





2. Petitioners were appointed to the post of Health Worker (Female) in Medical and Health Department of the State in different years, after selection held pursuant to advertisements issued in the years 2016, 2018, 2022 and 2024.

3. In the advertisements, pursuant to which petitioners applied, it was clearly mentioned that the post of Health Worker carries Pay Scale of Rs. 5200-20200, (Pay Band-1) Grade Pay Rs. 2000/-.

4. Petitioners were offered appointment as Health Worker in the pay scale mentioned in the advertisement. According to them, after serving as Health Worker in the department for few years, they realised that few persons serving as Health Worker are getting salary in Grade Pay of Rs. 2800/- and upon enquiry, it was revealed that only those who were appointed as Health Worker upto 2013, are getting Grade Pay of Rs. 2800/- and others who were appointed after enforcement of Recruitment Rules in 2016, are getting salary in Grade Pay of Rs. 2000/-.

5. According to petitioners, as they possess same qualification and are discharging similar duties as discharged by Health Workers appointed upto 2013, therefore there is no reason whatsoever for paying lesser Grade Pay to them. It is further contended that State Government cannot create a sub class within a class unless there is a rational, justifiable basis for providing different Grade Pay to Health Workers.



6. Reliefs sought by petitioners in Writ Petition (SS) No. 937 of 2025 are extracted below:

I. Issue an order or direction summoning the relevant records from the office of the respondent no.1; and issue a writ in the nature of Mandamus declaring the Government order dated 02-05-2013 as also serial nos. 1 & 2 of the Appendix-'Kha' of Rule 21 (2) of the Service Rules, 2016, as arbitrary and illegal and violative of Article 14, 16, 38 (2) and 39 (d) of the Constitution of India, contained in Annexure no. 1 & 6-A to this writ petition.

II. Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 02-05-2013, issued by the respondent no. 1, contained in Annexure-1 to this writ petition.

III. Issue a writ, order or direction in the nature of Mandamus, declaring that the petitioners are legally entitled to get the pay scale of Rs.5200-20200 with Grade pay of Rs. 2800/- from the date of their initial appointment on the post of Health worker (Female).

IV. Issue a writ, order or direction in the nature of Mandamus, declaring that the action of the respondent no.1, namely, Principal Secretary, Department of Medical, Health and Family Welfare of the State not to grant grade pay of Rs.2800/- to the petitioners amounts to hostile discriminations against the petitioners, which is violative of Article 14 and 16 of the Constitution of India.”

7. Petitioners have thrown challenge to Government Order dated 02.05.2013 and Appendix-B of the Recruitment Rules applicable for the post of Health Worker/Health Supervisor, notified on 26.07.2016, which are enclosed as Annexure-1 and Annexure-6A respectively to the writ petition.

8. Perusal of Government Order dated 02.05.2013 reveals that Health Workers serving in erstwhile State of Uttar Pradesh filed Writ Petition No. 15904 of 1983 (Shiv Charan Lal Kushwaha and another Vs. State of U.P. and others), claiming revision of pay scales and that writ petition was decided in their favour. In terms of judgment rendered in that writ petition, pay scale of Health Worker was revised vide Government Order dated 16.07.2010. Thereafter, another Government



Order was issued on 02.05.2013 whereby earlier Government Order was modified and approval of the State Government was granted for releasing difference of salary to persons who were covered by aforesaid judgment; however, in the last sentence of para 2 of Government Order dated 02.05.2013, it was provided that revised scales shall be given to them as personal pay and further appointments on the post of Health Worker shall be made in the scale of Rs. 5200-20200, Grade Pay Rs. 2000/-.

9. Government Order dated 02.05.2013 further provides that in terms of judgment rendered by Hon'ble Allahabad High Court, revised pay scale shall be given notionally to holders of the post of Health Workers between 01.05.1995 to 30.06.2010 and arrears of salary for the said period shall not be paid to them; however, revised scale shall be given to them w.e.f. 01.07.2010 as personal pay.

