

**SURENDER KUMAR JAIN & ORS
VS
STATE OF HARYANA & ORS**

Present: Mr. Sagar Saxena, Advocate &
Mr. Rahul Dev Singh, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG, Haryana.

The burden of the song ringing in this petition is a lament on absence of avenues of promotion for Pharmacists in the respondent department. They are stagnating. If there is not even room for a single promotion, the will to work dies and the department is left with the persons who are sidelined till they retire on the same post they started their career. Pharmacy educational practice or profession in India is regulated by the Pharmacy Council of India, a statutory body working under the Ministry of Health, Government of India. The hospitals and dispensaries where the petitioners works as Pharmacists are created and run under the Central Act called the Employees State Insurance Act 1948 (ESI Act) as amended from time to time.

They rely on promotional ladder in cadres of Pharmacists in different States in India in institutions/hospitals run by the Central Government and in States such as Uttar Pradesh, Kerala, Uttrakhand etc. where channels of promotion have been provided to Pharmacists in the health department in the shape of a pyramid.

They also rely on the certain orders passed by the Central Administrative Tribunal (CAT) Principal Bench, New Delhi (Annex. P-

8 & P-9) and in one of those cases, the decision of the Division Bench of the Delhi High Court in W.P. (C) 8082 of 2016 titled 'The Director General, ECIS Headquarters and another Vs. Udai Veer Singh and others' dated 09.11.2017 (unreported) which has been produced today at the hearing. The same is retained on record as Mark 'X'. The writ arose out of the directions issued by the CAT directing the respondent authorities to consider creating channels of promotion for Pharmacists. When the matter came up for hearing on 09.11.2017, the senior counsel for the ESI Healthcare on instructions made a statement that the orders passed by the learned Tribunal dated 06.05.2015 had been complied with and 3 heircharcil posts created. Accordingly, the petition before the Delhi High Court was dismissed as not pressed.

It is the contention of the petitioners that similar treatment may be given to them considering the functional requirements of the posts and the fact that in other cadres in ESI Healthcare Hospitals in Haryana there are channels of promotion provided to Nurses, Clerks, Peons etc who all work shoulder to shoulder in the same place. This causes the grave heartburn. The petitioners allude to the classical rendition on the menace of stagnation and lack of promotional avenues by the Supreme Court in the oft quoted judgment in Dr. Ms. O.Z. Hussain Vs. Union of India, 1990 (Supp) SCC 688. The significant observations were:-

“7.This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation

reduces efficiency and makes the service ineffective. Promotion is thus a normal incident of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group Scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service, and, therefore, it should have been the obligation of the Ministry of Health to attend to the represent of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.

8. This writ petition is allowed and the following directions are issued:

(1) Within four months from today, the Ministry of Health and Family Welfare of the Union of India shall frame a set of appropriate rules, inter alia, providing suitable promotional avenue for the 'A' Group scientists in the non-medical wing of the establishment of Director General of Health Services.

(2) These 'A' Group scientists shall be entitled to book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to doctors in the medical wing in the Directorate w.e.f. April 1, 1989;

(3) Government shall examine the tenability of the claim of equal pay scales for this category of officers within four months from today.

In O.Z. Hussain's case (Supra) the Supreme Court was dealing with health services and scientists and issued the slew of directions to the Ministry of Health and Family Welfare of the Union of India to frame appropriate rules providing suitable promotional avenues within 04 months to the Group 'A' Scientists in the non-medical wing of the Establishment in the Directorate and to also examine the tenability of the claim of equal pay scale for this category of officers.

In Raghunath Prasad Singh v. Secretary, Home (Police) Department, Government of Bihar and others; 1988 SCC 519; AIR 1988 SC 1033 the Supreme Court observed on subject matter as follows:

"Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly."

In the presence of the above predicament and in the facts and circumstances, the case of the petitioners is not without merit nor is the claim unjustified to award the petition with dismissal. The deserves active consideration at the hands of the State Government for it to formulate a concrete remedial plan of action by creating a hierarchal cadre/structure for the Pharmacists working in ESI Healthcare Hospitals in Haryana within the financial resources, which Haryana does not lack

as its neighbouring State. In case the numerical strength of beds in ESI Hospitals (300 as projected by Mr. Rathee) is a controlling and debilitating factor, then the case of the petitioners ought to be reviewed holistically, sympathetically and consistent with realisation of the hopes and aspirations for promotion, just are other hierarchal cadres in the same organization for the nurses, clerks, peons etc. enjoy.

Hence, the State Government is directed to initiate the exercise of providing promotional channel for Pharmacists and produce the blueprint and way forward at the end of six months of steps taken for ameliorating the lot of the aggrieved Pharmacists.

List again on 09.08.2017.

Copy of this order be given to Mr. Rathee so that he can put it in motion without delay in the quarters concerned.

15.02.2018
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(RAJIV NARAIN RAINA)
JUDGE

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