

A STATE OF BIHAR AND ORS.
v.
BIHAR VETERINARY ASSOCIATION AND ORS.
(Civil Appeal No.1507 of 2008)

B FEBRUARY 22, 2008

[A.K. MATHUR AND ALTAMAS KABIR, JJ.]

Service Law:

C *Pay scale – Parity in – Determining factors – Claim of parity by Veterinarians employed in Bihar Animal Husbandry Service with Indian Veterinary Service – Recommendations of Fitment Committee challenged – Interference by High Court with recommendations of Fitment Committee – Held: Not warranted – Fitment Committee after taking into account*
D *conditions obtaining in State of Bihar and duties discharged by Veterinarians and other services vis-à-vis services in Central Government worked out balance and recommended the pay scale – Therefore, it was not proper to interfere with the same – Picking up one class of service and granting higher*
E *pay scale as available in Central Government is likely to disturb the whole balance resulting in complex situation in the State and may lead to ruination of finances of the State.*

Administrative law:

F *Judicial Review – Interference with recommendations of Fitment Committee regarding the grant of pay scale – Scope of – Held: Granting of pay scale is purely executive action and hence Courts not to interfere with same – Proper forum is expert body – Service Law – Pay scale – Parity in.*

G **The respondent no.1 is a registered association of Veterinary Doctors employed in the service of Animal Husbandry Department of the State of Bihar and respondent Nos.2 to 9 are its members serving in different capacities. Respondents filed a writ petition in High Court**

H

on the ground that the Fitment Committee erroneously recommended the revised pay scale of Rs.6500-10,500/- for the veterinarians serving in basic grade of Bihar Animal Husbandry Service in place of Rs.8000-13,500/- as recommended by the Fifth Central Pay Commission to the Indian Veterinary service in basic grade and that the job of the Fitment Committee was only to recommend the pay scale as was being given to the Central Government Employees but instead of that the Fitment Committee recommended a lower pay scale. Single Judge of High Court allowed the writ petition and directed that the Veterinarians serving in the Bihar Animal Husbandry Service be given the pay scale of Rs.8,000-13,500/- as was granted to the members of the Indian Veterinary Service on the basis of the parity of the pay scale admissible to the employees of the Central Government.

Division Bench of High Court affirmed the same. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. A parity cannot be made between the members of the Indian Veterinary Service and the members of the Bihar Animal Husbandry Service. The members of this State Service have been allowed the pay scale of Rs.6,500-10,500/-. These employees of the Bihar Animal Husbandry Service are also at par with that of the State Administrative Service. Therefore, they cannot get the pay scale higher than the State service. Even then the Fitment Committee has recommended the revised pay scale of Rs.6,500-10,500/- for the Administrative Services of the State of Bihar including these Veterinarians. The pay scales in the States are revised from time to time on the recommendations of the Pay Commissions. A parity in a particular class of service depends on various factors. The Pay Commission has to consider the pay scales of various services of the State and then to make a hierarchy

A of the pay scale in the State. It is not possible to have the
same pay scales as that of the employees of the Central
Government or even for that matter between two States.
The pay scales essentially depend upon the resources
of the Government. It is not always possible that the
B resources of the Central Government and the State
Government are the same or even for that matter between
two States. Therefore, to decide and recommend pay
scales the Fitment Committee has to take all factors into
consideration. It is true that it was mentioned in the report
C of the Fitment Committee that the Fitment Committee was
required to recommend without considering the economic
constraints of the State and the need for resources of the
development programmes and it was also canvassed that
the Fitment Committee does not have the constraint of
D financial consequences but despite that the Committee
after elaborate discussion has recommended the pay
scale of Rs.6,500-10,500 and the same pay scale has been
granted to the members of the respondent association.
It was pointed out that the post of Veterinary Officer is
E equivalent to that of Medical Officers who are appointed
after passing the M.B.B.S. degree and these Doctors
have been granted 25% of their basic pay as non-
practicing allowance. Taking into consideration all
these factors the Fitment Committee in its wisdom
has already recommended the pay scale to these
F employees as admissible to the Group 'B' Officers of
the State of Bihar in the pay scale of Rs.6,500-10,500/-.
[Para 4] [229-A-G; 230-A, B]

G *S. C. Chandra & Ors. v. State of Jharkhand & Ors. (2007)*
8 SCC 279; *State of Haryana v. Tilak Raj (2003)* 6 SCC 123 –
relied on.

