

Dr. Ms. O.Z. Hussain vs Union Of India And Ors on 15 November, 1989

Equivalent citations: 1990 AIR 311, 1989 SCR SUPL. (2) 177, AIR 1990 SUPREME COURT 311, 1990 LAB IC 322, (1990) 1 CURLR 134, (1989) 4 JT 407 (SC), (1991) 16 ATC 521, (1990) 1 SERVLR 297, (1990) 60 FACLR 74, (1990) 1 UPLBEC 45, (1990) 1 SCJ 531, (1990) 1 SERVLJ 188, (1990) 2 LAB LN 1185, (1990) IJR 95 (SC), 1990 SCC (SUPP) 688, (1990) 1 PAT LJR 52, 1991 SCC (L&S) 649

Author: Misra Rangnath

Bench: Misra Rangnath, P.B. Sawant, K. Ramaswamy

PETITIONER:

DR. MS. O.Z. HUSSAIN

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT 15/11/1989

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

SAWANT, P.B.

RAMASWAMY, K.

CITATION:

1990 AIR 311	1989 SCR Supl. (2) 177
1990 SCC Supl. 688	JT 1989 (4) 407
1989 SCALE (2) 1134	

ACT:

Civil Services: Service Law--Directorate General of Health Service--Non-medical Wing--'A' Group scientists--Whether entitled to same pay scales and allowances as admissible to their counter-parts in Medical Wing.

Promotion--Whether a normal incidence of service--Necessity to provide promotional avenue--Pointed out.

HEADNOTE:

The petitioner, group 'A' scientist belonging to the non-medical wing of the Directorate General of Health Services, filed a writ petition in this Court seeking parity in pay scales and allowances with his counter-part in the medical wing. It was contended that group 'A' scientists are treated discriminately vis-a-vis their counter-parts in other Ministries, because the former are not given any promotional benefits while the latter are provided with avenues for promotion.

Allowing the writ petition, this Court,

HELD: 1. Provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' group scientists in the establishment of Directorate General of Health Services would be deprived of such advantage. [181B]

2. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to provide promotional avenue for this category of officers, [181C]

3. On the model of rules framed by the Ministry of Science and Technology, appropriate rules should be framed providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate. [181D]

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4. 'A' Group scientists shall be entitled to book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to doctors in the Medical wing in the Directorate. [181F]

5. Government shall examine the tenability of the claim of Group 'A' scientists for equal pay scales with their counterparts in medical wing. [181G]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 10 18 of 1989.

(Under Article 32 of the Constitution of India) Ranjit Kumar for the Petitioner.

A.D. Singh, (N.P.) R.B. Misra, and Ms. A Subhashini, (N.P.) for the Respondents.

The Order of the Court was delivered by MISRA, J. This is an application under Article 32 of the Constitution and the President of the National Council of Bio-Medical Scientists is the petitioner. The reliefs asked for are on the allegation that the Group 'A' scientists of the Ministry of Health and Family Welfare who are the members of the Council, are being discriminately treated; they have not been given any promotional benefits and, therefore, there is a large-scale stagnation in the

service. It has been alleged that the Group 'A' scientists are re- cruited through the Union Public Service Commission. These scientists possess a Master Degree in the relevant disci- plines and 3 years' experience to entitle them to be re- cruited. It has been indicated in a chart filed along with the Writ Petition that the total posts in this category are 243 including post of Drug Controller of India. The promo- tional posts available are filled up by direct recruitment and open competition and there is no promotional channel provided. Similar scientists in other Ministries, such as Ministry of Science and Technology, Ministry of Defence, Ministry of Environment and Ministry of Oceanography are recruited in terms of rules made under the proviso to Arti- cle 309 of the Constitution and for their Group 'A' scien- tific and technical officers, promotional avenues are avail- able. The petition further alleges that on their representa- tions from time to time, meetings have been held but decisions taken in such meetings have not been given effect to and, therefore, all the representations have gone unheeded. Particular reference has been made to the Minutes of a meeting held on 15.5. 1989, where Shri Basudeven, Joint Secretary in the Ministry of Health and Family Welfare presided; several officers from different wings of the Ministry attended and representatives of the petitioner's Council participated. It has been al- leged that though several demands were pressed by the repre- sentatives of the Council, only a few were considered and yet there was no follow-up action for their implementation. Notice was issued to the Union of India in the Minis- tries of Health, Human Resources, Science and Technology and Bio-Technology and the notice indicated that the matter would be taken up for final disposal. Though no return has been filed to the Rule Nisi, counsel appeared for the re- spondents and upon appropriate instructions, participated in the hearing of the matter.

