

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.484 of 2014 (S/B)

Dr. Sanjay Singh Chauhan and others Petitioners

Versus

State of Uttarakhand and others Respondents

Mr. Arvind Vashisth, Senior Advocate with Mr. B.N. Molakhi and
Mr. Imran Ali, Advocates for the petitioners.
Mr. Rajeev Bisht, Standing Counsel for the State.

**Coram : - Hon'ble Rajiv Sharma , J.
Hon'ble Alok Singh, J.**

Hon'ble Rajiv Sharma , J. (Oral)

The petitioners were appointed as Medical Officers "Ayush" on the contract basis during the year 2010 to 2013 under "National Rural Health Mission" (hereinafter referred to as "NRHM" for the sake of brevity). The NRHM was started by Government of India in the year 2005 for the purpose of Healthcare, more particularly, in rural areas. The 85% expenses are borne by the Central Government and 15% by the State Government.

2. According to the preamble of NRHM scheme, it is meant to develop and improve the quality of life of citizens and to adopt a synergistic approach by relating health to indicators of good health viz. segments of nutrition, sanitation, hygiene and safe drinking water. It also aims at mainstreaming the Indian System of Medicine to facilitate health care. The overall goal of the Mission is to improve the availability of access to quality health care by people especially for those residing in rural areas, the poor, women and children. In fact, it provides effective health care to rural population throughout the country

with special focus on 18 States including State of Uttarakhand.

3. The petitioners were appointed in Rastriya Bal Swasthaya Karyakram (RBSK) run by the NRHM. The State Government has also employed Allopathic, Dental, Ayurvedic and Homeopathic Medical Officers under NRHM on contract basis. The Allopathic and Dental Doctors were given consolidated salary of Rs.48,000/-, Rs.52,000/- and Rs.56,000/- for Sugam, Durgam and Ati-durgam places respectively. The petitioners were paid only Rs.36,000/-, Rs.40,000/- and Rs.44,000/- for Sugam, Durgam and Ati-durgam places respectively. There were 82 Ayurvedic and 18 Homeopathic Medical Officers appointed on contract basis under NRHM. 296 Ayurvedic Medical Officers were also appointed on contract basis under RBSK. Initially there was no difference in the salary between Allopathic Medical Officers and Ayurvedic Medical Officers as per advertisement issued in the year 2010. The petitioners have made several representations seeking parity of salary with their counter-parts working as Allopathic Medical Officers and Dental Medical Officers.

4. The case of the petitioners has been rejected only on the ground that they are working on contractual basis and thus, they are not entitled to the parity with Allopathic Medical Officers and Dental Medical Officers. The petitioners are discharging the same duties which are being discharged by the Allopathic Medical Officers and Dental Medical Officers.

5. The underlying principles of NRHM is to provide basic health facilities to the citizen of the State, more particularly, of rural areas. The petitioners have obtained their degrees from recognized institutions. They have also taken 4-5 years course. It is for the patient to opt for any of the system i.e. Allopathic or Ayurvedic or Homeopathic.

6. There is no intelligible differentia so as to distinguish the Ayurvedic and Homeopathic Medical Officers viz-a-viz Allopathic and Dental Medical Officers. There is no rational why the similar situate persons have been discriminated against. The petitioners as well as Allopathic and Dental Medical Officers constitute homogenous class.

7. Homeopathy, Ayurved and Allopathy are different streams of Medicines, yet these have to be treated at par with each other. The nature of degrees and duration of courses are almost the same. There is also discrimination by paying Rs.10,000/- extra to the Doctors working in Community Health Centres and Primary Health Centres. The petitioners are working in rural areas. They cannot be discriminated against only on the ground that they are not serving in Community Health Centres and Primary Health Centres.

8. Their Lordships of Hon'ble Supreme Court in **(1987) 4 SCC 634** in the case of **Bhagwan Dass and others Vs. State of Haryana and others** have held that if duties and functions of temporary appointees and employees of regular cadre in the same government

department are similar, there cannot be discrimination in pay between them merely on ground of difference in mode of their selection or that the appointment or scheme under which appointments made was temporary. Their Lordships have held as under :-

"8. It is therefore futile to contend that the petitioners in their capacity as Supervisors were required only to perform part-time work. As per clause (d) of the aforesaid extract, the supervisors were required to stay for the whole day in the village and were required to visit the Informal Education Centre and the Adult Education Centre in the night. They were also required to go on tour and to remain at the headquarter once a week from 9.30 A.M. to 4.00 P.M. The conclusion is therefore inevitable that the petitioners were not part-time functionaries but were whole-time functionaries.