H 2. Granting of pay scale is a purely executive function
and hence the Court should not interfere with the same.
Proper forum is an expert body and the expert body in
the present case has recommended the pay scale of

Rs.6,500-10,500/- after taking into consideration various factors. Single Judge as well as the Division Bench of the High Court ought not to have interfered with that finding. [Para 4] [230-D, E] A

3. The Fitment Committee after taking into account the conditions obtaining in the State of Bihar and the duties which are being discharged by the Veterinarians and other services vis-à-vis the services in the Central Government has worked out a balancing work and recommended the pay scale of Rs.6,500-10,500/- after looking into various evidence which have been produced before the Fitment Committee. Therefore, it was not proper to have disturbed this finding nor was it correct on the part of the Single Judge as well as the Division Bench of the High Court to have interfered with the same. If the courts start disturbing the recommendations of the pay scale in a particular class of service then it is likely to have cascading effect on all related service which may result into multifarious litigation. The Fitment Committee has undertaken the exercise and recommended the wholesale revision of the pay scale in the State of Bihar and if one class of service is to be picked up and granted higher pay scale as is available in the Central Government then the whole balance will be disturbed and other services are likely to be affected and it will result in complex situation in the State and may lead to ruination of the finances of the State. Therefore, interference by the Single Judge as well as the Division Bench of the High Court with the recommendation of the Fitment Committee was not warranted. [Para 4] [231-A, B, C, D, E] B C D E F

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1507 of 2008. G

From the Judgment and final Order dated 30.11.2006 of the High Court of Judicature at Patna in L.P.A. No. 886/2005. H

A Manish Kumar and Gopal Singh for the Appellants.

Raju Ramachandaran, Akhilesh Kumar Pandey,
Sudhanshu Saran and Tulika Mukherjee for the Respondents.

The Judgment of the Court was delivered by

B **A.K. MATHUR, J. 1.** Leave granted.

2. This appeal is directed against the order dated 30.11.2006 passed in Letters Patent Appeal No.886 of 2005 by the Division Bench of the Patna High Court whereby the learned Division Bench has affirmed the order passed by learned Single Judge. Learned Single Judge directed the authorities to grant a pay scale of Rs.8000-13,500/- to the Veterinary Doctors.

3. Brief facts which are necessary for disposal of this appeal are that the respondent No.1 is a registered association of Veterinary Doctors employed in the service of Animal Husbandry Department of the State of Bihar and respondent Nos.2 to 9 are the members of the aforesaid association serving in different capacities in the Animal Husbandry Department of the State of Bihar. The respondents herein filed a writ petition in the Patna High Court. The grievance raised in the petition was that the Fitment Committee ignored the terms of reference as contained in the Resolution of the State Government and erroneously recommended the revised pay scale of Rs.6,500-10,500/- for the Veterinarians serving in the basic grade of the Bihar Animal Husbandry Service in place of Rs.8,000-13,500/-. Therefore, it was submitted that the resolution of the State Government dated 8.2.1999 [Annexure-4 to the writ petition] to the extent that the recommendation has been accepted should be quashed and it was further prayed that the State Government be directed to grant the Veterinarians serving in the basic grade of Bihar Animal Husbandry Service the revised scale of Rs.8000-13,500/- and the scale of pay of Rs.10,000-15,200/-, Rs.12,000-16,500/- to those serving in the Junior/Senior Selection Grade of the Basic entry grade. All these members of the Association

