



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CWP-6846-2025
Date of decision: 11.03.2025

DR. DINESH GULIA AND OTHERSPetitioners

VERSUS

STATE OF HARYANA AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Shalender Mohan, Advocate
for the petitioners.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Santokhwinder S. Grewal, Addl. Sr. Standing Counsel
for the respondent-Union of India.

VINOD S. BHARDWAJ, J. (Oral)

The petitioner claims pay-parity as Veterinary Surgeon with the Medical Officers, since as per the earlier Pay Commissions, the pay of Veterinary Surgeons as well as Medical Officers were at par. It is further noticed by this Court that revision of pay scales of the 'Medical Officers' was undertaken pursuant to the statutory rules notified by the Government under Article 309 on 18.07.2014 whereby their Pay Scales had been revised.

2. Learned Counsel appearing on behalf of the petitioners has been posed with the following questions:-



- i) As to under what circumstances, the recommendations of the Pay Commission can have an overriding effect over the specific statutory rules notified under Article 309 of the Constitution of India? ;
 - ii) As to whether the petitioner can claim pay parity notwithstanding absence of any statutory rules placing Veterinary Surgeons at par with the Medical Officers who are now governed by the Haryana Civil Medical (Group-A) Service Rules, 2014? ;
 - iii) He has also been put the question as to the competence of the High Court to issue directions to the legislature to frame similar rules for the posts of Veterinary Surgeons as well ?.
3. He is not in a position to respond to the aforesaid queries .
4. To the contrary, learned Counsel appearing on behalf of the respondents refers to the judgment passed by this Court in CWP-20860-2012 titled ***“Jagdish Chander and others versus State of Haryana and another”*** decided on 29.03.2017 wherein this Court specifically held that it is within the competence of the Government to change the pay structure of different class of employees and that the act of the Government in providing a preferential pay structure to the HCMS Doctors as against the Veterinary Surgeons cannot be said to be arbitrary. The operative part of the said judgment dated 29.03.2017 is extracted hereinafter below:-



“I am of the considered view that if the Government has maintained pay parity on two occasions by accepting the recommendations of Central Pay Commission, it would not mean that for all the times to come, the same pay parity has to be maintained between the Veterinary Surgeons and the HCMS Doctors.

For the purpose of fixation of pay, the Government has to take into consideration the various factors including the educational qualification, the rigorousness of the course and other factors as enumerated in the written statement.

Admittedly, in the present case, same pay scales have been given to the petitioners after they raised a demand. However, the pay scales were granted to HCMS Doctors w.e.f. 20.02.2009. The only difference is the date of implementation of pay scale. The further difference is regarding the higher pay scales, which is granted after rendering 11 and 17 years of regular satisfactory service, whereas in case of HCMS Doctors, these were granted after rendering 10 and 15 years of regular satisfactory service. The previous cap limiting it to the certain percentage of the cadre strength of the post has been removed, in case of HCMS Doctors, but the same has been retained with some modification in case of Veterinary Surgeons.

Keeping in view the nature of their qualification, nature of duties and considering the other factors, it cannot be said that the Government had agreed to maintain pay parity



between the Veterinary Surgeons working in the Animal Husbandry and HCMS Doctors for all the times to come. It is always prerogative of the Government to make changes in the pay structure. It is also not an anomaly. It is conscious decision of the Government to make some distinction between the HCMS Doctors and the Veterinary Surgeons.

It being so, this Court does not find any merit in the present petitions. As such, the aforesaid five writ petitions are dismissed.”

5. He further submits that the Letters Patent Appeal filed by the petitioner therein against the said judgment and decree bearing LPA No. 1120 of 2017 and LPA No. 1139 of 2017 were dismissed by a Division Bench of this Court vide judgment dated 11.01.2023. The operative part of the said Division Bench judgment is extracted as under:-

“Next it is contended by the counsel for the appellants that the Haryana Government had accepted the 6th Pay Commission Report of Government of India in toto and therefore the appellants and other retired Veterinary Surgeons should be treated on par with HCMS officers with regard to the pay scale w.e.f. 01.01.2006 and also ACPs.

We may point out that the appellants themselves had filed extract of the report of the Pay Revision Committee of the Haryana Government dated 23.12.2008 signed by the Chairman and three Members (as Annexure P-6 in CWP-1139-2017). It merely states that one of the aspects considered while making recommendations by the said Pay Revision Committee was also the 6th Central



Pay Commission Report, but other aspects such as Government of India decisions, views of various Departments and Employees Associations in the State, were also taken into account. Thus this document does not support the plea of the appellants that the Govt.of Haryana had "adopted"/accepted in toto the 6th Pay Commission recommendations.

