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Court : Delhi

Decided On : Apr-25-2013

Judge : Pradeep Nandrajog

Appellant : Ajit Thapliyal and ors.

Respondent : All India Institute of Medical Sciences

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: April 25, 2013 + W.P.(C) 3976/2012 AJIT THAPLIYAL & ORS. Petitioners Represented by: Mr.Rohit K.Aggarwal, Advocate versus ALL INDIA INSTITUTE OF MEDICAL SCIENCES Respondent Represented by: Mr.Sumit Babbar, Advocate with Ms.Sneha Singh, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR.JUSTICE V.KAMESWAR RAO PRADEEP NANDRAJOG , J.

1. It is settled law that on the subject of equality, it is not the nomenclature of the post but a qualitative and quantitative assessment of two posts which determines equality attracting the application of the principle: Equal pay for equal work.

2. Petitioners who are Dark Room Assistants working under All India Institute of Medical Sciences (AIIMS) claim parity with their brotheren working in DDA, ICMR and Government of India Press.

3. Whereas in the latter three organizations there is a single cadre posts of Dark Room Assistants appointed by direct recruitment in the pay scale `4000-6000, under AIIMS three posts of Dark Room Assistants: Dark Room Assistant Grade III in pay scale `3050-4590; Dark Room Assistant Grade II in pay scale `4000-6000 and Dark Room Assistant Grade I in pay scale `4500-7000 exist.

4. The petitioners are thus effectively praying that Dark Room Assistant Grade III in AIIMS be paid salary in the grade applicable to Dark Room Assistants Grade II, and if granted, would require a stepping up of pay Dark Room Assistants Grade II and Grade I i.e. a cascading effect. This is one reason given by the Tribunal to decline relief.

5. Now, it is for the executive to decide its cadre structure and not the Court. For good reasons, AIIMS has three categories of posts of Dark Room Assistants i.e. Grade III, Grade II and Grade I and not the other three organizations.

6. The Standing Finance Committee on AIIMS which met on August 24, 2010 noted the difference in duties performed by Dark Room Assistants in AIIMS and other organizations as also the cadre structure as under: The Committee noted that the Dark Room Assistants were asking for a higher pay scale citing the scales of pay given to Dark Room Assistants in ICMR, DDA and GOI Press. The Committee further noted that while the Dark Room Assistants at AIIMS were handling work pertaining to X Rays, Dark Room Assistants in ICMR/DDA & GOI Press were involved with printing of photographs etc. Hence, their duties were entirely different from the duties being performed by Dark Room Assistants at AIIMS. If any comparison has to be drawn, it has to be with Dark Room Assistants in Central Government Hospitals who were also placed in the scale of `3050-4590 (pre-revised). Hence, there was not merit in the demand of Dark Room Assistants for being placed in the pay scale of `4000-6000/-. The proposal was, therefore, not agreed to. As regards cadre restructuring, the Committee noted that out of the total 29 posts of Dark Room Assistants, 7 had been proposed for conversion into Technician Radiology Grade II (Item not FC/23). This would thus have only 22 posts. Hence the proposal would need to be re-cast. The Committee also interacted with HOD Radiology about the utility of Dark Room Assistants in their

present assignments after the induction of digital X Ray devices. It was agreed that based on their qualifications, existing Dark Room Assistants could be considered for deployment elsewhere. The Committee also decided that henceforth the cadre of Dark Room Assistants would be a dying cadre and any vacancy would be converted into the part of Technician Radiology Grade II.

7. The Tribunal has noted the same, and we agree. Whereas Dark Room Assistants at AIIMS handle work pertaining to only X-Rays, Dark Room Assistants in DDA, ICMR and Government of India Press handle work pertaining to printing of photographs etc. Thus, quantitatively and qualitatively the nature of duties and work performed is different.

8. Now, the two contentions which were urged before us may be noted.

9. Firstly that the Standing Finance Committee of AIIMS had opined to the contrary on an earlier occasion vis--vis its decision dated August 24, 2010. It was urged that no new material surfaced after the first decision was taken warranting a review.

10. The argument is premised as if administrative decisions are subject to the same rigorous pertaining to review jurisdiction as we find in judicial decisions. An administrative decision which is wrong can be reviewed at any time and corrective action taken with respect to the wrong. With respect to judicial decisions, merely because they are wrong is no ground to review them. The two types of decisions are different.

11. Second contention urged was that whereas Dark Room Assistants, as per Recruitment Rules framed by AIIMS, require a diploma or certificate in Photography apart from a matriculation degree, for appointment in DDA, ICMR or Government of India Press the requirement is only matriculate.

12. We simply need to highlight that under ICMR a three years work experience in high class photography and practical knowledge of dark room working is an essential qualification. Under DDA, two years experience in dark room of developing, printing, enlarging and re-touching photographs while working in an

institute of repute is an essential qualification and under the Government of India Press three years experience in a photograph studio or a certificate from a recognized institution in printing technology at +2 level is an essential qualification.

13. Thus, the argument that under AIIMS a higher qualification is prescribed is incorrect. In trades, experience substitutes degrees and diplomas.

14. It is trite that unless there is complete qualitative and quantitative parity in two posts, equivalence cannot be claimed.

15. The writ petition is dismissed but without any orders as to costs. (PRADEEP NANDRAJOG) JUDGE (V.KAMESWAR RAO) JUDGE APRIL 25 2013 mamta

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