Annexure P-1 indicates the institutions located in different parts of the country where the posts of 'A' Group scientists who are members of the Council work. Their total number is 243 and this is not disputed. The petitioner has placed on record the rules framed in exercise of powers under proviso to Article 309 of the Constitution in the Ministry of Science and Technology, covering Group 'A' scientists. Rule 13 thereof provides avenues for promotion. This also is not disputed. Annexure P-3 is a tabular state- ment prepared by the petitioner, showing the disparities in the service conditions between the BioMedical scientists and other similar scientists and the discrimination that Group 'A' specialists/scientists under the establishment of Direc- tor General of Health Services suffer. The pay-scale for different categories of Group 'A' scientists in the non- medical posts and of doctors in the medical posts have been separately shown. It has been pointed out therein that while there is a difference in the pay-scale in the establishment of Director General of Health Services, there is no dispari- ty in respect of similar posts in the Indian Council of Medical Research (ICMR) or in the All-India Institute of Medical Sciences, Delhi or the Post--Graduate Institute at Chandigarh. It has been further pointed out in the said chart that various kinds of allowances are admissible to the doctors in the medical wing, such as book allowance, higher degree allowance, risk allowance and conveyance allowance in the establishment of Director General of Health Services while the non-medical category manned by the 'A' Group scientists is denied all these allowances. It has also been alleged that while the medical category doctors get non- practising allowance the benefit of such allowance is not extended to the non-medical category. Such discrimination, according to the petitioner, is not noticed in the I.C.M.R. or in the two Institute at Delhi and Chandigarh respectively.

The 4th Pay Commission in Chapter 29, paragraph 29.8 recommended:

"The question of granting incentive to officers and staff who acquire higher qualification has also engaged our attention. Railways have suggested a scheme for giving such incentives in the context of the need for updating the skills of the employees for the more efficient discharge of their duties in these days when modernisation and adoption of advanced technology is being undertaken in different fields of railway working. Suggestions have also been made for grant of post graduate allowance to veterinary surgeons and special allowances to EDP personnel. Some such schemes are in existence in the defence services. We suggest that some incentive should be given to employees who acquire qualifications which are useful for their work and contribute to their efficiency."

On 15th of December, 1986, the Office Memorandum in the Ministry of Personnel, Public Grievances and Pension indicated that this recommendation of the Pay Commission has been accepted by the Government.

Undoubtedly, in regard to the three other allowances, namely, book allowance, risk allowance and conveyance allowance, there is no scope for discrimination between Group 'A' scientists in non-medical and medical wings. In fact, at the hearing of the writ petition, respondent's counsel found it difficult to support the prevailing position. We are of the opinion that these four kinds of allowances, which are admissible to the medical doctors are also admissible to the Group 'A' scientists under the non-medical category employed in the establishment of Director General of Health Services. The claim for nonpractising allowance stands on a somewhat different footing and we do not think on the present state of the record of this proceeding, we can come to a definite conclusion that the Group 'A' scientists in the non-medical category would be also entitled to such allowance. We, however, leave the question open and Government at their level in the appropriate Ministry would examine tenability of this claim as and when raised. It has been canvassed by petitioner's counsel at the hearing that there is no justification for the disparity in the scale of pay between the two categories of officers. Government counsel has taken the stand that the qualifications of officers in the two wings are different and the difference in the pay scales has always existed. It is difficult for us on the material available to take any final view of the matter but the respondent should examine tenability of the claim to equal scales of pay.

This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate. This Writ Petition is allowed and the following directions are

issued:

1. Within four months from today, the Ministry of Health and Family Welfare of the Union of India shall frame a set of appropri-

ate rules, inter alia, providing suitable promotional avenue for the 'A' Group scientists in the non-medical wing of the establishment of Director General of Health Services;

2. These 'A' Group scientists shall be entitled to book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to doctors in the medical wing in the Directorate w.e.f. 1.4.1989;

3. Government shall examine the tenability of the claim of equal pay scales for this category of officers within four months from today.

There shall be no directions for costs.

T.N.A.

Petition allowed.