"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 213 OF 2013

State of Punjab & Ors. **... Appellants**

Versus

Jagjit Singh & Ors. **... Respondents**

WITH

CIVIL APPEAL NO. 10356 OF 2016
(Arising out of SLP (CIVIL).31676 CC NO. 15616 OF 2011)

CIVIL APPEAL NO.10357 OF 2016
(Arising out of SLP (CIVIL) 31677 CC NO. 16434 OF 2011)

CIVIL APPEAL NO.10358 OF 2016
(Arising out of SLP (CIVIL) NO. 37162 OF 2012)

CIVIL APPEAL NO. 10360 OF 2016
(Arising out of SLP (CIVIL) NO. 37164 OF 2012)

CIVIL APPEAL NO.10361 OF 2016
(Arising out of SLP (CIVIL) NO. 37165 OF 2012)

CIVIL APPEAL NO. 211 OF 2013

CIVIL APPEAL NO. 212 OF 2013

CIVIL APPEAL NO. 214 OF 2013

CIVIL APPEAL NO. 217 OF 2013

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CIVIL APPEAL NO. 249 OF 2013

CIVIL APPEAL NO. 257 OF 2013

CIVIL APPEAL NO. 260 OF 2013

CIVIL APPEAL NO. 262 OF 2013

CIVIL APPEAL NO. 966 OF 2013

CIVIL APPEAL NO. 2231 OF 2013

CIVIL APPEAL NO. 2299 OF 2013

CIVIL APPEAL NO. 2300 OF 2013

CIVIL APPEAL NO. 2301 OF 2013

CIVIL APPEAL NO. 2702 OF 2013

CIVIL APPEAL NO. 7150 OF 2013

CIVIL APPEAL NO. 8248 OF 2013

CIVIL APPEAL NO. 8979 OF 2013

CIVIL APPEAL NO. 9295 OF 2013

CIVIL APPEAL NO. 228 OF 2013

CIVIL APPEAL NO. 229 OF 2013

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CIVIL APPEAL NO. 231 OF 2013

CIVIL APPEAL NO. 232 OF 2013

CIVIL APPEAL NO. 233 OF 2013

CIVIL APPEAL NO. 234 OF 2013

CIVIL APPEAL NO. 235 OF 2013

CIVIL APPEAL NO. 10362 OF 2016
(Arising out of SLP (CIVIL) NO. 9464 OF 2013)

CIVIL APPEAL NO. 10363 OF 2016
(Arising out of SLP (CIVIL) NO. 11966 OF 2013)

CIVIL APPEAL NO. 10364 OF 2016
(Arising out of SLP (CIVIL) NO. 17707 OF 2013)

CIVIL APPEAL NO. 10365 OF 2016
(Arising out of SLP (CIVIL) NO. 24410 OF 2013)

CIVIL APPEAL NO. 871 OF 2014

CIVIL APPEAL NO. 10366 OF 2016
(Arising out of SLP (CIVIL) NO. 4340 OF 2014)

CIVIL APPEAL NO. 10527 OF 2014

J U D G M E N T

Jagdish Singh Khehar, J.

1. Delay in filing and refiling Special Leave Petition (Civil)…. CC no. 15616 of 2011, and Special Leave Petition (Civil)…. CC no. 16434 of 2011 is condoned. Leave is granted in all special leave petitions.

2. A division bench of the Punjab and Haryana High Court, in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009), set aside, in an intra-court appeal, the judgment rendered by a learned single Judge of the High Court, in Rajinder Singh & Ors. v. State of Punjab & Ors. (CWP no. 1536 of 1988, decided on 5.2.2003). In the above judgment, the learned single Judge had directed the State to pay to the writ petitioners (who were daily-wagers working as Pump Operators, Fitters, Helpers, Drivers, Plumbers, Chowkidars etc.), minimum of the pay-scale, revised from time to time, with permissible allowances, as were being paid to similarly placed regular

employees; arrears payable, were limited to a period of three years, prior to the date of filing of the writ petition. In sum and substance, the above mentioned division bench held, that temporary employees were not entitled to the minimum of the pay-scale, as was being paid to similarly placed regular employees.

