association Vs. Union of India (UOI) and Others, wherein it was held as follows:-

The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service of cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors.

10. In the case of State of U.P. and Others Vs. J.P. Chaurasia and Others, it was pointed out by the Apex Court that whether two posts are equal or should carry equal pay, depends on several factors. It does not depend just upon either the nature of work or the volume of work done. Primarily, it requires among others, evaluation of duties and responsibilities of the respective posts by the competent authorities constituted for the purpose and courts cannot coordinately substitute themselves in the place of those authorities. The quantity of work may be the same but the quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. It must be determined by expert bodies like Pay Commission and the Government, who would be the best Judges, to evaluate the nature of duty, responsibility and all relevant factors. The same view was reiterated in the case of State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, by a three-Judge Bench of this Court. In the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, a claim for equal pay by a group of pharmacists was rejected saying that the classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate that the classification made was unreasonable.

11. Yet again, in the case of State of W.B. and Others Vs. Hari Narayan Bhowal and Others, it was observed:-

10. This Court in the case of Delhi Veterinary Association Vs. Union of India (UOI) and Others, said that in addition to the principle of "equal pay for equal

work", the pay structure of the employees of the Government should reflect many other social values.

12. The Apex Court in the case of State of West Bengal and others Vs. Deb Kumar Mukherjee and others, recognizing the value of recommendation of the Pay Revision Committee had held as follows:-

8. As mentioned above, the three Pay Commission during the last three decades examined the revision of pay scales of various cadres in the State of West Bengal. On the basis of the material placed before the Pay Commissions the two grades in respect of Inspectors in the Housing Department were maintained. Similarly the Pay Commissions recommended different pay scales for Inspectors in different Departments of the State Government. The High Court, in its writ jurisdiction, was not justified in reaching the findings different than that of the Pay Commissions.

13. The main question once again was considered by the Apex Court in the case of Union of India and Others Vs. Pradip Kumar Dey, wherein, after referring to various decisions dealing with the similar questions had held as follows:-

8. In our considered view, the Division Bench of the High Court was not right and justified in straightaway giving direction to grant pay scale to the Respondent when there was no material placed before the Court for comparison to order to apply the principle of "equal pay for equal work" between the Radio Operators of CRPF and the Radio Operators working in civil side in the Central Water Commission and the Directorate of Police Wireless. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned Single Judge was right when he stated in the order that in the absence of such material it was not possible to grant relief to the Respondent. No doubt, the Directorate of CRPF made recommendations to the Pay Commission for giving higher pay scales on the basis of which claim is made by the Respondent for grant of pay scale. The factual statements contained in the recommendation of a particular department alone cannot be considered per se proof of such things or they cannot by themselves vouch for the correctness of the same. The said recommendation could not be taken as a recommendation made by the Government. Even otherwise a mere recommendation did not confer any right on the Respondent to make such a claim for writ of mandamus.

14. Yet again in the case of State Bank of India and Another Vs. M.R. Ganesh Babu and Others, the Apex Court while dealing with same principle had expressed that:-

16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work

done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating, the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court.

15. The same view in fact has also been reported by the Apex Court in the case of State of Haryana and Another Vs. Tilak Raj and Others, and in the case of Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty,

16. Thus, in the light of the aforementioned settled position in law, when this Court has examined the decision taken by the Fitment Committee and the Fitment Appellate Committee, it does not find any error in the decision for not allowing the pay-scale on the post of Senior Sister Tutor as prevalent in the Central Government for the Senior Sister Tutor of the State of Bihar.

17. It has to be kept in mind that while deciding such issue, the qualification, the set up of afferent tiers on the post of Nurses prevailing in the State of Bihar vis-a-vis in the Central Government has been taken into consideration, which by themselves provide sufficient basis for not treating the two posts similar and consequently, not allowing higher pay-scale of the post of Senior Sister Tutor as prevailing in the Central Government to the Senior Sister Tutors working in the State of Bihar.

18. This Court would, therefore, find it difficult to either interfere with such opinion and decision of the expert body only because the Petitioner has been of the impression that she holding the post of Senior Sister Tutor and the Senior Sister Tutor in the Central Government have been given higher pay-scale. Mere nomenclature of the post or designation of the post cannot be the criteria for fixation of pay. When the Government of Bihar had taken a conscious decision to implement the Central Government pay-scale, it had definitely intended to adopt such pay-scale in the light of relevant factors and criteria. One of such criteria, therefore, being equation of post, as is prevailing in the set up of the State

Government vis-a-vis in the Central Government is itself germane to the issue of pay fixation for the post of Senior Sister Tutor.

19. As noted above, the post of Senior Sister Tutor in the nursing cadre of the Central Government is the highest post whereas in the State of Bihar that is only second lower post and as such, the equivalence sought to be arrived at by the Fitment Committee of placing the post of Senior Sister Tutor and its equivalent post in the middle level pay-scale cannot be faulted with either on fact or in law.

20. That being so, this Court does not find any merit in this application and the same is, accordingly, dismissed.