

Non-Reportable
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8220 OF 2013
(Arising out of S.L.P (C) No. 31846 of 2011)

Dr. Nawal Kishore Verma and another ...Appellants

Versus

The State of Bihar and others ...Respondents



Leave granted.

2. The present appeal, by special leave, is directed against the judgment and order dated 10.8.2011 passed in LPA No. 210 of 2009 by the High Court of Judicature at Patna whereby the Division Bench affirmed the orders dated 17.7.2008 and 28.1.2009 passed in CWJC No. 4098 of 2001 and CWJC No. 17736 of 2008 respectively.

3. The appellants, who are Homeopathic doctors, being aggrieved by non-grant of correct scale of pay, knocked at the doors of the High Court in CWJC No. 8471 of 1994, which was disposed of, vide order dated 30.11.1995, directing as follows:

-

“..... this writ petition is disposed of by directing the Joint Secretary, Urban Development Department, Bihar, Patna (Respondent No. 2) to take a final decision within a period of eight weeks from the date of receipt/production of a copy of this judgment about the extension of the benefit of the recommendations of the 3rd, 4th and 5th Pay revision Committee to the petitioner in the light of the observations made in this judgment. It is also made clear that while taking final decision in the matter, respondent No. 2 will also take into consideration the pay scale recommended by the Pay Anomaly Committee for Homeopathic Doctors, namely, Rs. 2200-4000/- with effect from 1st January, 1986. It is, however, made clear that such pay scale has been recommended for the degree holder. Respondent No. 2 will examine whether the petitioners are degree holders and whether the benefit of such recommendation of the Pay Anomaly Committee can be extended to them.”

4. After the said order was passed, the Competent authority of the Government considered the claim of the appellants and rejected the same by communication dated

25.9.1997 observing that there was no anomaly in respect of the scale admissible to the Homeopathic doctors and the appellants not being degree holders could not be allowed the pay scale admissible to the degree holders and further directed the local body (Mahnar Municipality) where the appellants were serving to take a decision in regard to the pay scale admissible to them in the light of the observations contained in letter dated 25.9.1997. Thereafter, the authorities of Mahnar municipality took a decision in the light of the recommendations of the Pay Revision Committee and fixed the pay scale of the appellants and sought the approval of the State Government as per their communications dated 20.7.1999 and 8.2.2000. The State Government vide letter dated 3.1.2001 reiterated the position which was earlier communicated by letter dated 25.9.1997.

5. Being grieved by the said order the appellants approached the High Court and the learned single Judge directed the Municipality to allow the pay scale as per the recommendations of the Pay Revision Committee that had been accepted by the State Government for the Homeopathic doctors. Assailing the said order, the appellants preferred

Letters Patent Appeal No. 707 of 2008 and the Division Bench vide order dated 26.9.2008 permitted the appellants to withdraw the appeal with liberty to apply for reviewing the order dated 17.7.2008.

6. Thereafter a review was filed forming the subject-matter of CWJC No. 17736 of 2008. It was contended in the review application that the petitioners there are the diploma holder Homeopathic doctors and they were entitled to the same pay scale which was given to degree holder Homeopathic doctors and further such higher scale had already been allowed to one Dr. T. Ekka in compliance with the order dated 23.2.1993 passed in the writ petition preferred by said Dr. Ekka. The said submission was opposed by the State stating that it was a mistake and there was no necessity to exercise the review jurisdiction. The learned single Judge declined to entertain the review and, accordingly, the same was dismissed.

7. Thereafter, LPA No. 210 of 2009 was preferred and the Division Bench took note of the submissions canvassed at the Bar and opined thus: -

“The learned Government Pleader submitted that the Diploma holders are not entitled to claim equal pay as that of Degree holders as such Diploma holder cannot claim equal pay as that of Degree holders and it is for the Municipality to extend the benefit. We had also the occasion to go through the contents of Annexure-1 whereby the Government has extended the benefit of pay scale by equating the educational qualification of Diploma holders with that of the Degree holders. Even a contention has been urged before us that the government has extended the benefit of equal pay scale to some person namely Dr. T. Ekka and P. Srivastava.

In absence of any policy emanating from the Government to equate the pay scale of the Diploma holder with that of Degree holders, we are of the opinion that the appellants have no wish to claim equal pay with that of Degree holders.”

Being of this view the LPA was dismissed.

8. We have heard Mr. Amit Pawan, learned counsel for the appellants, and Mr. Gopal Singh and Mr. Chandan Kumar, learned counsel for the respondents.

9. The learned counsel for the appellants has brought to our notice the resolution dated 3.2.1981. It is in connection with grant of pay scale and other facilities to non-teaching staff of local bodies, equivalent to the Government

employees. The relevant clauses are (6) and (7) which are reproduced below: -

“(6) Fixation of pay of the servants of local bodies in the newly revised pay scale in place of the earlier pay scale will be done as according to the principles and procedures laid down in Department of Finance Resolution No. 14636 dated 30.11.1972 (copy enclosed)

(7) Whatever additional financial burden as a consequence of the above decisions, will arise, the same will be incurred by the concerned local bodies, but having regard to their economic condition, the Government has taken an immediate decision that as before, 70% of this additional expenditure (30% as grant and 40% as loan) will be borne by the Government and the remaining 30% will be borne by the concerned bodies out of their own funds. This relief will be payable by the Government only to the employees who are working on the posts approved by the Government. No other financial relief will be given by the Government under the head of Establishment.”