10. With regard to the first ground for not granting salary on the same basis as of respondents 2 to 6, viz. that they are part-time employees whereas respondents 2 to 6 are full-time employees, having examined the aforesaid records placed before the Court, we are of the opinion that there is no substance in this contention.

11. With regard to the next contention viz. that the mode of recruitment of the petitioners is different from the mode of recruitment of respondents 2 to 6, we are afraid it is altogether without substance. The contention has been raised in the following terms (paragraph 4(d) of the Counter affidavit dated 6-1-1986 filed on behalf of Respondents 1 to 13):--

It is absolutely incorrect that the Petitioners are similarly placed as the employees under the Social Education Scheme, as alleged. The latter are whole-time employees selected by the subordinate services Selection Board after competing with candidates from any pan of the country. In the case of Petitioners, normally the selection at best is limited to the candidates from the Cluster of a few villages only. The contention made by the Petitioners has no justifiable basis."

(Emphasis added).

We need not enter into the merits of the respective modes of selection. Assuming that the selection of the petitioners has been limited to the cluster of a few villages, whereas Respondents 2 to 6 were selected by another mode wherein they had faced competition from candidates from all over the

country., we need not examine the merits of these modes for the very good reason that once the nature and functions and the work are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "Equal pay for equal work" doctrine. It was open to the State to resort to a selection process whereat candidates from all over the country might have competed if they so desired. If however they deliberately chose to limit the selection of the candidates from a cluster of a few villages it will not absolve the State from treating such candidates in a discriminatory manner to the disadvantage of the selectees once they are appointed, provided the work done by the candidates so selected is similar in nature. It was perhaps considered advantageous to make recruitment from the cluster of a few villages for the purposes of the Adult Education Scheme because the Supervisors appointed from that area would know the people of that area more intimately and would be in a better position to persuade them to take advantage of the Adult Education Scheme in order to make it a success. So also it was perhaps considered desirable to make recourse to this mode of recruitment of candidates because candidates from other parts of the country would have found it inconvenient and onerous to seek employment in such a Scheme where they would have to work amongst total strangers and it would have made it difficult for them to discharge their functions of persuading the villagers to avail of the Adult Education Scheme on account of that factor. So also they might not have been tempted to compete for these posts in view of the fact that the Scheme itself was for an uncertain duration and could have been discontinued at any time. Be that as it may, so long as the petitioners are doing work which is similar to the work performed by respondents 2 to 6 from the stand point of 'Equal work for equal pay' doctrine, the petitioners cannot be discriminated against in regard to pay scales. Whether equal work is put in by a candidate, selected by a process whereat candidates from all parts of the country could have competed or whether they are selected by a process where candidates from only a cluster of a few villages could have competed is altogether irrelevant and immaterial, for the purposes of the applicability of 'Equal work for equal pay' doctrine.. A typist doing similar work as another typist cannot be denied equal pay on the ground that the process

of selection was different in as much as ultimately the work done is similar and there is no rational ground to refuse equal pay for equal work. It is quite possible that if he had to compete with candidates from all over the country, he might or might not have been selected. It would be easier for him to be selected when the selection is limited to a cluster of a few villages. That however is altogether a different matter. It is possible that he might not have been selected at all if he had to compete against candidates from all over the country. But once he is selected, whether he is selected by one process or the other, he cannot be denied equal pay for equal work without violating the said doctrine. This plea raised by the Respondent-State must also fail.