10. Petitioners have challenged Appendix-B to the Recruitment Rules applicable for the post of Health Worker which provides that post of Health Worker shall carry scale of Rs. 5200-20200, Grade Pay Rs. 2000/- while the post of Health Supervisor which is the next higher post, will carry scale of Rs. 5200-20200, Grade Pay Rs. 2800/-.

11. Learned Senior Counsel for the petitioner submits that in terms of direction issued by Hon'ble Allahabad High Court, which was affirmed by Hon'ble Supreme Court, a Pay Anomaly Committee was constituted by



State Government and on the recommendation of Pay Anomaly Committee, pay scale admissible for the post of Health Worker was revised, therefore, benefit of pay revision made vide Government Order dated 16.07.2010 can not be denied to petitioners, merely because they were appointed after 02.05.2013.

12. In the counter affidavit filed by Dr. Sunita Tamta, on behalf of respondent No. 2, it is stated that petitioners applied for the post of Health Worker, knowing fully well that they would get Grade Pay of Rs. 2000/- after appointment, therefore they cannot now raise grievance regarding pay scale which is given to them. It is further stated that Grade Pay of Rs. 2800/- claimed by petitioners is admissible for the post of Health Supervisor, which is promotional post available to Health Workers and Grade Pay of Rs. 2800/-, if given to petitioners, will create problem.

13. A supplementary counter affidavit is also filed in reply to the amended writ petition in which it is contended that after having applied for the post of Health Worker, knowing fully well that it carries Grade Pay of Rs. 2000/- and after serving on the post for 9 long years, petitioners cannot question the pay scale given to them.

14. Learned Senior Counsel for the petitioners relies upon the judgment rendered by Hon'ble Supreme Court in the case of **Dhirendra Chamoli and another Vs. State of U.P.** reported as **(1986) 1 SCC 637** for contending that different pay scales cannot be prescribed for persons performing same duties.



15. He also relies upon another judgment rendered by Hon'ble Supreme Court in the case of **Mew Ram Kanojia Vs. All India Institute of Medical Sciences and others** reported as **(1989) 2 SCC 235** for contending that when not only duties and functions performed by petitioners are similar to the one performed by other set of persons, but their educational qualifications are also the same, then there cannot be any difference in pay scales.

16. Learned Senior Counsel for the petitioners relies upon the judgment dated 10.03.2025 rendered by Hon'ble Supreme Court in the case of **Anurag Krishna Sinha Vs. State of Bihar and Another in Civil Appeal No. 13581 of 2025** in support of his contention that Article 14 of the Constitution mandates that State shall not deny to any person equality before law or equal protection of law within the territory of India. Thus is contended that unequal treatment meted out to petitioners in the matter of Grade Pay is unsustainable.

17. Learned counsel for the petitioners further submits that once Government decided to upgrade the pay scale of Health Workers and to grant them Grade Pay of Rs. 2800/- vide G.O. dated 16.07.2010, then it is incumbent upon the Government to extend benefit of said decision to all persons serving as Health Worker. He thus submits that petitioners have a legitimate expectation of getting Grade Pay of Rs. 2800/-.

18. Learned State Counsel per contra submits that pay scale of Health Workers, who were party to the writ



petition had to be upgraded in deference to the decision of Hon'ble Allahabad High Court in Writ Petition No. 15904 of 1983; however, keeping in view the huge financial burden involved, State Government provided in Government Order dated 02.05.2013 that only existing members of service would get Grade Pay of Rs. 2800/- as personal pay and those appointed after issuance of that Government Order, shall be given Grade Pay of Rs. 2000/-. This, according to State Counsel was necessitated because of :

- (i) Financial constraint, as huge financial burden would have befallen upon the State in passing on benefit of pay upgradation even to persons who were to be appointed in future as there are as many as 2306 sanctioned posts of Health Worker (Female) and 855 posts of Health Worker (Male) and members of other services would have claimed parity with Health Workers.
- (ii) Scale of Rs. 5200-20200, Grade Pay Rs. 2800/- is payable to Health Supervisor (Male/Female), which is promotional post available to Health Worker (Male/Female), and difference in pay scale has to be maintained between feeder post and promotional post, as such while upgrading pay scale of existing employees serving on the post of Health Worker in terms of judgment, State Government decided not to extend benefit of pay up-gradation to future appointees.