3. Another division bench of the same High Court, in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010), dismissed an intra-Court appeal preferred by the State of Punjab, arising out of the judgment rendered by a learned single Judge in Rajinder Kumar v. State of Punjab & Ors. (CWP no. 14050 of 1999, decided on 20.11.2002), and affirmed the decision of the single Judge, in connected appeals preferred by employees. The letters patent bench held, that the writ petitioners (working as daily-wage Pump Operators, Fitters, Helpers, Drivers, Plumbers, Chowkidars, Ledger Clerks, Ledger Keepers, Petrol Men, Surveyors, Fitter Coolies, Sewermen, and the like), were entitled to minimum of the pay-scale, alongwith permissible allowances (as revised from time to time), which were being given to similarly placed regular employees. Arrears payable to the concerned employees were limited to three years prior to the filing of the writ petition. In sum and substance, the division bench in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009) affirmed the position adopted by the learned single Judge in Rajinder Singh & Ors. v. State of Punjab & Ors. (CWP no. 1536 of 1988). It is apparent, that the instant division bench, concluded conversely as against the judgment rendered in State of Punjab & Ors. v. Rajinder Singh (LPA no. 337 of 2003), by the earlier division bench.

4. It would be relevant to mention, that the earlier judgment rendered, in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003) was not noticed by the later division bench – in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009). Noticing a conflict of views expressed in the judgments rendered by two division benches in the above matters, a learned single Judge of the High Court, referred the matter for adjudication to a larger bench, on 11.5.2011. It is, therefore, that a full bench of the High Court, took up the issue, for resolving the dispute emerging out of the differences of opinion expressed in the above two judgments, in Avtar Singh v. State of Punjab & Ors. (CWP no. 14796 of 2003), alongwith connected writ petitions. The full bench rendered its judgment on 11.11.2011. The present bunch of cases, which we have taken up for collective disposal, comprise of a challenge to the judgment rendered by the division bench of the High Court in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009); a challenge to the judgment, referred to above, in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010); as also, a challenge to the judgment rendered by the full bench of the High Court in Avtar Singh v. State of Punjab & Ors. (CWP no. 14796 of 2003, decided on 11.11.2011). This bunch of cases, also involves challenges to judgments rendered by the High Court, by relying on the judgments referred to above.

5. The issue which arises for our consideration is, whether temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to

minimum of the regular pay-scale, alongwith dearness allowance (as revised from time to time) on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts. The full bench of the High Court, while adjudicating upon the above controversy had concluded, that such like temporary employees were not entitled to the minimum of the regular pay-scale, merely for reason, that the activities carried on by daily-wagers and the regular employees were similar. However, it carved out two exceptions, and extended the minimum of the regular pay to such employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder:-

> "(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.
> (2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.
> (3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months."

6. The issue which has arisen for consideration in the present set of appeals, necessitates a bird's eye view on the legal position declared by this Court, on the underlying ingredients, which govern the principle of 'equal pay for equal work'.

It is also necessary for resolving the controversy, to determine the manner in which this Court has extended the benefit of "minimum of the regular pay-scale" alongwith dearness allowance, as revised from time to time, to temporary employees (engaged on daily-wage basis, as ad-hoc appointees, as employees engaged on casual basis, as contract appointees, and the like). For the aforesaid purpose, we shall, examine the above issue, in two stages. We shall first examine situations where the principle of 'equal pay for equal work' has been extended to employees engaged on regular basis. And thereafter, how the same has been applied with reference to different categories of temporary employees.