H

are the Veterinarians duly selected by the Bihar Public Service Commission and were appointed as Veterinary Officers to serve the State of Bihar as Veterinary Physician/Surgeon to look after the live-stock of the State. The pay scale of the employees of the State of Bihar has been revised from time to time and the last pay revision was effected in the year 1998. The State Government in consideration of the representations received from various employees' Union and Associations to grant their members the Central pay scale and promotional benefits available to the Central Government employees, agreed in principle, to grant its employees the Central pay scale along with promotional benefits which are available to the Central Government employees and the State Government also appointed a Fitment/ Pay Revision Committee to achieve the said purpose. That Committee recommended the Class I Central Pay scale of Rs.2200-4000/- in the basic grade and Rs.3,000-4,500/- and Rs.3,700-5,300/- in the Junior/ Senior Selection Grade and Rs.4,100-5,300/- in the supertime selection grade. Thereafter, the State of Bihar issued another resolution on 2.1.1998 and agreed in principle to allow the Central pay scale along with Central service conditions to its employees and an agreement to this effect was signed between the State Government and the Gazetted Officers Federation and State Secretariat Employees' representatives and accordingly, a Fitment Committee was constituted to make recommendations for revision of the pay scale of the State Government employees at par with the Central Government employees whose pay scales were revised on the basis of the recommendations of the Fifth Central Pay Commission with effect from 1.1.1996. The Fitment Committee considered the claim of the respondents and recommended a pay scale of Rs.6,500-10,500/- for the basic/entry grade of the Bihar Animal Husbandry Service. This was not acceptable to the association and it was submitted that the recommendations of this Fitment Committee was contrary to the pay scale recommended by the Fifth Central Pay Commission which recommended grant of higher scale of pay of Rs.8,500-13,500/- to the Veterinarians of the Indian Veterinary

A

B

C

D

E

F

G

H

- A Service in the basic grade. Therefore, the Veterinarians serving in the basic grade in the State of Bihar should also have been fitted in the pay scale of Rs.8,000-13,500/-. Similarly, it was claimed that the pay scales for other promotional posts should be fitted on the basis of the recommendation of the Fifth Central
- B Pay Commission. It was also pointed out that the Fitment Committee in paragraph 2.2.6 of its report has noticed that the recommendation of the Fifth Central Pay Commission to grant higher scale of Rs.2200-4,000/- to the entry grade of the U.T. Civil/ Police Services has not been accepted by the Government of India. It was also noted by the Fitment Committee in its report
- C that had that been allowed to the Union Territories Civil Services then it would have been possible for the State to grant similar pay scale to Bihar State Administrative/ Police Service in the basic entry grade of the two services. The Fitment Committee
- D in paragraphs 2.2.10 and 2.8.1 of its report recommended the lower scale of Rs.6,500-10,500/- for the basic entry grade of the Bihar Animal Husbandry Service as the said service on comparison was found similar to the other State Services notified in resolution of the State Government dated 28.2.1989.
- E In short, the submission of the respondent- association was that the members of the Bihar Animal Husbandry Service should be granted the same pay scale as is admissible to Indian Veterinary Service i.e. Rs.8,000-13,500/- as recommended by the Fifth Central Pay Commission and granted to the members of the Indian Veterinary Service. It was submitted that the job of the
- F Fitment Committee was only to recommend the pay scale as was being given to the Central Government Employees but instead of that the Fitment Committee recommended a lower pay scale. Learned Single Judge after hearing the parties allowed the writ petition and directed that the Veterinarians
- G serving in the Bihar Animal Husbandry Service should be given the pay scale of Rs.8,000-13,500/- as is being granted to the members of the Indian Veterinary Service on the basis of the parity of the pay scale admissible to the employees of the Central Government. Aggrieved against this order of learned Single
- H Judge, Letters Patent Appeal No.886 of 2007 was preferred by

the appellants before the Division Bench of the High Court but without any result. Hence the present appeal. A