Counsel for the appellants however contended that there is no denial of the plea taken in Para-5 of the Writ Petitions by the appellants that the Government of Haryana had accepted in toto the 6th Pay Commission Report of the Government of India in the written statement of the respondents.

We do not agree with the said contention since the plea of the appellants is not supported by any evidence and Annexure P-6 does not support their plea.

Also the tone and tenor of the written statement clearly suggests that the Government had reserved to itself, in the notification issued on 20.04.2001, it's prerogative to disturb certain parities which were in existence in the past on account of shifting emphasis from time to time on importance of different services, nature of duties and responsibility assigned to different services and changing in order of priorities of the State Government. The written statement specifically states that the post of Veterinary Surgeons are not comparable with HCMS Officers and pay parity, therefore the same was not maintained.

*Counsel for the appellants then relied on the decision of the Supreme Court titled as **State of Punjab***



and Others Vs. Senior Vocational Staff Masters Association & Others ((2017) 9 SCC 379).

In the said decision it was held as under.

"25. since the very inception, the educational qualification for appointment as Vocational Masters had been a degree or a diploma with three years' experience as both the qualifications were placed on a par. All persons were appointed by a common process of selection and they teach the same classes, performing the same work. No distinction can be brought about between the persons so appointed. It is only subsequently that the appellants designated some of the Vocational Masters as Vocational Lecturers and brought about an artificial distinction between the two. Even on account of re-designation of the degree-holders and postgraduates as Vocational Lecturers, there was no change in the responsibilities and the financial matters as between the degree-holders and diploma-holders before the alleged notification which fact is duly admitted by the State. There is no distinction between the Vocational Lecturers and Vocational Masters and they form one unified cadre and class. There cannot be any discrimination between similarly situated persons, whether by way of a government notification or any amendment in the Rules. As far as nature of work is concerned, it is stated that the Vocational Masters are discharging their duty in the Senior Secondary Schools in the engineering/non-engineering trades and have the technical qualifications while the Vocational



Lecturers are also discharging the same duties in the same schools. Both Vocational Masters and Lecturers are teaching the same classes ie. 10+1 and 10 +2 and hence the nature of work, responsibilities and duties being identical and the pay scales were also kept identical since 1978 onwards.

26. The principle of equality is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39-A, 43 and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice-social, economic and political, by inter alia, minimising monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of the 4th Pay Commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eye of the law if no reasonable justification is offered for the same.



27. We are conscious of the fact that a differential scale on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of employees are treated as equal initially, they should continue to be so treated unless a different treatment is justified by some cogent reasons. In a case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continued to be identical as they were initially laid down, then the Court shall be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed"

The ratio in the above judgment is that if two categories of employees are treated as equal initially they should continue to be so treated unless a different treatment is justified by some cogent reasons, and that if the basic qualifications and job requirements continued to be identical as they were initially laid down, then the Court should be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed.

We are of the opinion that the said decision is distinguishable. Unlike in the said decision. Veterinary Surgeons and HCMS Doctors have different educational qualifications and different



nature of duties. So the said posts are not comparable, and cannot be said to be on parity. So merely because in the past at some point of time pay scale parity was provided for, there is no bar on the State Government to change the said pattern and treat them differentially by giving them revised pay from different dates and ACPs on completion of different periods of service and with a cap on number of Veterinary Surgeons who should get them.

*The decision of this Court titled as **State of Punjab and others Vs. Er. R.K. Aggarwal and others** (dt. 29.07.2019 in LPA-1991-2014) cited by the counsel for the appellants is also distinguishable because in that case there was a claim for parity of pay scale between Engineers working in Public Work Department and Junior Engineers working in the Soil Conservation Department, and the Court held that uniformity in pay structure should be maintained for all common categories who have identical qualification and discharge same or similar duties which is not the case in the instant appeals.”*

6. Learned Counsel for the petitioner fairly submits that he was not in the knowledge of the aforesaid judgments.

7. Further, in the matter of “**State of J&K versus A.R. Zakki**, decided on 06.12.1991 reported as **AIR 1992 SC 1546** it was held by the Hon’ble Supreme Court as under:

10. In our opinion there is considerable merit in this submission. A writ of mandamus cannot be issued



to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J and K Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J and K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court.

(EMPHASIS SUPPLIED)

8. Taking into consideration the lack of satisfactory response by Counsel for the petitioner and the abovesaid judicial pronouncements as regards absence of competence of the High Court to issue directions to the State legislature to frame an appropriate law under Article 309 with respect to the pay parity of Veterinary Surgeons and as to the rights of the State Government to have a different pay structure in relation to HCMS Doctors and the Veterinary Surgeons, I find that the directions sought for by the petitioner by way of the present writ petition cannot be accepted at this stage.

The instant writ petition is dismissed at this stage.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 11, 2025

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No