19. Learned State Counsel relies on para 2 of Government Order dated 02.05.2013, where it is provided that revised scale shall be given to existing employees as personal pay. Thus it is contended that after pay revision, post of Health Worker (Male/Female) carries pay scale of Rs. 5200-20200, Grade Pay Rs.



2000/-; however, Grade Pay of Rs. 2800/- is payable as personal pay to those who were serving on the date of issuance of Government Order dated 02.05.2013, in deference to the judgment rendered by Hon'ble Allahabad High Court, which attained finality. Thus he contends that there is rationale for paying Grade Pay of Rs. 2800/- to persons who were covered by the judgment.

20. Learned State Counsel submits that petitioners are wrongly invoking principle of 'equal pay for equal work', as pay scale prescribed for the post of Health Worker is Rs. 5200-20200/-, Grade Pay Rs. 2000/- which is paid to petitioners also; there is a small group of persons serving on the post of Health Worker who are being paid Grade Pay of Rs. 2800/- as personal pay, in view of decision of Hon'ble Allahabad High Court. Thus it is contended that petitioners cannot claim parity with Health Workers, who were serving on 02.05.2013 when impugned Government Order was issued.

21. Learned State Counsel thus submits that petitioners are not entitled to claim parity with persons who are covered by the judgment rendered by Hon'ble Allahabad High Court in Writ Petition No. 15904 of 1983.

22. It is contended by learned State Counsel that Article 14 provides that equals should be treated equally, therefore treating unequals as equal would be violative of Article 14. He submits that persons who were party to the writ petition decided by Hon'ble Allahabad High Court constitute a separate class, therefore, persons appointed as Health Worker after



02.05.2013, who are not protected by that decision constitute a separate class and they do not have a vested right to get the same Grade Pay which is granted as special pay to persons who are covered by the judgement He submits that grant of Special Pay to those who are covered by decision of Court is justified as they deserved to be treated differently and State is not bound to extend the same benefit to all Health Workers.

23. Learned State Counsel thus contends that law permits differential treatment if the two groups are inherently different and the classification in such cases is reasonable. He submits that Special Pay is given to an employee due to some reason which distinguishes him from other members of service. Thus according to him, claim staked by petitioners for Grade Pay of Rs. 2800/- which is given as Special Pay, is unsustainable.

24. Learned State Counsel relies upon the judgment rendered by Hon'ble Supreme Court in the case of **Punjab State Electricity Board and Another Vs. Thana Singh and Others**, reported as **(2019) 4 SCC 113** for contending that decision regarding revision or equation of pay scales has to be taken by the executive alone and there is no scope for judicial review in such matters.

25. Learned State Counsel also relies upon the judgment rendered by Hon'ble Supreme Court in the case of **S.C. Chandra and others Vs. State of Jharkhand and others** reported as **(2007) 8 SCC 279** for contending that while fixing pay scales, executive has to bear in mind various aspects, viz its financial



capacity, duty, responsibility, educational qualification, mode of appointment for the post, therefore Court should exercise judicial restraint. Para 20, 21, 26,27,28, 33, 34, 35 and 36 of the said judgment are reproduced below:

**“20.** After going through the order of the Division Bench we are of opinion that the view taken by the Division Bench of the High Court is correct. Firstly, the school is not being managed by BCCL as from the facts it is more than clear that BCCL was only extending financial assistance from time to time. By that it cannot be saddled with the liability to pay these teachers of the school as being paid to the clerks working with BCCL or in the Government of Jharkhand. It is essentially a school managed by a body independent of the management of BCCL. Therefore, BCCL cannot be saddled with the responsibilities of granting the teachers the salaries equated to that of the clerks working in BCCL.

