

A

SHYAM BABU VERMA AND ORS.

v.

UNION OF INDIA AND ORS.

FEBRUARY 8, 1994

B

[J.S. VERMA, N.P. SINGH AND N. VENKATACHALA, JJ.]

Service Law:

C

Constitution of India, 1950: Articles 14, 16—Principle of 'equal pay for equal work'—Held in equality of men in different groups excludes applicability of the principle—It is always open to Government to put its employees of same service in different categories for purpose of scale of pay according to qualifications possessed by them.

D

Pharmacy Act, 1948: S.31—Pharmacists Grade- B—Qualificationwise categorisation—Pharmacists possession qualifications under cl(a) to cl(c) put in Pay scale of Rs. 330-560—Those covered under clause (d) put in pay scale of Rs. 330- 480—Held, no fault can be found with the Government in putting Pharmacists Grade-B in two categories of pay scales according to their Qualification and experience.

E

The petitioner were appointed as Pharmacists Grade-B in the Northern Railway Central Hospital, in the scale of Rs. 130- 240. On the recommendation of the Third Pay Commission, two pay scales were provided for Pharmacist Grade-B w.e.f. 1973. Pharmacists possessing qualifications prescribed in clauses (a) to (c) of s. 31 of the Pharmacy Act, 1948 were given the pay scale of Rs. 330-560 and those covered under clause (d) of s. 31 were provided the pay scale of Rs. 330-480. The petitioners, though covered under clause (d) of s. 31, were getting the revised scale of Rs. 330-560 since 1973. By the orders dated 15.6.1984, the petitioners were informed that as they were covered by clause (d) of s. 31 of the Pharmacy Act, 1948, their salary was being fixed in the scale of Rs. 330-480 instead of Rs. 330-560 and that after completion of 10 years of service, they would be getting the scale of Rs. 330-560.

F

G

H

The petitioners filed the writ petition before this Court challenging the validity of the order. It was contended that sudden reduction of the pay scale retrospectively had not only put them to financial loss but even

affected their seniority; the order was arbitrary and discriminatory in nature and on the principle of 'equal pay for equal work' they were entitled to the pay scale of Rs. 330-560, as they had been performing the same nature of work which was being performed by other Pharmacists Grade-B in the pay scale of Rs. 330-560.

Disposing of the Writ Petitions, this Court

HELD: 1.1. Admittedly, the petitioners do not hold the qualifications mentioned in clauses (a), (b) and (c) of Section 31 of the Act and they are only covered by clause (d) of Section 31. Once it is established that the petitioners do not belong to the class of Pharmacists who possessed the qualifications mentioned in clauses (a) to (c) of Section 31 for whom the separate scale of pay was recommended by the Third Pay Commission, which was accepted by the Government and implemented w.e.f. 1.1.1975, the petitioners cannot claim the same scale. [705-D-H]

1.2. It is always open to the Government to put its employees in the same service in different categories for the purpose of the scale of pay, according to the qualifications possessed by them. When s. 31 itself conceives of different types of Pharmacists with reference to their academic qualifications and experience, then no fault can be found either with the Third Pay Commission or the respondents in putting the Pharmacists Grade-B in two categories with reference to their qualifications and experience and prescribing two scales of pay. In most of the services, the scale of pay is linked with the academic performance, experience and it cannot be held that for one service, there should be only one scale of pay, ignoring the persons, who possess the higher qualifications. [706-A-C]

2.1. Inequality of the men in the different groups, excludes applicability of the principle of 'equal pay for equal work' to them. The nature of work may be more or less same, but scale of pay varies based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. 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 the classification made to be unreasonable. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimina-

A tion, within the meaning of Article 14 of the Constitution. [706-E, F]

Madhya Pradesh v. Pramod Hartive, [1993] 1 S.C.C. 539, relied on.

B 2.2. In the instant case, there is no scope for applying the principle of 'equal pay for equal work', when the petitioners belong to a separate category of Pharmacists, with reference to the qualifications prescribed under the Act. There is no element of arbitrariness in the decision of the respondents to implement two scales of pay for two categories of Pharmacists Grade-B. It does not violate any of the provisions of the Constitution, calling for interference by this Court. [706-G, H; 707-A]

C 2.3. Although the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1.1.1973, as they have received the scale of Rs. 330-560 since 1973, due to no fault of theirs, and that scale is being reduced in the year 1984 with effect from 1.1.1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. [707-B]

D CIVIL ORIGINAL JURISDICTION: Writ Petitions (C) Nos. 12897 to 12899 of 1984.