7. Randhir Singh v. Union of India[1], decided by a three-Judge bench: The petitioner in the instant case, was holding the post of Driver-Constable in the Delhi Police Force, under the Delhi Administration. The scale of pay of Driver-Constables, in case of non-matriculates was Rs.210-270, and in case of matriculates was Rs.225-308. The scale of pay of Drivers in the Railway Protection Force, at that juncture was Rs.260-400. The pay-scale of Drivers in the non-secretariat offices in Delhi was, Rs.260-350. And that, of Drivers employed in secretariat offices in Delhi, was Rs.260-400. The pay-scale of Drivers of heavy vehicles in the Fire Brigade Department, and in the Department of Lighthouse was Rs.330-480. The prayer of the petitioner was, that he should be placed in the scale of pay, as was extended to Drivers in other governmental organizations in Delhi. The instant prayer was based on the submission, that he

[1] (1982) 1 SCC 618

was discharging the same duties as other Drivers. His contention was, that the duties of Drivers engaged by the Delhi Police Force, were more onerous than Drivers in other departments. He based his claim on the logic, that there was no reason/justification, to assign different pay-scales to Drivers, engaged in different departments of the Delhi Administration.

(ii) This Court on examining the above controversy, arrived at the conclusion, that merely the fact that the concerned employees were engaged in different departments of the Government, was not by itself sufficient to justify different pay-scales. It was acknowledged, that though persons holding the same rank/designation in different departments of the Government, may be discharging different duties. Yet it was held, that if their powers, duties and responsibilities were identical, there was no justification for extending different scales of pay to them, merely because they were engaged in different departments. Accordingly it was declared, that where all relevant considerations were the same, persons holding identical posts ought not to be treated differently, in the matter of pay. If the officers in the same rank perform dissimilar functions and exercise different powers, duties and responsibilities, such officers could not complain, that they had been placed in a dissimilar pay-scale (even though the nomenclature and designation of the posts, was the same). It was concluded, that the principle of 'equal pay for equal work', which meant equal pay for everyone irrespective of sex, was deducible from the Preamble and Articles 14, 16 and 39(d) of the Constitution. The principle of 'equal pay for equal work', was held to be applicable to cases of unequal scales of pay, based on no classification or

irrational classification, though both sets of employees (- engaged on temporary and regular basis, respectively) performed identical duties and responsibilities.

(iii) The Court arrived at the conclusion, that there could not be the slightest doubt that Driver-Constables engaged in the Delhi Police Force, performed the same functions and duties, as other Drivers in the services of the Delhi Administration and the Central Government. Even though he belonged to a different department, the petitioner was held as entitled to the pay-scale of Rs.260-400.

8. D.S. Nakara v. Union of India[2], decided by a five-Judge Constitution Bench: It is not necessary for us to narrate the factual controversy adjudicated upon in this case. In fact, the main issue which arose for consideration pertained to pension, and not to wages. Be that as it may, it is of utmost importance to highlight the following observations recorded in the above judgment:-

> "32. Having succinctly focused our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38 (1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice - social, economic and political shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Art. 39 (d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in Randhir Singh v. Union of India & Ors., (1982) 1 SCC 618.

[2] (1983) 1 SCC 304

Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under: (SCC p.619, para 1)

> "Now, thanks to the rising social and political consciousness and the expectations aroused as a consequence and the forward looking posture of this Court, the under-privileged also are clamouring for the rights and are seeking the intervention of the court with touching faith and confidence in the court. The Judges of the court have a duty to redeem their Constitutional oath and do justice no less to the pavement dweller than to the guest of the five-star hotel."

Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Art. 39 (e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Art. 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Art. 43 (3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities."

It is however impossible to overlook, that the Constitution Bench noticed the Randhir Singh case[1], and while affirming the principle of 'equal pay for equal work', extended it to pensionary entitlements also.

9. Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India[3], decided by a two-Judge bench: The petitioners in the above case, were Personal Assistants and Stenographers attached to heads of departments in the Customs and Central Excise Department, of the

[3] (1988) 3 SCC 91

Ministry of Finance. They were placed in the pay-scale of Rs.550-900. The petitioners claimed, that the basic qualifications, the method, manner and source of recruitment, and their grades of promotion were the same as some of their counterparts (Personal Assistants and Stenographers) attached to Joint Secretaries/Secretaries and other officers in the Central Secretariat. The above counterparts, it was alleged, were placed in the pay-scale of Rs.650-1040. The petitioners' contention was, that their duties and responsibilities were similar to the duties and responsibilities discharged by some of their counterparts. Premised on the instant foundation, it was their contention, that the differentiation in their pay-scales, was violative of Articles 14 and 16 of the Constitution of India. The petitioners claimed 'equal pay for equal work'.