**21.** Learned counsel for the appellants have relied on Article 39(d) of the Constitution. Article 39(d) does not mean that all the teachers working in the school should be equated with the clerks in BCCL or the Government of Jharkhand for application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in *State of Haryana v. Charanjit Singh* [(2006) 9 SCC 321 : 2006 SCC (L&S) 1804] wherein Their Lordships have put the entire controversy to rest and held that the principle, “equal pay for equal work” must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in *Charanjit Singh* [(2006) 9 SCC 321 : 2006 SCC (L&S) 1804] all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL.

**26. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity,**



responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.

**27.** Thus, in *State of Haryana v. Tilak Raj* [(2003) 6 SCC 123 : 2003 SCC (L&S) 828] it was held that the principle can only apply if there is *complete and wholesale identity* between the two groups. *Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.*

**28.** In *State of Haryana v. Charanjit Singh* [(2006) 9 SCC 321 : 2006 SCC (L&S) 1804] discussing a large number of earlier decisions it was held by a three-Judge Bench of this Court that the principle of equal pay for equal work cannot apply unless there is *complete and wholesale identity* between the two groups. Moreover, even for finding out whether there is complete and wholesale identity, the proper forum is an expert body and not the writ court, as this requires extensive evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. Hence in recent decisions the Supreme Court has considerably watered down the principle of equal pay for equal work and this principle has hardly been ever applied in recent decisions.

**33.** It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen* [(2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270].

**34.** There is broad separation of powers under the Constitution, and the judiciary should not ordinarily encroach into the executive or legislative domain. The theory of separation of powers, first propounded by the French philosopher Montesquieu in his book *The Spirit of Laws* still broadly holds the field in India today. Thus, in *Asif Hameed v. State of J&K* [1989 Supp (2) SCC 364 : AIR 1989 SC 1899] a three-



Judge Bench of this Court observed (vide paras 17 to 19): (SCC pp. 373-74)

“17. Before adverting to the controversy directly involved in these appeals we may have a fresh look at the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. *No organ can usurp the functions assigned to another.* The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles* [2 L Ed 2d 630 : 356 US 86 (1958)] observed as under: (US pp. 119-20)

*‘All power is, in Madison's phrase, “of an encroaching nature”. ... Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint. ...*

Rigorous observance of the difference between limits of power and wise exercise of power—between questions of authority and questions of prudence—requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not



authorised the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.’

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.”

(emphasis supplied)

35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

36. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide *Govt. of W.B. v. Tarun K. Roy* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] .”

(emphasis supplied)

26. It is thus contended that within its limited resources it was not possible for the State Government to grant Grade Pay of Rs. 2800/- to future appointees as well, therefore State Government, while upgrading the Grade Pay indicated in its decision that upgraded Grade Pay shall not be admissible to Health Workers who are appointed in future. Thus it is contended that petitioners do not have any vested right to get the higher Grade Pay which was given as personal pay to Health Workers



covered by the judgment. It is further contended that petitioners are entitled to the pay scale as mentioned in the Recruitment Rules, which is being paid to them.

27. Learned State Counsel also relies upon judgment rendered by Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. R.D. Sharma and others**, reported as **(2022) 13 SCC 320**. Para 17 and 18 of the said judgment is reproduced below:

“17. It may be noted that this Court has consistently held that the equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court's interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. A beneficial reference of the observations made in this regard in Secy., Finance Deptt. v. W.B. Registration Service Assn. [Secy., Finance Deptt. v. W.B. Registration Service Assn., 1993 Supp (1) SCC 153 : 1993 SCC (L&S) 157] be made. As held in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822] “equal pay for equal work” is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government.

18. Pertinently the Administrative Tribunal after considering the relevant factual and legal aspects



had rightly rejected the claim of Respondent 1 for granting the apex scale on the basis of "equal pay for equal work" in the OA filed by him. The said well-considered, just and proper order of the Tribunal was wrongly set aside by the High Court on extraneous grounds applying the principle of "equal pay for equal work", while exercising the power of superintendence under Article 227 of the Constitution of India. It is well-settled legal position that the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. In the instant case, the Tribunal had not committed any jurisdictional error, nor any failure of justice had occasioned, and hence the interference of the High Court in the order passed by the Tribunal was absolutely unwarranted."

