

(1998) 03 BOM CK 0050

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 347 of 1992

Shri Shrikant A. Bicholkar and
others

APPELLANT

Vs

State of Goa and another

RESPONDENT

Date of Decision: March 11, 1998

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (1998) 3 ALLMR 679 : (1998) 3 BomCR 740 : (1999) 81 FLR 545

Hon'ble Judges: R.M.S. Khandeparkar, J; R.K. Batta, J

Bench: Division Bench

Advocate: E.P. Lobo, for the Appellant; H.R. Bharne, G.A., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.K. Batta, J.

The petitioners were appointed as Health Assistants in the Directorate of Health Services and are working in the Filaria Control Unit Programme. Initially there were three categories of employees, namely, Laboratory Technician in the pay scale of Rs. 1200-2040, Laboratory Assistant in the pay scale of Rs. 975-1540 and Health Assistant in the pay scale of Rs. 950-1500. The Government of Goa found that the duties and responsibilities of Laboratory Technician/Laboratory Assistant were same and since their eligibility requirement for educational qualifications also did not differ for the said posts, there was no case for disparity in their pay scales. Therefore, vide Order bearing No. 13/207/87-1/P.H.D. dated 19th January, 1988, the pay scale of Laboratory Assistants was brought at par with that of Laboratory Technician and it was revised to Rs. 1200-2040. The petitioners in this petition claim that the eligibility requirement insofar as educational qualification is concerned is same for all the three posts as per the recruitment rules applicable at the time of their appointments and the petitioners also discharge identical duties as are being

performed by Laboratory Technicians/Laboratory Assistant in the Filaria Control Unit Programme. In support of their contention, the petitioners have placed reliance upon letter dated 25th February 1981 issued by Chief Medical Officer, Anti-Filaria which is at page 17 as well as Exhibit A Colly at page 19 annexed to the said letter. In the said annexure it is stated that the duties of Health Assistant are akin to those of Laboratory Assistant/Laboratory Technician under National Filaria Control Programme. The duties of the Health Assistant are also enumerated in the said Exhibit A namely: -

- "1. On receipt of night blood smears, he/she should ensure that the smear is approximately of 20 cmm. and is uniformly spread, the condition of the slide is good and not foggy or full of scratches etc. and proper numbering is done.
2. Fixation, staining and examination of all blood smears for microfilaria detection and other laboratory duties assigned to him by the incharge of N.F.C.P. Unit.
3. Maintenance of records in the Laboratory and display of various indices in the form of diagram and charts.
4. Proper maintenance, care and cleanliness of the laboratory equipment in his charge."

It is pertinent to note, at this stage, that the duties are said to be akin under the National Filaria Control Programme. In paragraph 12 of the petition, the petitioners have themselves stated that there was no substantial difference in the qualifications, which means that the petitioners themselves feel that there is some difference but it is not substantial. The duties which have been enumerated in Exhibit A are only in relation to the ones which are being performed in the National Filaria Control Programme and not in the Directorate of Health Services. Naturally, the duties in National Filaria Control Programme would be limited to duties stated in Exhibit A at page 19 of this petition.

2. An affidavit has been filed on behalf of Directors of Health Services, respondent No. 2, wherein it is pointed out that not only there is basic difference in the qualifications but also the duties of Laboratory Technician/Laboratory Assistant are not same. The duties of the Laboratory Technician/Laboratory Assistant are enumerated in paragraph 6 of the affidavit as under:-

1. Staining of Blood slides.
2. Examination of Blood slides.
3. Preparation of stains.
4. To prepare the report for slides.
5. Examination of stools.
6. Examination of Urine.

7. Examination of Sputum for A.F.B.

8. Examination of blood for routine investigation like H.C., T.C, D.C, E.S.R."

3. From the duties enumerated above of the Laboratory Technician/Laboratory Assistant, it can be seen that only first four duties are similar to the Health Assistant but the duties at serial numbers 5 to 8 are not part of duties of the Health Assistant nor the petitioners have been able to make out that their duties also include the said duties at serial numbers 5 to 8 enumerated in paragraph 6 of the affidavit-in-reply. Though the petitioners claim in affidavit-in-rejoinder in paragraph 3 that they are also qualified to carry out such duties, the fact to qualify to carry out such duties is altogether a different consideration and what is to be seen is whether the duties of Laboratory Technicians/Laboratory Assistant are same as the duties of the Health Assistant.

4. In view of the above, we find the duties of the Health Assistant cannot be taken as similar to that of Laboratory Technician/Laboratory Assistant. In view of this, we do not find any merit whatsoever in the submission made by the learned advocate for the petitioners that the duties of the Health Assistant and the Laboratory Technician/Laboratory Assistant are same or similar. Reliance placed on the judgment of the Apex Court in State of Haryana and Another Vs. Ram Chander and Another, cannot help the petitioners until and unless it is established that the duties are of same type and nature as that of the Laboratory Technician/Laboratory Assistant qualitatively as well as quantitatively.

5. In view of the above, we do not find any merit in this petition and the petition is hereby rejected with no order as to costs.

6. Petition rejected.