(Under Article 32 of the Constitution of India.)

E G. Viswanatha Iyer, S.N. Singh, B.M. Sharma and M.L. Srivastava for the Petitioners.

C.V. Subba Rao and Hemant Sharma for the Respondents.

F The Judgment of the Court was delivered by

G N.P. SINGH, J. 1. These petitions under Article 32 of the Constitution have been filed on behalf of the three petitioners, questioning the validity of an order dated 15.6.1984, issued by the Chief Superintendent, Central Hospital (Northern Railway), New Delhi.

H 2. After the petitioners had been duly registered as Pharmacists by the Registrar, Uttar Pradesh State Pharmacy Council they were appointed as pharmacists in the Northern Railway, Central Hospital, in the scale of Rs. 130-240. Since 1973 petitioner started getting the revised scale of Rs. 330-560. A seniority list of Pharmacists in the pay scale of Rs. 330-560 was prepared, in which names of the petitioners were also included. The

impugned orders dated 15.6.1984 were issued to the petitioners, saying that as they were covered by clause (d) of Section 31 of the Pharmacy Act, 1948 (hereinafter referred to as the 'Act'), their salary was being fixed in the scale of Rs. 330-480 instead of Rs. 330-560 with effect from 1973. It was further said that after completion of 10 years of service, they would be getting the scale of Rs. 330-560. There is no dispute that after completion of 10 years of service, petitioners have been getting the scale of Rs. 330-560. According to the petitioners, the sudden reduction of the scale of pay from Rs. 330-560 to Rs. 330-480, after several years of the implementation of the said scale, has not only affected financially but even the seniority of the petitioners.

3. It has been stated on behalf of the respondents that aforesaid order dated 15.6.1984, had been issued in view of the Railway Board letter dated 12.8.1975. It was pointed out that as the petitioners were not qualified Pharmacists, possessing the qualifications mentioned in clauses (a), (b) and (c) of Sections 31 and 32 of the Act, they were not entitled to the pay scale of Rs. 330-560 as per recommendation of the Third Pay Commission and by the impugned order the pay scale recommended for them was implemented.

Section 31 of the Act says:

"31 - A person who has attained the age of eighteen years shall be entitled on payment of the prescribed fee to have his name entered in the first register if he resides, or carries on the business or profession of pharmacy, in the State and if he-

(a) holds a degree or diploma in pharmacy or pharmaceutical chemistry or a chemist and druggist diploma of an Indian University or a State Government, as the case may be, or a prescribed qualification granted by an authority outside India, or

(b) holds a degree of an Indian University other than a degree in pharmacy or pharmaceutical chemistry, and has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical prac-

A titioners for a total period of not less than three years, or

(c) has passed an examination recognised as adequate by the State Government for compounders or dispensers, or

B (d) has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than five years prior to the date notified under sub-Section (2) of section 30".

C 4. The Third Pay Commission recommended the two revised scales of pay to the Pharmacists Grade-B, classifying them into two categories, according to their qualifications. In other words, the Pharmacists Grade-B, who were getting the scale of Rs. 130- 240, were out in two categories with reference to their qualification, and two scales of pay were recommended, which are as follows :—

	Original Scale	Revised Scale	Qualification	
E	Pharmacist Gr. B.	130-240	330-10-380-EB-12-500-EB-15-560	For fully qualified Pharmacist i.e. those possessing qualification mentioned in Section 31 and 32 of Pharmacy Act 1948 but excluding those covered by clause (d) of Section 31 of the Pharmacy Act.
F	Pharmacist Gr. B.	130-240	330-8-370-10-400-EB-10-480.	For unqualified Pharmacists i.e. those covered by clause (d) of Section 31 of Pharmacist Act or possessing registrable qualifications under that clause.
G				
H				

The said recommendation was given effect from 1.1.1973. There is no dispute that the petitioners are unqualified Pharmacists as such covered by clause (d) of Section 31 of the Act. In terms of the recommendation, which was given effect to with effect from 1.1.1973, the petitioners were entitled to the scale of Rs. 330-480. But they were getting the pay scale of Rs. 330-560, which was meant for qualified Pharmacists i.e. those possessing qualifications mentioned in Sections 31 and 32 of the Act, excluding those covered by clause (d) of Section 31 of the Act.