28. Learned State Counsel further submits that petitioners were appointed after 2018 and in the advertisements, in response to which they applied, it was clearly mentioned that upon appointment, they shall get salary in the scale of Rs. 5200-20200, Grade Pay Rs. 2000/-. Thus it is submitted that petitioners' claim for higher pay scale is without any substance and is barred by principle of estoppel and acquiescence, as they accepted the appointment, without demur when it was offered to them.

29. Learned State Counsel submits that petitioners were given appointment in the pay scale indicated in the advertisement; therefore, it cannot be contended that their condition of service was altered or they were offered appointment on a pay scale lower than what was indicated in the advertisement. Thus, it is contended that none of the vested or accrued right of the petitioners is violated and petitioners are getting salary strictly as per the scale indicated in the advertisement



and the Recruitment Rules applicable to the post of Health Worker (Male/Female).

30. Learned State Counsel further submits that “equal pay for equal work” is not a fundamental right vested in an employee, although it is a constitutional goal to be achieved by the Government, as held by Hon’ble Supreme Court in the case of State of Madhya Pradesh Vs. R.D. Sharma (supra).

31. Learned State Counsel also relied upon the law declared by Hon’ble Supreme Court in the case **Punjab State Electricity Board and Another Vs. Thana Singh and Others**, reported as **(2019) 4 SCC 113**. Para 10, 11 and 12 of the said judgment are reproduced below:

10. It is fairly well settled that equation of pay scales must be left to the Government and on the decision of the experts and the Court should not interfere with it. Observing that equation of pay scales of posts must be left to the Government and the experts, in SAIL v. Dibyendu Bhattacharya [SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] , this Court held as under: (SCC p. 133, para 26)

“26. In Union of India v. S.L. Dutta [Union of India v. S.L. Dutta, (1991) 1 SCC 505 : 1991 SCC (L&S) 406] , Union of India v. N.Y. Apte [Union of India v. N.Y. Apte, (1998) 6 SCC 741 : 1998 SCC (L&S) 1673] , State of U.P. v. J.P. Chaurasia [State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121 : 1989 SCC (L&S) 71] and Kshetriya Kisan Gramin Bank v. D.B. Sharma [Kshetriya Kisan Gramin Bank v. D.B. Sharma, (2001) 1 SCC 353 : 2001 SCC (L&S) 1000] , this Court held that the determination that two posts are equal or not, is a job of the Expert Committee and the court should not interfere with it unless the decision of the Committee is found to be unreasonable or arbitrary or made on extraneous considerations. More so, it is an executive function to fix the service conditions, etc. and lies within the exclusive domain of the rule-making authority. (See also T. Venkateswarulu v. Tirumala Tirupathi Devasthanams [T. Venkateswarulu v. Tirumala Tirupathi Devasthanams, (2009) 1 SCC 546 : (2009) 1 SCC (L&S) 202] .)”



11. In S.C. Chandra v. State of Jharkhand [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897] , observing that the grant of pay scales is a purely executive function and the court should not interfere with the same, this Court held as under: (SCC pp. 292-94, paras 33 & 35)

“33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide Indian Drugs & Pharmaceuticals Ltd. v. Workmen [Indian Drugs & Pharmaceuticals Ltd. v. Workmen, (2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270] .

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35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).”

(emphasis in original)

12. Observing that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts, this Court, in SAIL [SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] , held as under: (SCC pp. 133-34, para 30)

“30. ... the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.”



32. Learned Senior Counsel for the petitioners however contends that once State Government accepted the report submitted by the Committee and decided in 2010 to upgrade the scale to Rs. 5200-20200 Grade Pay Rs. 2800/-, in respect of existing members of service, then pay scale for the post of Health Worker (Male/Female) should have been revised and benefit of pay revision could not have been limited to persons who were serving as Health Worker and were party to Writ Petition No. 15904 of 1983.

