

PETITIONER:
DELHI VETERINARY ASSOCIATION

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 12/04/1984

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
MADON, D.P.

CITATION:
1984 AIR 1221 1984 SCR (3) 429
1984 SCC (3) 1 1984 SCALE (1) 663
CITATOR INFO :
D 1988 SC1291 (9)

ACT:

Constitution of India 1950-Article 39 (d) 'Equal pay for equal work'-Principle-Applicability of-Factors to be taken into consideration while fixing pay scales.

Veterinary Assistant Surgeons employed in Delhi Administration, Union Territory of Chandigarh and Central Government-Disparity in pay scales-Whether veterinary assistant surgeons in Delhi Administration entitled to equal scales of pay.

HEADNOTE:

The Petitioner in a writ petition sought relief in respect of Veterinary Assistant Surgeons working in the Delhi Administration, alleging that the Veterinary Assistant Surgeons have been denied the benefit of the principle of 'equal pay for equal work' incorporated in Article 39 (d) of the Constitution and that there has been violation of the fundamental rights guaranteed under Articles 14 and 16, because their scale of salary (Rs. 550-990) was lower than the pay scale of Veterinary Assistant Surgeons employed by the Union Territory of Chandigarh (850-1700), or by the Central Government in the Indo-Tibetan Boarder Police and by the Border Security Force (Rs. 650-1200).

The writ petition was opposed by the Union of India denying many of the allegations in the petition, while the Development Commissioner, while the Delhi Administration contested the writ petition by justifying the impugned pay scale and also by pleading that the matter should be allowed to be examined by the Fourth Pay Commission.

Dismissing the writ petition,

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HELD: 1. The question of the fixation of pay scale for Veterinary Assistant Surgeons should be left to be decided by the Government on the basis of the recommendation of the Fourth Pay Commission. The question of discrimination cannot be decided in isolation. Having regard to the long delay in approaching this Court after the fixation of the pay scale, no relief can be granted in respect of the period between 1973 and 1984. The petitioner is at liberty to make its representation before the Fourth Pay Commission. [434 H-E]

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2. In addition to the principle of 'equal pay for equal work', the pay structure of the employees of the Government should reflect many other social values. Apart from being the dominant employer, the Government is also expected to be a model employer. It has, therefore, to follow certain, basic principles in fixing the pay scales of various posts and cadres. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements disagreeableness of the task, hazard attendant on work and fatigue involved are some of the factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualification prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors. [432F-H; 433A]

3. While fixing the pay scales, the paying capacity of the Government, the total financial burden which has to be borne by the general public, the disparity between the incomes of the Government employees and the incomes of those who are not in government service and the net amount available for government at the current taxation level, after paying the salaries and allowances to the Government servants have also to be borne in mind. [433B-C]

4. It is imperative that there should be an evolution and implementation of a scientific national policy of incomes, wages and prices which would be applicable not merely to Government services but also to the other sectors of the national economy. As far as possible the needs of a family unit have to be borne in mind in fixing the wage scales. The 'needs' are not static. They include adequate nutrition, medical facilities, clothing, housing, education, cultural, activities etc. Care should also be taken to see that what is fixed today as an adequate pay scale does not become inadequate within a about period by providing an automatic mechanism for the modification of the pay scale. [433E-G]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 9080 of 1983
(Under article 32 of the Constitution of India)

K. K. Singhvi, A. K. Gupta and Brij Bhushan for the petitioner. K. G. Bhagat, Addl. Sol. General, Harbans Lal and R.N. Poddar for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The Delhi Veterinary Association is the petitioner in the above case. It is an association of veterinary doctors who are residing in the Union Territory of Delhi. By this petition under Article 32 of the Constitution, the petitioner

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is seeking relief in respect of Veterinary Assistant Surgeons working in the office of the Development Commissioner, Delhi Administration, Delhi, who are its members. It is alleged that these Veterinary Assistant Surgeons have been denied the benefit of the principle of 'equal pay for equal work' incorporated in Article 39 (d) of the Constitution and that there has been violation of their fundamental rights guaranteed under Article 14 and Article

15 of the Constitution because their scale of salary is lower than the pay scale of Veterinary Assistant Surgeons employed by the Union Territory of Chandigarh or by the Central Government in the Indo-Tibetan Border Police (I.T.B.P) and in the Border Security Force (B.S.F.) It is also alleged that the Veterinary Assistant Surgeons are persons who have obtained Bachelor's Degree in Veterinary Science and Animal Husbandry (B.V.Sc. & A.H.) from colleges of veterinary medicine and the minimum qualifications for entering the said course are more or less the same as those prescribed for M.B.B.S. or B.D.S. Examinations. They would be taught in the colleges of veterinary medicine inter alia subjects like Biochemistry, Pharmacology & Toxicology, Bacteriology, Pathology, Hygiene, Parasitology, Surgery, Radiology, Clinical & Preventive medicine, Obstetrics, Gynecology and additionally Animal Husbandry. Some of them, it is stated, have also undergone some special courses after their degree. Having regard to the period of study in the college and the subjects taught they claim that they are almost equal to those who have obtained M.B.B.S. and B.D.S. degrees.

