

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OA/310/00794/2014Dated this the 25th day of June, Two Thousand NineteenPRESENT

HON'BLE SHRI P. MADHAVAN, MEMBER (J)

HON'BLE SHRI T. JACOB, MEMBER (A)

Dr. Mrs. S. Revathi,
Principal,
College of Nursing,
Jawaharlal Institute of
Post Graduate Medical Education
and Research (JIPMER)
Puducherry-6.

... Applicant

By Advocate M/s. C.S. Associates

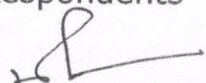
Vs.

1. The Director,
Jawaharlal Institute of
Postgraduate Medical Education
and Research (JIPMER),
Gorimedu,
Puducherry-6.

2. Union of India rep., by
The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
Maulana Azad Road,
New Del 001.

... Respondents

By Advocate Mr. M.T. Arunan



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Administrative Member)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following relief:

"To direct the 2nd respondent to upgrade the pay band of the applicant in the Pay Band Rs.37400-67000 Grade Pay Rs.8700/- from the date of appointment and confer all the consequential benefits and pass such further or other orders as may deem fit and thus render justice".

2. The facts leading to filing of this OA would read thus:-

The applicant in pursuance of an advertisement in the National Dailies and Employment News for filling up the post of Principal in the College of Nursing in the pay scale of PB-3 Rs.15600-39100 + Grade Pay Rs.7600/- (VI CPC) applied for the said post and after selection, joined the Institute on 01.02.2010. Her pay scale was fixed at Rs.15600-39100 as per Schedule V of JIPMER Regulation, 2008. On coming to know that the Principals working in other Government Colleges/autonomous institutions are being paid higher pay scale, she made several representations to implement the pay scale of PB-4 (Rs.37400-67000 + Grade Pay Rs.8700) on par with the Principal, College of Nursing, AIIMS and Rajkumari Amrit College of Nursing, New Delhi. Since there was no response, the applicant submitted further representations by way of reminders on 25-04-2011, 25-07-2011, 13-03-2012, 11-09-2012, 12-03-2013 and 10-03-2014. Till date, the 1st respondent has not considered and passed any order. Hence the applicant has filed this OA seeking the above relief on the following grounds:-



(i) There had been difference in the pay scales of the Principal, Rajkumari Amrit Kaur College of Nursing, New Delhi run directly by the Ministry of Health and Family Welfare, New Delhi wherein the Principal of the said College is being paid a higher scale of pay and AGP and other allowances.

(ii) The Principal, College of Nursing, AIIMS, New Delhi filed WP(C) No.3005/2008 wherein the Hon'ble Delhi High Court by Judgement dated 28.8.2008 directed the respondents to grant the benefit of revised/upgraded pay scales in terms of the recommendation of the Fifth Pay Commission which has been extended to her contemporary working as Principal in Raj Kumari Amrit Kaur, College of Nursing, New Delhi.

(iii) The Standing Financial Committee (SFC) met in New Delhi on 24.9.2013 and simply turned down her request without citing any good reason.

(iv) The gazette of India No.429, New Delhi, August 4, 2008 declaring JIPMER, Puducherry as Institute of National importance embodying the constitution of the same does not discriminate the full time employee of the JIPMER from the employee of the same cadre in the CGCS elsewhere in the whole India.

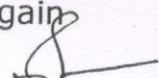
(v) The post of Principal, College of Nursing in Rajkumari College of Nursing, New Delhi, AIIMS, New Delhi. PGMER Chandigarh and JIPMER Puducherry are identical and in par with each other. There should not be any discrimination, The qualification/teaching experience as per the recruitment rules are also the same. Other general rules of Central Government Civil service are similar in all the above mentioned institutions.

(vi) The Ministry of Health and Family Welfare, New Delhi has sanctioned six AIIMS like institutions in 2012 and all have been Functioning as on date. The advertisement calling for advertisement for the post of Principal clearly stated that the Pay Scale was fixed at PB-4.