33. Learned State Counsel contends that while taking decision regarding pay revision, State Government has to consider various aspects, including financial capacity. He submits that there are 2306 sanctioned post of Health Worker (Female), 855 sanctioned post of Health Worker (Male) besides 897 post of Health Supervisor (Male/Female), therefore, having regard to huge financial burden which would have befallen upon the State by upgrading pay scale to Rs. 5200-20200 Grade Pay Rs. 2800/-, it was decided to grant benefit of the judgment rendered by Hon'ble Allahabad High Court by upgrading Grade Pay of persons who were party to Writ Petition No. 15904 of 1983 and for others, who were to be appointed in future, it was provided that they shall get salary in the pay scale of Rs. 5200-20200, Grade Pay Rs. 2000/-.

34. Learned State Counsel contends that petitioners do not have any vested or legally enforceable right to get salary in the pay scale of 5200-20200 Grade Pay Rs. 2800/-, when the advertisement and Service Rules



clearly provide that they shall get salary in the pay scale of Rs. 5200-20200, Grade Pay of Rs. 2000/-.

35. Learned State Counsel further submits that a Government servant, upon appointment, acquires a status and his/her service conditions can then be altered by State Government by amending the Service Rules. In reply to challenge to Appendix-B of the Service Rules, learned State Counsel relies upon para 18, 19 and 20 of the judgment rendered by Hon'ble Supreme Court in the case of **Union of India and others Vs. Arun Kumar Roy** reported as **(1986) 1 SCC 675**. Para 18, 19 and 20 of the said judgment are reproduced below:

“18. The question whether the terms embodied in the order of appointment should govern the service conditions of employees in government service or the Rules governing them is not an open question now. It is now well settled that a government servant whose appointment though originates in a contract, acquires a status and thereafter is governed by his service rules and not by the terms of contract. The powers of the government under Article 309 to make rules, to regulate the service conditions of its employees are very wide and unfettered. These powers can be exercised unilaterally without the consent of the employees concerned. It will, therefore, be idle to contend that in the case of employees under the government, the terms of the contract of appointment should prevail over the Rules governing their service conditions. The origin of government service often times is contractual. There is always an offer and acceptance, thus bringing it to being a completed contract between the government and its employees. Once appointed, a government servant acquires a status and thereafter his position is not one governed by the contract of appointment. Public law governing service conditions steps in to regulate the relationship between the employer and employee. His emoluments and other service conditions are thereafter regulated by the appropriate statutory authority empowered to do so. Such regulation is permissible in law unilaterally without reciprocal consent. This Court made this clear in two judgments rendered by two Constitution Benches of this Court in *Roshan Lal Tandon v. Union of India* [AIR 1967 SC 1889 : (1968) 1 SCR 185] and in *State of J&K v. Triloki Nath Khosa* [(1974) 1 SCC 19 :



19. Thus it is clear and not open to doubt that the terms and conditions of the service of an employee under the government who enters service on a contract, will once he is appointed, be governed by the Rules governing his service conditions. It will not be permissible thereafter for him to rely upon the terms of contract which are not in consonance with the Rules governing the service.

20. The powers of the government under Article 309 of the Constitution to make rules regulating the service conditions of the government employees cannot, in any manner, be fettered by any agreement. The respondent cannot, therefore, succeed either on the terms of the contract or on the notification on which the High Court has relied upon. Nor can he press into service the Rule of estoppel against the government.”

36. Learned State Counsel relies upon the judgment rendered by this Court in Writ Petition (SB) No. 297 of 2020 where it was held that Government can alter the conditions of service of its employees unilaterally and consent of the Government employees is not a pre requisite for validity of the rules of service, the contractual origin of the service notwithstanding. Para 6 and 7 of the said judgment are reproduced below:

“6. It is well settled that though employment under the Government like under any other master may have a contractual origin, the Government servant acquires a status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which for, its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved, consent is not a pre-condition for the validity of rules of service, the contractual origin of the service notwithstanding. Where a party seeks to impeach validity of a rule made by a competent authority on the ground that the rules offend Article 14, the burden is on him to plead and prove the infirmity. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The burden



thus, is on the petitioners to set out facts necessary to sustain the plea of discrimination and to adduce "cogent and convincing evidence" to prove those facts for "there is a presumption that every factor which is relevant or material has been taken into account by the rule making authority while framing the Rules. Unless the classification is unjust on the face of it, the onus lies-upon the party attacking the classification to show by pleading the necessary material that the said classification is unreasonable and violative of Article 16 of the Constitution.