12. Turning now to the contention that the nature of the duties are different,, the Respondent-State has failed to establish its plea. In the regular cadre, the essential qualification for appointment is B.A., B.Ed. Petitioners also possess the same qualifications viz. B.A., B.Ed. In fact many of them even possess higher degrees such as M.A.M.Ed. In what manner and in what respect are the duties and functions discharged by those who are in the regular cadre different? The petitioners having discharged the initial burden showing similarity in this regard, the burden is shifted on the Respondent-State to establish that these are dissimilar in essence and in substance. We are unable to uphold the bare assertion made in this behalf by the State of Haryana (in paragraph 21 of the Counter-affidavit dated November 23, 1985). In fact the communication dated April 8, 1985 (Annexure R-2) addressed by the respondent State of Haryana to the District Officers which has been quoted in the earlier part of the judgment supports the contentions of the petitioners and belies the plea raised by the Respondent-State.”

9. Their Lordships of Hon’ble Supreme Court in the recent judgment reported in **(2017) 1 SCC 148** in the case of **State of Punjab and others Vs. Jagjit Singh and others** have laid down the following principles to determine parity in principle of “equal pay for equal work”. Their Lordships have held that the temporary employees are also entitled to minimum regular pay scale

on the principle of “equal pay for equal work”. Their Lordships have held as under :

“42.2. The mere fact that the subject post occupied by the claimant, is in a “different department” vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of ‘equal pay for equal work’. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see – the Randhir Singh case1, and the D.S. Nakara case2).

42.3. The principle of ‘equal pay for equal work’, applies to cases of unequal scales of pay, based on no classification or irrational classification (see – the Randhir Singh case1). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case3, the Mewa Ram Kanojia case5, the Grih Kalyan Kendra Workers’ Union case6 and the S.C. Chandra case12).

42.4. Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of ‘equal pay for equal work’ (see – the Randhir Singh case1, State of Haryana v. Haryana Civil Secretariat Personal Staff Association9, and the Hukum Chand Gupta case17). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

42.5. In determining equality of functions and responsibilities, under the principle of ‘equal pay for equal work’, it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within

the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case³ and the State Bank of India case⁸). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of ‘equal pay for equal work’ (see - State of U.P. v. J.P. Chaurasia⁴, and the Grih Kalyan Kendra Workers’ Union case⁶).

42.6. For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – the Orissa University of Agriculture & Technology case¹⁰).

42.7. Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - ‘selection grade’, in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria (see - State of U.P. v. J.P. Chaurasia⁴).

42.8. If the qualifications for recruitment to the subject post vis-a- vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see – the Mewa Ram Kanojia case⁵, and Government of W.B. v. Tarun K. Roy¹¹). In such a cause, the principle of ‘equal pay for equal work’, cannot be invoked.

42.9. The reference post, with which parity is claimed, under the principle of ‘equal pay for equal work’, has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as

a promotional post (see - *Union of India v. Pradip Kumar Dey*⁷, and the *Hukum Chand Gupta* case¹⁷).

42.10. A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see - the *Harbans Lal* case²³). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - *Official Liquidator v. Dayanand*¹³).

42.11. Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see - the *State Bank of India* case⁸).

42.12. The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable (see - *State of Haryana v. Haryana Civil Secretariat Personal Staff Association*⁹).

42.13. The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay-scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see - *State of West Bengal v. West Bengal Minimum Wages Inspectors Association*¹⁴).

42.14. For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see - Union Territory Administration, Chandigarh v. Manju Mathur¹⁵).

42.15. There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see - the Hukum Chand Gupta case¹⁷), when the duties are qualitatively dissimilar.

42.16. The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see - the Hukum Chand Gupta case¹⁷).

42.17. Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of 'equal pay for equal work', even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of 'equal pay for equal work' would not apply (see - the S.C. Chandra case¹², and the National Aluminum Company Limited case¹⁸).

60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to

temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

10. In the instant case, the duties discharged by the petitioners viz-a-viz Allopathic Medical Officers and Dental Medical Officers are of equal sensitivity and quality, even the responsibility and reliability are the same. The classification made by the State Government is irrational.

11. Accordingly, the writ petition is allowed. The State/respondents are directed to pay and release the salary to the petitioners at par with Allopathic Medical Officers and Dental Medical Officers from the date when the same was paid to the Allopathic and Dental Medical Officers, within a period of three months from today with arrears.

(Alok Singh, J.)

(Rajiv Sharma, J.)

03.04.2018

JKJ