4. We have heard learned counsel for the parties and perused the record. We fail to understand how can a parity be made between the members of the Indian Veterinary Service and the members of the Bihar Animal Husbandry Service. The members of this State Service have been allowed the pay scale of Rs.6,500-10,500/-. These employees of the Bihar Animal Husbandry Service are also at par with that of the State Administrative Service. Therefore, they cannot get the pay scale higher than the State service. Even then the Fitment Committee has recommended the revised pay scale of Rs.6,500-10,500/- for the Administrative Services of the State of Bihar including these Veterinarians. The pay scales in the States are revised from time to time on the recommendations of the Pay Commissions. A parity in a particular class of service depends on various factors. The Pay Commission has to consider the pay scales of various services of the State and then to make a hierarchy of the pay scale in the State. It is not possible to have the same pay scales as that of the employees of the Central Government or even for that matter between two States. The pay scales essentially depend upon the resources of the Government. It is not always possible that the resources of the Central Government and the State Government are the same or even for that matter between two States. Therefore, to decide and recommend pay scales the Fitment Committee has to take all factor into consideration. It is true that it was mentioned in the report of the Fitment Committee that the Fitment Committee was required to recommend without considering the economic constraints of the State and the need for resources of the development programmes and it was also canvassed that the Fitment Committee does not have the constraint of financial consequences but despite that the Committee after elaborate discussion has recommended the pay scale of Rs.6,500-10,500 and the same pay scale has been granted to the members of the respondent association. It was pointed out that the post of B C D E F G H

A Veterinary Officer is equivalent to that of Medical Officers who are appointed after passing the M.B.B.S. degree and these Doctors have been granted 25% of their basic pay as non-practising allowance. Taking into consideration all these factors the Fitment Committee in its wisdom has already recommended the pay scale to these employees as admissible to the Group 'B' Officers of the State of Bihar in the pay scale of Rs.6,500-10,500/-. Recently in *S.C.Chandra & Ors. V. State of Jharkhand & Ors* [(2007) 8 SCC 279] this Court (to which one of us was a party) examined the question of parity in pay scale and fixation of pay scales. Referring to an earlier decision of this Court in *State of Haryana v. Tilak Raj* [(2003) 6 SCC 123], this Court held that in order to get similar pay there should be complete and wholesale identity between two groups. This Court after examining all these cases on the subject has observed that granting of pay scale is a purely executive function and hence the Court should not interfere with the same. Proper form is an expert body and the expert body in the present case has recommended the pay scale of Rs.6,500-10,500/- after taking into consideration various factors. Learned Single Judge as well as the Division Bench of the High Court ought not to have interfered with that finding. In *S.C.Chandra & Ors.* (supra) this Court observed as follows :

“ For finding out whether there is complete and wholesale identity, the proper forum is an expert body and not the writ court, as this requires extensive evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. The courts must realize that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter which is for the executive to discharge. Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.”

Therefore, the Fitment Committee after taking into account the conditions obtaining in the State of Bihar and the duties which are being discharges by the Veterinarians and other services vis-à-vis the services in the Central Government has worked out a balancing work and recommended the pay scale of Rs.6,500-10,500/- after looking into various evidence which have been produced before the Fitment Committee. Therefore, it was not proper to have disturbed this finding nor was it correct on the part of the learned Single Judge as well as the Division Bench of the High Court to have interfered with the same. If the courts start disturbing the recommendations of the pay scale in a particular class of service then it is likely to have cascading effect on all related service which may result into multifarious litigation. The Fitment Committee has undertaken the exercise and recommended the wholesale revision of the pay scale in the State of Bihar and if one class of service is to be picked up and granted higher pay scale as is available in the Central Government then the whole balance will be disturbed and other services are likely to be affected and it will result in complex situation in the State and may lead to ruination of the finances of the State. Therefore, interference by the learned Single Judge as well as the Division Bench of the High Court with the recommendation of the Fitment Committee was not warranted.

5. As a result of our above discussions, we allow this appeal and set aside the order passed by the learned Single Judge as well as the Division Bench of the High Court of Patna and dismiss the writ petition filed by the respondents. There would be no order as to costs.

D.G.

Appeal allowed.