

## Shyam Babu Verma vs Union Of India on 8 February, 1994

**Equivalent citations: 1994 SCR (1) 700, 1994 SCC (2) 521, AIRONLINE 1994 SC 411**

**Author: N.P Singh**

**Bench: N.P Singh, Jagdish Saran Verma, N Venkatachala**

PETITIONER:

SHYAM BABU VERMA

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 08/02/1994

BENCH:

SINGH N.P. (J)

BENCH:

SINGH N.P. (J)

VERMA, JAGDISH SARAN (J)

VENKATACHALA N. (J)

CITATION:

1994 SCR (1) 700

1994 SCC (2) 521

JT 1994 (1) 574

1994 SCALE (1) 469

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- These petitions under Article 32 of the Constitution have been filed on behalf of the three petitioners, questioning the validity of an order dated June 15, 1984 issued by the Chief Superintendent, Central Hospital (Northern Railway), New Delhi. 2. After the petitioners had been duly registered as Pharmacists by the Registrar, U.P. State Pharmacy Council, they were appointed as Pharmacists in the Northern Railway, Central Hospital, in the scale of Rs 130-240. Since 1973 petitioners 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 June 15, 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 June 15, 1984 had been issued in view of the Railway Board letter dated August 12, 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 orders the pay scale recommended for them was implemented.

4. Section 31 of the Act says "3 1. 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 practitioners 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

(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." 5. The Third Pay Commission recommended the two revised scales of

5. The third 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 put in two categories with reference to their qualification and two scales of pay were recommended which are as follows :

Original Revised Scale Qualification Scale Pharmacist 130-240 330-10-380- For fully qualified Grade-B. EB-12-500-Pharmacist i.e. those EB-15-560 possessing qualification mentioned in Sections 31 and 32 of Pharmacy Act, 1948 but excluding those covered by clause (d) of Section 31 of the Pharmacy Act.

Pharmacist 130-240 330-8-370- For unqualified Grade-B. 10-400-EB- Pharmacists i.e. those 10-480. covered by clause (d) of Section 31 of Pharmacy Act, or possessing registerable qualifications under that clause.

The said recommendation was given effect from January 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 January 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.

6. According to the petitioners, although they possess the qualification prescribed under clause (d) of Section 31 but as throughout they had been treated on a par with the Pharmacists possessing qualifications prescribed in clauses

(a) to (c) of Sections 31 and 32 of the Act and they were getting the same scale of pay since 1973, the order dated June 15, 1984 reducing their scale of pay from Rs 330-560 to Rs 330-480 retrospectively, was arbitrary and discriminatory in nature.

7. 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. January 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. January 1, 1973, we fail to understand as to how the petitioners can claim the scale when they do not belong to same class or category.

8. The basis of the claim of the petitioners is that prior to January 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 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.

9. 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 the 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 M.P. v. Pramod Bhartiya 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.

10. 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.

11. 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. January 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 January 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 1 (1993) 1 SCC 539: 1993

SCC (L&S) 221: (1993) 23 ATC 657 the fault of the respondents, the petitioners being in no way responsible for the same.

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

BOARD OF SCHOOL EDUCATION v. ARUN RATHI (Agrawal, J.)