3. Per contra, the respondents in their reply have stated that the applicant after accepting the pay scale of the said post and the terms and conditions stipulated in the advertisement, joined the service at JIPMER. She was granted the pay scale of PB-3 (Rs 15600-39100 + GP Rs.7600) approved by the Ministry by letter dated 10.2.2009. The pay structure of the applicant was fixed based on the 2nd Respondent OM dated 10.2.2016 in which it was clearly mentioned that the revised pay structure for the post of Principal/Professor, College of Nursing will be PB-3 (Rs.15600-39100 + GP Rs.7600/-) on the basis of 6h CPC recommendation. The Deputy Director (Admn) had also sought clarification vide letter dated 4.2.2015 to the second respondent with regard to the revision of pay scales of Teaching Nursing Personnel in Government of India wherein the second respondent vide letter dated 9.3.2016 instructed the first respondent to implement the pay scales approved by the Ministry vide letter dated 10.2.2009 in case of nursing teachers w.e.f. 01.01.2006 immediately in a time bound manner and further directed to furnish Action Taken Report to the Ministry. While so, the applicant cannot say that the respondents have not taken any action to implement the new pay scale. She has also not placed any material fact to show that the post of Principal College of Nursing is identical to the post of Principal, Rajkumari Amrit Kaur College of Nursing, New Delhi etc., to claim parity of pay. Hence the respondents pray for dismissal of the OA.

4. The applicant has filed rejoinder in which it is stated that the first respondent has mentioned the posts available in the College of Nursing, JIPMER and the then existing pay scales noted against each of them. Again



the 1st Respondent is asking for clarification whether to implement the pay scale at par with that of teaching Nursing Personnel of other In Is like AIIMS with effect from 01.01.2006. The Ist Respondent has correctly mentioned the pay scales of Teaching Nursing Personnel in the College of Nursing of the In Is like AIIMS including the post of the Principal in Pay Band 4 with GP Rs.8700/- treating the post of Principal at par with the post of Principal Raj Kumari Amrit Kaur College of Nursing, New Delhi. Regulation 35 of Rules and Regulations of the AIIMS, New Delhi and the Regulation 43 of the Rules and Regulations of the JIPMER, Puducherry are same. The regulation reads that the rules as applicable to the Central Government servants with regard to the general conditions of service, pay and allowances including travelling and daily allowance, leave salary, joining time, foreign service terms and orders and decisions issued in this regard by the Central Government from time to time shall apply to the employees of the Institute. The Recruitment Rules for the post of Principal, JIPMER, Puducherry are one and the same and identical as required for the post of the Principal in all the colleges of Nursing in other INI's namely, Rajkumari Amrit Kaur College of Nursing, New Delhi, AIIMS, New Delhi, PGIMER, Chandigarh and other AIIMS like Institutions under the Ministry of Health and Family Welfare, Government of India (Rishikesh, Patna, Bhopal, Bhubaneswar and Jodhpur). The Recruitment Rules reads thus:--

Essential:

- 1. Master Degree in Nursing with advanced specialization in Nursing**
- 2. Must be Registered Nurse and Midwife.**
- 3. 10 years experience in the Nursing field after registration as Nurse out of which seven years must have been spent in Nursing Education or Administration after obtaining the prescribed Post Graduate qualification.**



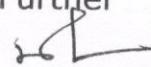
5. The applicant would further submit that there is no such rule in the JIPMER Act, 2008 that could discriminate the post of Principal, College of Nursing, JIPMER against that in any of other INIs like AIIMS, New Delhi and Raj Kumari Amrit Kaur College of Nursing, New Delhi. As per Clause 67 of Schedule-1 of JIPMER Regulations, 2008, the first respondent has the power to fix the pay of the institute employees under normal rules. Clause 76 grants the first respondent the power to sanction investigation of claims for arrears of pay etc., which are more than three years old but not more than 6 years old. In spite of all these, the first respondent has not taken any steps to write to the second respondent to find out whether or not the post of Principal, College of Nursing, JIPMER is equivalent to that of the Nursing College of other INIs under the Ministry of Health and Family Welfare, Government of India namely, the AIIMS, New Delhi.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. Admittedly the applicant after accepting the offer of appointment and the pay scale attached to the post and joining as Principal in the College of Nursing, JIPMER, Puducherry in the pay scale of PB-3 (Rs.15600-39100 + Grade Pay Rs.7600/- (VI CPC) on 01.02.2010 as per Schedule V of JIPMER Regulations, 2008 is seeking parity of pay scale with that of the Principals working in the AIIMS and Rajkumari Amrit Kaur College of Nursing, New Delhi on the ground that JIPMER is equivalent to that of the Nursing Colleges of other INIs under the Ministry of Health and Family Welfare, Government of India. The creation and fixation of pay scales for the posts of Principal, Vice