7. In the case of *The State of Jammu & Kashmir vs Shri Triloki Nath Khosa & others*, reported in 1974 (1) SCC 19, Hon'ble Supreme Court has held that "discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. It was, therefore, incumbent on the respondents to plead and show that the classification of Assistant Engineers into those who hold diplomas and those who hold degrees is unreasonable and bears no rational nexus with its purported object. Rather than do this, the respondents contented themselves by propounding an abstract theory that educational qualifications are germane at the stage of initial recruitment only. Omission to furnish the necessary particulars was construed by this Court in two cases as indicating that the plea of unlawful discrimination had no basis. Such an infirmity in pleadings led this Court in *State of Madhya Pradesh v. Bhopal Sugar Industries Ltd.* to remand the matter to the High Court in order to enable the petitioner therein to amend its petition. Mr. Garg asked for a remand so that the respondents could have an opportunity to plead the necessary facts but we declined to do so as we did not propose to allow the appeal on the narrow ground that the respondents' plea of discrimination was inadequate."

37. Learned State Counsel submits that there is no change or alteration in the service conditions or pay scale of the petitioners after their appointment. He submits that Service Rules were enforced in 2016 and petitioners were appointed thereafter and in the advertisement, the same pay scale was mentioned which is being paid to the petitioners.

38. This Court finds substance in the contentions raised by learned State Counsel.



39. Even though Grade Pay of Rs. 2800/- as Special Pay was given to Health Workers, who were appointed before reorganisation of the State, in terms of judgment rendered by Hon'ble Allahabad High Court; however, it was a special benefit given to them for historical reasons. It is not in dispute that pay scale of Health Workers was fixed as Rs. 5200-20200, Grade Pay Rs. 2000/-, therefore, claim of petitioners for same Grade Pay, as was given to other set of persons as Special Pay, is unsustainable for the following reasons:

- i. Petitioners cannot claim parity with others who on the strength of judgment rendered by Hon'ble Allahabad High Court were given Grade Pay of Rs. 2800/- as personal pay. Petitioners were appointed after 02.05.2013 when it was decided that appointments in future shall be made in the pay scale of Rs. 5200-20200, Grade Pay of Rs. 2000/- and as per the Recruitment Rules framed in 2016, Grade Pay of Rs. 2000/- is payable for the post of Health Worker.
- ii. Petitioners participated in the selection held pursuant to advertisements issued in the year 2016 and thereafter, and the pay scale applicable for the post of Health Worker was clearly mentioned as Rs. 5200-20200, Grade Pay Rs. 2000/- in those advertisements.
- iii. Petitioners applied in response to such advertisements with eyes wide open and the pay scale mentioned in the advertisement is being paid to them, therefore they cannot have any grievance that they are being paid salary on a lower pay scale. Moreover, they were offered appointment in the same pay scale which they accepted without any demur, thus they cannot now contend that they are being treated unfairly.
- iv. It is not their case that their pay scale has been reduced after appointment. The decision to grant higher grade pay as personal pay to



existing members of service was taken much before petitioners' selection and appointment, thus they cannot now question the decision taken by Government after so many years of service.

40. Even though, petitioners are serving as Health Worker and their duties and responsibilities may be similar to those discharged by the other set of persons; however, difference in their pay scale is due to historical reasons. Other group of persons are covered by the judgment rendered by Hon'ble Allahabad High Court which led to revision of their Grade Pay, however, petitioners are differently situate. State Government decided to grant Grade Pay of Rs. 2800/- to other group of persons as personal pay, appointments on the post of Health Worker were to be made in Grade Pay of Rs. 2000/-. Thus it is not a case of hostile discrimination as alleged.

