

THE UNION OF INDIA & ORS.

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v.

RAJIB KHAN & ORS.

(Civil Appeal No. 172 of 2023)

JANUARY 16, 2023

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[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Service Law – Entitlement to Nursing allowance – Respondents were working as Nursing Assistants in BSF and were paid “Hospital Patient care Allowance” – Respondents claimed to be entitled to “Nursing Allowance” at par with Staff Nurses – Single Judge of the High Court held that similar duties performed by Staff Nurses & Nursing Assistants, thus respondents are entitled to Nursing allowance – It also held that educational qualification cannot be a ground for denial of Nursing Allowance – Division Bench of the High Court dismissed the appeal preferred by the appellant-Union of India – On appeal, held: The Nursing Assistants in the BSF neither have relevant experience for appointment as Staff Nurse nor they possess any educational qualification for appointment as Staff Nurse – Therefore, the case of Nursing Assistants cannot be compared with that of the Staff Nurses as both carry different educational qualification – Under the circumstances, the High Court has committed a serious error in holding and directing that the Nursing Assistants serving in the BSF are entitled to Nursing Allowance at par with the Staff Nurses.

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Allowing the appeal, the Court

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HELD: 1. The Nursing Assistants in the BSF neither have relevant experience for appointment as Staff Nurse nor they possess any educational qualification for appointment as Staff Nurse. Therefore, the case of Nursing Assistants cannot be compared with that of the Staff Nurses as both carry different educational qualification. Under the circumstances, the High Court has committed a serious error in holding and directing that the Nursing Assistants serving in the Assam Rifles/BSF are entitled to Nursing Allowance at par with the Staff Nurses. [Para 5][1013-G-H; 1014-A-B]

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- A *Punjab State Cooperative Milk Producers Federation Limited and Another versus Balbir Kumar Walia and others* (2021) 8 SCC 784; *Director of Elementary Education, Odisha and Others versus Pramod Kumar Sahoo* (2019) 10 SCC 674; *Secretary Department of Personnel Public Grievances & Pension & Anr. Versus T.V.L.N. Mallikarjuna Rao*, (2015) 3 SCC 653: [2014] 13 SCR149 – referred to.
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Case Law Reference

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|---|-------------------|-------------|----------|
| | (2021) 8 SCC 784 | referred to | Para 2.4 |
| C | (2019) 10 SCC 674 | referred to | Para 2.4 |
| | [2014] 13 SCR 149 | referred to | Para 2.4 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No.172 of 2023.

- D From the Judgment and Order dated 02.11.2021 of the High Court of Gauhati at Guwahati in W.A No. 305/2021.

Ms. Madhavi Divan, ASG, Arvind Kumar Sharma, Adv. for the Appellants.

Omanakuttan K. K., Adv. for the Respondents.

The Judgment of the Court was delivered by

- E **M. R. SHAH, J.**

- F 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 02.11.2021 passed by the High Court of Gauhati in WA No.305 of 2021 by which the High Court has dismissed the said appeal preferred by the appellants herein -Union of India and others, not interfering with the judgment and order passed by the learned Single Judge allowing the writ petition and holding that the original writ petitioners are entitled to Nursing Allowance, the Union of India and others have preferred the present appeal.

- G 2. That the respondents herein are working as the Nursing Assistants in various hospitals under the establishment of Border Security Force. All of them were being paid the 'Hospital Patient Care Allowance'. According to the original writ petitioners they were entitled to the Nursing Allowance like it was being given to the Staff Nurse. Therefore, a writ petition was filed before the High Court. The claim of the original writ petitioners claiming Nursing Allowance at par with the Nursing Staff was opposed by the appellants containing *inter alia* that they are being
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paid the special allowance known as ‘Hospital Patient Care Allowance’ and are not entitled to the Nursing Allowance at par with Staff Nurses as they are not qualified as a Staff Nurse. However, the learned Single Judge negated the objection of the appellants – BSF by observing that the duties performed by the writ petitioners are the similar duties performed by the Staff Nurses. Learned Single Judge observed that educational qualification cannot be a ground for denial of Nursing Allowance. Consequently, the learned Single Judge allowed the writ petition. The appeal preferred by the appellants before the Division Bench of the High Court has been dismissed by the impugned judgment and order. Hence, the present appeal.

2.1 Ms. Madhavi Divan, learned ASG has vehemently submitted that in the facts and circumstances of the case the High Court has committed a serious error in holding that the original writ petitioners – Nursing Assistants are entitled to the Nursing Allowance at par with the Staff Nurses.

2.2 It is submitted that so far as the qualification of the Staff Nurses is concerned, it is four years course and so far as the Nursing Assistants are concerned, they have completed only one year course which is the requirement for the post of Nursing Assistants. It is submitted that therefore, when the original writ petitioners – Nursing Assistants are not eligible for appointment as Staff Nurses and the educational qualification being different, they shall not be entitled to claim the Nursing Allowance at par with the Staff Nurses.

2.3 It is further submitted that the High Court has not properly appreciated the fact that the Nursing Assistants in the BSF do not have the relevant experience and qualify only 6 months duration of Nursing Assistant Cadre and later absorbed in BSF Para Medical Set up. It is submitted that the Nursing Assistants also do not possess any registration certificate issued by the State Nursing Council and the Indian Nursing Council and therefore, they do not possess the relevant qualification and experience as mandated to receive the Nursing Allowance at par with the Staff Nurses.