Principal and Lecturers etc., have been done with the approval and sanction of the Ministry of Health and Family Welfare, New Delhi. The applicant states that the first respondent has failed to take up the matter with the second respondent to find out the equivalency of the post and pay scale with that of Nursing Colleges of other INIs under the Ministry of Health and Family Welfare, New Delhi. The applicant made several representations to upgrade her pay with that of the pay of other Nursing Colleges and Indian National Institutes (INIs). The Standing Financial Committee however, did not approve the request of the applicant. Ultimately the applicant has also resigned the post and has now filed this OA seeking upgradation of the pay scale and to grant arrears thereof. The contention of the applicant that the post of Principal is identical with the post of Principal in AIIMS and other Nursing Colleges under the Ministry of Health and Family Welfare is without any basis as she has not put forth any relevant documents to prove the parity of scale with the post of Principal under the Ministry of Health and Family Welfare. Further she has been recruited for the post as per the advertisement and strictly as per the Recruitment Rules for the said post. We are of the considered view that implementation of pay scale has to be decided only by the Pay Commission which is the expert body to decide on the issue. Unless there are specific recommendations of the Pay Commission and the same has been accepted by the Ministry of Health and Family Welfare, Government of India, the pay upgradation cannot be given. The contention of the applicant that the post of Principal is identical with the post in AIIMS and other Nursing Colleges mentioned above has not been accepted by the Government of India. Further



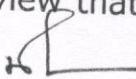
the applicant has not put forth any relevant documents to prove the historical parity of the scale with the post of Principals of AIIMS etc., and further mere nomenclature alone cannot justify identical pay scale. The burden of proof in establishing parity in pay scales and the nature of duties and responsibilities lies on the person claiming such right.

8. The Hon'ble Supreme Court in the case of Union of India vs. P.V. Hariharan (1997 SCC (L&S) 838) has held that "matter regarding fixation of pay be left to expert body like Pay Commission and it was not for the Tribunal to adjudicate on the issue of granting pay scale."

"Before parting with this appeal, we feel impelled to make a few observations:- Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendation of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

9. In yet another case, in State of Haryana and Another vs. Haryana Civil Secretariat Personal Staff Association reported in 2002 (6) SCC 22, the Hon'ble Supreme Court has held as follows:-

"... In the context of complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration of the State Government courts have taken the view that



ordinarily courts should not try to dwindle deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the government is patently irrational, unjust and prejudicial to a section of employees and the government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the government to implement the same. As noted earlier, in the present case 'the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of the employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre, On the discussions in the foregoing paragraphs, we have no hesitation to hold that the High Court was in error in allowing the writ petition and directing the appellants to grant the scale of Rs. 2000-3500 to the P.A.s of the State Civil Secretariat with effect from 1.1.1986, The judgment of the High Court is unsustainable, Therefore, the appeal is allowed and the judgment under challenge is set aside. The writ petition filed by the respondent herein is dismissed. There will, however, be no order for costs."

10. More important is the aspect of separation of powers exercisable by the judiciary on the one hand and the executive on the other. It is appropriate to refer to and follow the decision of the Apex Court in the case of S.C. Chandra Vs State of Jharkhand (2007) 8 SCC 279 wherein it has been held as under:-

"12. 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 vs. State of Jammu and Kashmir, AIR 1989 SC 1899 a three Judge bench of this Court observed (vide paragraphs 17 to 19) :



"17. Before advertiring to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognized 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* (1958) 356 US 86 observed as under :

"All power is, in Madison's phrase, "of an encroaching nature". Judicial powers is no 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



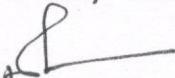
require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard 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 authorized 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 sermonize 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)

13. 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. Realizing 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).

14. 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 Government of West Bengal vs. Tarun K. Roy and others (2004) 1 SCC 347.



15. Similarly, in State of Haryana and another vs. Haryana Civil Secretariat Personal Staff Association(2002) 6 SCC 72, the principle of equal pay for equal work was considered in great detail. In paragraphs 9 & 10 of the said judgment the Supreme Court observed that equation of posts and salary is a complex matter which should be left to an expert body. The Courts must realize that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter which is for the executive to discharge. Granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences vide Union of India and others vs. Pradip Kumar Dey (2000) 8 SCC 580.

11. In the conspectus of the above facts and circumstances of the case and the discussions made hereinabove, we do not find any merit in the OA. The OA is liable to be dismissed and is accordingly dismissed. No order as to costs.