5. According to the petitioners, although they possess the qualification prescribed under clause (d) of Section 31, but as throughout they had been treated *at par* with the Pharmacists possessing qualifications prescribed in clauses (a) to (c) Sections 31 and 32 of the Act and they were getting the same scale of pay since 1973, the order dated 15.6.1984 reducing their scale of pay from Rs. 330-560 to Rs. 330-480 retrospectively, was arbitrary and discriminatory in nature.

6. During the hearing of the writ petitions, it was an admitted position that the petitioners do not hold the qualifications mentioned in clauses (a), (b) and (c) of Section 31 of the Act and they are only covered by clause (d) of Section 31. The Third Pay Commission placed Pharmacists grade-B into two categories, for prescribing the scales of pay - (i) Pharmacists, fully qualified, who possessed the qualifications mentioned in clauses (a) to (c) of Section 31, (ii) Pharmacists, who are covered by clause (d) of Section 31 of the Act. That recommendation was given effect to w.e.f. 1.1.1973. As such in normal course, the petitioners were entitled to the scale of Rs. 330-480 and not the scale of Rs. 330-560. But they were getting the scale of Rs. 330- 560 since 1973. Once it is established that the petitioners do not belong to the class of Pharmacists, who possessed the qualifications mentioned in clauses (a) to (c) of Section 31 for whom the separate scale of pay was recommended by the Third Pay Commission, which was accepted by the Government and implemented w.e.f. 1.1.1973, we fail to understand as to how the petitioners can claim the same scale when they do not belong to same class of category.

7. The basis of the claim of the petitioners, is that prior to 1.1.1973 there was only one scale of Rs. 130-240 for Pharmacists who possessed the qualifications mentioned in clauses (a) to (c) of Section 31 as well as those who were covered by clause (d) of Section 31 i.e. who did not possess the

A qualifications mentioned in clauses (a) to (c). It is always open to the State Government to put its employees in the same service in different categories for the purpose of the scale of pay, according to the qualifications possessed by them. When Section 31 itself conceives of different types of Pharmacists with reference to their academic qualifications and experience, then no fault can be found either with the Third Pay Commission or the respondents in putting the Pharmacists grade-B in two categories with reference to their qualifications and experience and prescribing two scales of pay. In most of the services, the scale of pay is linked with the academic performance, experience and it cannot be held that for one service, there should be only one scale of pay, ignoring the persons, who possess the higher qualifications.

8. It was then urged on behalf of the petitioners that on principle of 'equal pay for equal work', they were entitled to pay scale of Rs. 330-560. It was pointed out that they have been performing the same nature of work, which was being performed by other Pharmacists Grade-B, who have been given the scale of Rs. 330-560. The nature of work may be more or less same, but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. 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 the classification made to be unreasonable. Inequality of the men in different groups, excludes applicability of the principle of 'equal pay for equal work' to them. The principle of 'equal pay for equal work' has been examined in State of *Madhya Pradesh v. Pramod Bhartiya*, [1993] 1 S.C.C. 539, by this Court. Before any direction is issued by the Court the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution.

9. In the facts of present case, there is no scope for applying the principle of 'equal pay for equal work', when the petitioners belong to a separate category of Pharmacists, with reference to the qualifications prescribed under the Act. According to us, there is no element of arbitrariness in the decision of the respondents to implement two scales of pay for two categories of Pharmacists Grade-B. It does not violate any of the

provisions of the Constitution, calling for interference by this Court.

A

10. Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1.1.1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560, but as they have received the scale of Rs. 330-560 since 1973, due to no fault of theirs, and that scale is being reduced in the year 1984 with effect from 1.1.1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners, due to the fault of the respondents, the petitioners being in no way responsible for the same.

B

C

The petitions are allowed in part. There will be no order as to costs.

N.P.V.

Petitions disposed of.