41. State Government has to consider various aspects while determining pay scales and the first and foremost consideration is financial capacity of the State. As per Recruitment Rules, there are 2306 sanctioned post of Health Worker (Female) and 855 posts of Health Worker (Male) besides 897 posts of Health Supervisor (Male/Female). Having regard to large number of employees serving as Health Worker, State Government decided to grant Grade Pay of Rs. 2800/- as Special Pay, only to existing members of service. However, for persons who were to be appointed as Health Worker in future, decision was taken that they shall get salary in the pay scale of Rs. 5200-20200, Grade Pay Rs. 2000/-.



42. Since salary has to be paid by State Government from its limited resources and giving Grade Pay of Rs. 2800/- to all Health Workers, including future appointees, would have fastened huge financial liability upon the State, therefore, Government in its wisdom took the decision as is contained in Government Order dated 02.05.2013.

43. Interference with the decision taken by State Government would not be proper in view of the law declared by Apex Court that determination of pay scales is primary function of the executive and while exercising power of judicial review, Courts should not enter upon the task of fixation of pay.

44. Article 14 of the Constitution of India provides that equals cannot be treated unequally; however, it also ordains that unequals cannot be treated equally. Health Workers who were in service before 02.05.2013 were given Grade Pay of Rs. 2800/- as Special Pay pursuant to judgment rendered by Hon'ble Allahabad High Court. Petitioners are not protected by that judgment; State Government decided to fix pay scale for the post of Health Worker as Rs. 5200-20200, Grade Pay Rs. 2000/- Since there are two set of persons, one which is covered by judgment and the other is not covered by the judgment. State Government decided to give Grade Pay of Rs. 2800/-, as personal pay, to the first set of persons and for others, it was decided that they shall be entitled to scale of Rs. 5200-20200, Grade Pay Rs. 2000/-.

45. Even though at first blush, difference in pay scale between two group of persons discharging similar duties



appears to be unreasonable; however, upon deeper scrutiny, one finds that there is intelligible differentia and grant of Grade Pay of Rs. 2800/- as personal pay to the persons who are covered by judgment cannot be termed as unreasonable. Thus the classification has reasonable nexus with the object sought to be achieved.

46. The argument of hostile discrimination could be sustained, only if State Government made classification amongst persons serving as Health Worker on 02.05.2013. The Government Order treats all serving Health Workers as forming one homogeneous class by providing them Grade Pay of Rs. 2800/- as personal pay. The said Grade pay, however, is not payable to persons who are appointed in future. The grant of Grade Pay of Rs. 2800/- as personal pay to persons who were in service on 02.05.2013 cannot be said to be arbitrary as it was given to them pursuant to a judgment. Thus the challenge thrown by petitioners to Government Order dated 02.05.2013 is without any force. Similarly, challenge thrown by petitioners to Appendix-B of the Recruitment Rules which lays down the scales admissible for the post is also unsustainable. The said Rules were framed much before petitioners were appointed.

47. Appendix-B does not make any distinction amongst Health Workers and Pay Scale of Rs. 5200-20200, Grade pay Rs. 2000/- is admissible across the board for the post of Health Worker. Health Workers who were appointed before 02.05.2013, however, are to be given Grade Pay of Rs. 2800/- as personal pay, while pay scale mentioned in the Rules is admissible for the post of Health Worker. In the advertisement, whereby



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applications were invited, the pay scale as mentioned in the Rules was indicated. It is nobody's case that appointment was offered to the petitioners on a lower scale or their scale was reduced after appointment.

48. After applying for the post of Health Worker pursuant to the advertisement, in which pay scale was mentioned and after having accepted offer of appointment in the pay scale of Rs. 5200-20200, Grade Pay Rs. 2000/-, claim staked by petitioners for Grade Pay of Rs. 2800/-, is unsustainable.

49. Thus, the reliefs claimed by petitioners cannot be granted. Writ petitions fail and are dismissed.

**(Manoj Kumar Tiwari, J.)**

16.06.2026

*Mahinder/*