2.4 It is further submitted by Ms. Madhavi Diwan, learned ASG that the High Court has materially erred in observing that the educational qualification cannot be a ground for denial of Nursing Allowance to the Nursing Assistants. It is submitted that as observed and held by this Court in a catena of decisions classification of the different pay scales is

- A permissible based upon educational qualifications, experience and nature of duties. Reliance is placed on the decisions of this Court in the case of **Punjab State Cooperative Milk Producers Federation Limited and Another versus Balbir Kumar Walia and others, (2021) 8 SCC 784; Director of Elementary Education, Odisha and Others versus Pramod Kumar Sahoo, (2019) 10 SCC 674** and **Secretary Department of Personnel Public Grievances & Pension & Anr. versus T.V.L.N. Mallikarjuna Rao, (2015) 3 SCC 653.**
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2.5 Making the above submissions and relying upon the above decisions, it is prayed to allow the present appeal.

- C 3. While opposing the present appeal learned counsel appearing on behalf of the respondents – original writ petitioners has vehemently submitted that while passing the order the learned Single Judge had heavily relied upon the decisions of the Division Bench of the High Court taking the view that the educational qualification cannot be a ground for denial of Nursing Allowance to the Nursing Assistants.

- D 3.1 It is submitted that as such the Nursing Assistants are being integral part of the nursing service and therefore the learned Single Judge was right in observing and taking the view that both the Nursing Assistants as well as the Staff Nurses are integral part of the nursing service in general and therefore, like the Staff Nurse, the Nursing Assistants are also entitled to get the nursing allowance. It is submitted that therefore, when both the Nursing Assistants as well as the Staff Nurses are integral part of the nursing service and would be performing the similar duties, the High court has not committed any error in directing to pay Nursing Allowance to the Nursing Assistants at par with the Staff Nurse. Therefore, it is prayed to dismiss the present appeal.
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4. Having heard learned counsel for the respective parties, a short question which is posed for consideration before this Court is whether in a case where the educational qualifications for the post of Nursing Assistant and Staff Nurse are different, still the Nursing Assistants shall be entitled to the Nursing Allowance at par with the Staff Nurses?

- G 4.1 The High Court has taken the view that the educational qualifications cannot be a ground for denial of Nursing Allowance at par with the Staff Nurse who can also be said to be an integral part of the nursing service in general. The view taken by the High Court is just contrary to the decisions of this Court in the case of **Punjab State**
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Cooperative Milk Producers Federation Limited (supra), Pramod Kumar Sahoo (supra) and T.V.L.N. Mallikarjuna Rao (supra). A

4.2 In the case of **T.V.L.N. Mallikarjuna Rao (supra)** it is observed by this Court that the classification of posts and determination of pay structure comes within the exclusive domain of the Executive and the Tribunal cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service. In the case before this Court, this Court upheld the different pay scales/pay structure based on different educational qualifications. It is observed and held that considering the educational qualifications prescribed for appointment to the post of Data Entry Operators, Grade B and the order assigning duties, the classification of Data Entry Operators in different grades, does not violate any right of equality guaranteed by Articles 14 and 16 of the Constitution nor does it violate the constitutional protection against hostile or arbitrary discrimination. B C

4.3 In the case of Punjab State Cooperative Milk Producers Federation Limited (supra), it is observed and held by this Court that different educational qualification and experience prescribed for appointment can be a ground to have different pay scales/pay structures. D

4.4 In the case of **Pramod Kumar Sahoo (supra)** it is observed and held that nature of work may be more or less the same but the scale of pay may vary based on academic qualification or experience which justifies classification. It is further held and observed that inequality of men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. In the case before this Court, this Court upheld the classification based upon the higher educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification. E F

5. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand the view taken by the High Court that the educational qualification cannot be a ground for denial of Nursing Allowance to the Nursing Assistants is unsustainable. In the present case the respective Nursing Assistants are being paid 'Hospital Patient Care Allowance'. The Nursing Assistants in the BSF neither have relevant experience for appointment as Staff Nurse nor they possess any educational qualification for appointment as Staff Nurse. Therefore, the case of Nursing Assistants cannot be compared with that of the G H

A Staff Nurses as both carry different educational qualification. Under the circumstances, the High Court has committed a serious error in holding and directing that the Nursing Assistants serving in the Assam Rifles/BSF are entitled to Nursing Allowance at par with the Staff Nurses.

6. In view of the above and for the reason stated above present
B appeal succeeds. The impugned judgment and order passed by the learned Single Judge as well as the Division Bench of the High Court holding and directing that the original writ petitioners – Nursing Assistants shall be entitled to Nursing Allowance at par with the Staff Nurse is hereby quashed and set aside.

C Consequently, the original writ petition filed before the learned Single Judge claiming Nursing Allowance at par with the Staff Nurse stands dismissed. Present appeal is accordingly allowed. No costs.

Ankit Gyan
(Assisted by : Abhishek Pratap Singh and Aarsh Choudhary, LCRAs)

Appeal allowed.