It is alleged that whereas the Veterinary Assistant Surgeons in the Union Territory of Chandigarh were paid salary in the pay scale of Rs. 850-1700 on the basis of the pay scale prevailing in the adjoining State of Punjab and the Veterinary Assistant Surgeons in the Union Territories of Arunachal Pradesh and Mizoram were paid in the pay scale of Rs. 550-900, the Veterinary Assistant Surgeons of the Union Territory of Delhi were given pay in the pay scale of Rs. 425-750 from January 1, 1973 and on a representation being made by them, their pay scale was modified to Rs. 550-900 with effect from November 2, 1977 as was being paid in the Union Territories of Arunachal Pradesh and Mizoram with effect from January 1, 1973 even though the Ministry of Agriculture had recommended that their pay scale should be revised to Rs. 650-1200. The petitioner contends that even now the disparity between their pay scale and the pay scale of the Veterinary Assistant Surgeons of the Union Territory of

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Chandigarh and of I.T.B.P. and B.S.F. which is fixed at Rs. 650-1200 persists. On the basis of the above allegations the petitioner prays that a direction should be issued to the respondents to treat the Veterinary Assistant Surgeons of the Delhi Administration at par with the Veterinary Assistant Surgeons of Chandigarh, I.T.B.P. and B.S.F.

A counter affidavit is filed on behalf of the Union Government denying many of the allegations in the petition and in particular the recommendation said to have been made by the ministry of Agriculture.

The Development Commissioner, Delhi has filed a counter affidavit justifying the impugned pay scale and at the same time he has pleaded that this is a matter which should be allowed to be examined by the Fourth Pay Commission. In view of the latter plea, we feel that it is not appropriate to deal with the merits of the claim of the Veterinary Assistant Surgeons of Delhi in the course of this order although we feel that prima facie their grievance appears to be a legitimate one. Since any alteration in their pay scales would involve modification of the pay scales of officers in the higher cadres in the same department and in the corresponding cadres in other departments, the work of refixation of the pay scale should not ordinarily be undertaken by the Court at this stage because the Fourth Pay Commission is required to consider the very same question

after taking into consideration all the relevant aspects.

In addition to the principle of 'equal pay for equal work', the pay structure of the employees of the Government should reflect many other social values. Apart from being the dominant employer, the Government is also expected to be a model employer. It has, therefore, to follow certain basic principles in fixing the pay scales of various posts and cadres in the Government service. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and hori-

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zontal and vertical relativity with other jobs in the same service or outside are also relevant factors.

At the same time while fixing the pay scales, the paying capacity of the Government, the total financial burden which has to be borne by the general public, the disparity between the incomes of the Government employees and the incomes of those who are not in Government service and the net amount available for Government at the current taxation level, which appears to be very high when compared with other countries in the world, for developmental purposes after paying the salaries and allowances to the Government servants have also to be borne in mind. These are, however, not exhaustive of the various matters which should be considered while fixing the pay scales. There may be many others including geographical considerations.

Above all, it should be noted that the work of a Pay Commission does not really mean an increase of Rs. 100 here or recommending an additional allowance of Rs. 50 there. It does also mean a mere reduction of the number of pay scales or an attempt at the reduction of the gap between the highest pay scale and the lowest pay scale. It is a big exercise in gearing up the national economy to secure the highest good to the millions of our countrymen. In an egalitarian society based on planned economy it is imperative that there should be an evolution and implementation of a scientific national policy of incomes, wages and prices which would be applicable not merely to Government services but also to the other sectors of the national economy. As far as possible the needs of a family unit have to be borne in mind in fixing the wage scales. The 'needs' are not static. They include adequate nutrition, medical facilities, clothing, housing education, cultural activities etc. Any provision made while fixing the pay scales for the development of a society of healthy and well educated children irrespective of the economic position of the parents is only an investment and not just an item of expenditure. In these days of galloping inflation, care should also be taken to see that what is fixed today as an adequate pay scale does not become inadequate within a short period by providing an automatic mechanism for the modification of the pay scale.

The duties of a Pay Commission are really onerous. But we have no doubt that the Fourth Pay Commission will keep in view

all the relevant considerations, some of which are referred to above, while dealing with the complex problem of determining the equitable pay scales for the vast number of employees of the Central Government and of the Union Territories. We have also no doubt that the Fourth Pay Commission will not just be another Pay Commission as in the past but will lay down sound principles regarding the salary structure of the public services.

In the above situation, we do not feel called upon to decide in isolation the question of discrimination raised before us. This is a matter which should be left to be decided by the Government on the basis of the recommendations of the Fourth Pay Commission.

It was, however, urged that since the Fourth Pay Commission would not be making any recommendation in respect of the period between 1973 and the date on which the new pay scales to be fixed on the recommendation of the Fourth Pay Commission would come into force, the Court should consider whether the Veterinary Assistant Surgeons were entitled to any retrospective benefit in respect of the said past period. Having regard to the long delay in approaching this Court after the fixation of their pay scale earlier, we do not propose to grant any relief in respect of that period.

The petition is, therefore, dismissed. The petitioner is at liberty to make its representation before the Fourth Pay Commission to determine the pay scale of the Veterinary Assistant Surgeons of Delhi. We are sure that the Fourth Pay Commission which is presided over by a former Judge of this Court would consider their representation sympathetically.

N.V.K.

Petition dismissed.

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