10. The learned counsel has also drawn our attention to a Gazette Notification dated 21.11.1992 by the Government of Bihar. It reads as follows: -

“BIHAR GAZETTE
EXTRAORDINARY ISSUE
PASSED BY THE GOVERNMENT OF BIHAR
28 Agrahayan 1914 (Sa.)
Patna, Saturday, 01st December 1992

Department of Health, Medical Education and
Family Welfare

NOTIFICATION

21st November 1992

No. 161 V.9.02192-D 716 M-H.,

In light of Ministry of Health, Education and Family Welfare, Government of India, letter Ref. 14016-1190-Homoeo dated 03.01.1991 and Central Homoeopathic Council, New Delhi, letter Ref. 14-12-24186 CCH 16074 dated 13.03.1990, the four year D.H.M.S. (Diploma in Homeopathic Medicine and Surgery) certificate (qualification), in homeopathic medicine stream conferred by a lawfully established university, institution or board, upto the year 1983, is granted equivalence to a degree.

By orders
Government of Bihar
Surendra Prasad Sinha
Deputy Secretary to the State

Published by Superintendent, Government
Printing Material Store and Publication, Patna

Printed by Superintendent, Secretariat Press,
Bihar Patna

Bihar Gazette (Extraordinary), 650-Laego-774-
600 R.P. Singh”

11. From the aforesaid notification it is quite vivid that the Diploma in Homoeopathic Medicine and Surgery has been in equivalence to a degree up to the year 1983. There is no quarrel over the fact that the appellants are fully covered by

the said notification. At this juncture, it is relevant to refer to the resolution dated 15.9.1997 which deals with amendment in the pay scale of Homoeopathic doctors of Department of Health in the light of direction given by the Patna High Court in CWJC No. 2950 of 1995 which was preferred by one Dr. Amareshwar Prasad. After referring to the order passed by the High Court in the case of Dr. Amareshwar Prasad, the Department of Finance of the State of Bihar in the said resolution stated thus: -

“During the course of scrutiny a fact came to light that the Department of Health Education and Family Welfare vide its notification dated 21.11.1992 had decided that the four year DHMS (Diploma in Homoeopathic Medicine and Surgery) diploma in homoeopathic medicine stream conferred by a lawfully established university, institute or board upto the year 1983 would be declared equivalent to a degree. In the aforesaid background the question of revision in the pay scale of Homeopathic Doctors was pending before the Government.

In light of the direction of the Hon'ble High Court and recommendation of fifth Pay Anomaly Redressal Committee, and after discussion with Department of the Health, Medical Education and Family Welfare, the Government has decided that the Degree Holder Homeopathic Doctors/ homeopathic doctors having four year DHMS (Diploma in Homeopathic Medicine and Surgery) diploma in homeopathic medicine stream conferred by

a lawfully established university, institute or board upto the year 1983 be approved the payscale of Rs.2200-4000 in place of Rs.1500-2750.

The Revised pay scale will be admissible notionally from 1.1.86 and actually from 1.3.89. The arrear due from 1.3.89 to 31.3.1993, would be deposited in Provident Fund of the concerned employee and enhanced pay in the fixed pay scale will be paid in cash as per the pay fixation order dated 1 April 1995."

12. The learned counsel for the appellants would submit that the aforesaid resolution is significant as equivalence has been clearly admitted after referring to the notification dated 21.11.1992. Mr. Amit Pawan, learned counsel, has also drawn our attention to the communication dated 13.7.1999 by the Deputy Secretary in the Department of Urban Development, to the Administrator, Municipal Corporation of Muzaffarpur and Special Officer, Mahnar Municipality, making a special reference to the present appellants. The relevant part of the same is as follows: -

"... this is to state that fixation of pay scale of Dr. Ramakant Sharma and Dr. N.K. Verma, Medical Officers, is to be made in third, fourth and fifth pay revision, in compliance of the orders dated 30.11.1995 passed by Hon'ble Patna High Court. Dr. Ramakant Sharma and

Dr. N.K. Verma, are the Medical officers of Municipal Corporation of Muzaffarpur and Mahnar Municipal Council respectively, whose appointments have been made by the concerned bodies. Hence, as per rules, the responsibility of carrying out amendment in pay scales and fixation of pay scale lies on the concerned local bodies.”

13. After so stating, a direction was issued to the municipalities to take appropriate action and inform the Government. In compliance with the aforesaid order of the State Government, Mahnar Municipality on 20.7.1999 passed an order after referring to the notification of equivalence dated 21.11.1992 fixing the pay scale and sent it to the Government for approval. Be it noted, a similar communication was sent by Muzaffarpur Municipal Corporation on 8.2.2000. The State Government, by communication dated 3.1.2001, reiterated its earlier decision dated 25.9.1997.

14. The learned counsel for the State though made an endeavour to show that there is no equivalence, yet on the face of the notifications and orders he could not pursue the said submission any further. Thereafter, it was urged by him that it is the municipalities who are to amend the rules and pay the amount. On a query being made as to how others

have been paid on a proper decision being taken, we could not get any satisfactory answer. It is also noticed that certain doctors of Ranchi Municipality were given the benefit by the erstwhile State of Bihar.

15. Keeping in view the factum of equivalence, communications made by the State Government to the Municipalities and Municipal Corporations, the benefit extended to other diploma holders and also regard being had to the fact barring the two appellants no other diploma holders are there who are covered by the notification dated 21.11.1992, we direct the respondents to extend similar benefit that were extended to Dr. T. Ekka and Dr. P. Srivastava. If in their case there has been any apportionment of the financial burden between the State and the municipality, the same shall apply *mutatis mutandis* and the order to that effect shall be passed within six weeks from today and the benefits shall be given within three months therefrom.

16. Resultantly, the appeal is allowed, the orders passed by the learned single Judge as well as by the Division Bench are set aside leaving the parties to bear their respective costs.

.....J.
[Anil R. Dave]

.....J.
[Dipak Misra]

New Delhi;
September 12, 2013.

SUPREME COURT OF INDIA



JUDGMENT