(ii) The assertions made by the petitioners were repudiated by the Union of India. Whilst acknowledging, that the duties and work performed by the petitioners were/was identical to that performed by their counterparts attached to Joint Secretaries/Secretaries and other officers in the secretariat, yet it was pointed out, that their counterparts working in the secretariat, constituted a class, which was distinguishable from them. It was asserted, that the above counterparts discharged duties of higher responsibility, as Joint Secretaries and Directors in the Central Secretariat performed functions and duties of greater responsibility, as compared to heads of departments, with whom the petitioners were attached. It was contended, that the principle of 'equal pay for equal work' depended on the nature of the work done, and not on the mere volume and kind of work. The respondents also asserted, that people discharging duties and

responsibilities which were qualitatively different, when examined on the touchstone of reliability and responsibility, could not be placed in the same pay-scale.

(iii) While adjudicating upon the controversy, this Court arrived at the conclusion, that the differentiation of the pay-scale was not sought to be justified on the basis of the functional work discharged by the petitioners and their counterparts in the secretariat, but on the dissimilarity of their responsibility, confidentiality and the relationship with the public etc. It was accordingly concluded, that the same amount of physical work, could entail different quality of work, some more sensitive, some requiring more tact, some less. It was therefore held, that the principle of 'equal pay for equal work' could not be translated into a mathematical formula. Interference in a claim as the one projected by the petitioners at the hands of a Court, would not be possible unless it could be demonstrated, that either the differentiation in the pay-scale was irrational, or based on no basis, or arrived at mala fide, either in law or on fact. In the light of the stance adopted by the respondents, it was held that it was not possible to say, that the differentiation of pay in the present controversy, was not based on a rational nexus. In the above view of the matter, the prayer made by the petitioners was declined.

10. State of U.P. v. J.P. Chaurasia[4], decided by a two-Judge bench: Prior to 1965, Bench Secretaries in the High Court of Allahabad, were placed in a pay-

[4] (1989) 1 SCC 121

scale higher than that allowed to Section Officers. Bench Secretaries were placed in the pay-scale of Rs.160-320 as against the pay-scale of Rs.100-300 extended to Section Officers. A Rationalization Committee, recommended the pay-scale of Rs.150-350 for Bench Secretaries and Rs.200-400 for Section Officers. While examining the recommendation, the State Government placed Bench Secretaries in the pay-scale of Rs.200-400, and Section Officers in the pay-scale of Rs.515-715. Dissatisfied with the apparent down-grading, Bench Secretaries demanded, that they should be placed at par with Section Officers, even though their principal prayer was for being placed in a higher pay-scale. The matter was examined by the Pay Commission, which also submitted its report. The Pay Commission refused to accept, that Bench Secretaries and Section Officers could be equated, for the purpose of pay-scales. The Pay Commission was of the view, that the nature of work of Section Officers was not only different, but also, more onerous than that of Bench Secretaries. It also expressed the view, that Section Officers had to bear more responsibilities in their sections, and were required to exercise control over their subordinates. Additionally, they were required to prepare lengthy original notes, in complicated matters. The Pay Commission therefore recommended, the pay-scale of Rs.400-750 for Bench Secretaries and Rs.500-1000 for Section Officers. Thereupon, the Anomalies Committee, while rejecting the claim of Bench Secretaries for being placed on par with Section Officers, suggested that 10 posts of Bench Secretaries should be upgraded and placed in the pay-scale of Rs.500-1000 (the same as, Section Officers). Those Bench Secretaries, who

were placed in the pay-scale of Rs.500-1000 were designated as Bench Secretaries Grade-I, and those placed in the pay-scale of Rs.400-750, were designated as Bench Secretaries Grade-II.

(ii) This Court while adjudicating upon the controversy, examined the matter from two different angles. Firstly, whether Bench Secretaries in the High Court of Allahabad, were entitled to the pay-scale admissible to Section Officers? Secondly, whether the creation of two grades with different pay-scales in the cadre of Bench Secretaries despite the fact that they were discharging the same duties and responsibilities, was violative of the principle of 'equal pay for equal work'?

(iii) While answering the first question this Court felt, that the issue required evaluation of duties and responsibilities of the respective posts, with which equation was sought. And it was concluded, that on the subject of equation of posts, the matter ought to be left for determination to the executive, as the same would have to be examined by expert bodies. It was however held, that whenever it was felt, that expert bodies had not evaluated the duties and responsibilities in consonance with law, the matter would be open to judicial review. In the present case, while acknowledging that at one time Bench Secretaries were paid more emoluments than Section Officers, it was held, that since successive Pay Commissions and even Pay Rationalization Committees had found, that Section Officers performed more onerous duties, bearing greater responsibility as compared to Bench Secretaries, it was not possible for this Court to go against the said opinion. As such, this Court rejected the prayer of

the Bench Secretaries as of right, to be assigned a pay-scale equivalent to or higher than that of Section Officers.

(iv) With reference to the second question, namely, whether there could be two scales of pay in the same cadre, of persons performing the same or similar work or duties, this Court expressed the view, that all Bench Secretaries in the High Court of Allahabad performed the same duties, but Bench Secretaries Grade-I were entitled to a higher pay-scale than Bench Secretaries Grade-II, on account of their selection as Bench Secretaries Grade-I, out of Bench Secretaries Grade-II, by a Selection Committee appointed under the rules, framed by the High Court. The above selection, was based on merit with due regard to seniority. And only such Bench Secretaries Grade-II who had acquired sufficient experience, and also displayed a higher level of merit, could be appointed as Bench Secretaries Grade-I. It was therefore held, that the rules provided for a proper classification, for the grant of higher emoluments to Bench Secretaries Grade-I, as against Bench Secretaries Grade-II.

(v) In the above view of the matter, the claim raised by the Bench Secretaries for equal pay, as was extended to Section Officers, was declined by this Court.

11. Mewa Ram Kanojia v. All India Institute of Medical Sciences[5], decided by a two-Judge bench: The petitioner in this case, was appointed against the post of Hearing Therapist, at the AIIMS, with effect from 3.8.1972. At that juncture, he was placed in the pay-scale of Rs.210-425. Based on the recommendations

[5] (1989) 2 SCC 235

made by the Third Pay Commission (which were adopted by the AIIMS), the pay-scale for the post of Hearing Therapist was revised to Rs.425-700, with effect from 1.1.1973. The petitioner accordingly came to be paid emoluments in the aforesaid revised pay-scale. The petitioner asserted, that the post of Hearing Therapist was required to discharge duties and responsibilities which were similar to those of the posts of Speech Pathologist and Audiologist. The said posts were in the pay-scale of Rs.650-1200. Since the claim of the petitioner for the aforesaid higher pay-scale (made under the principle of 'equal pay for equal work') was not acceded to by the department, he made a representation to the Third Pay Commission, which also negatived his claim for parity, as also, for a higher pay-scale. It is therefore that he sought judicial intervention. His main grievance was, that Hearing Therapist performed similar duties and functions as the posts of Senior Speech Pathologist, Senior Physiotherapist, Senior Occupational Therapist, Audiologist, and Speech Pathologist, and further, the qualifications prescribed for the above said posts were almost similar. Since those holding the above mentioned comparable posts were also working in the AIIMS, it was asserted, that the action of the employer was discriminatory towards the petitioner.

(ii) Whilst controverting the claim of the petitioner it was pointed out, that the post of Hearing Therapist was not comparable with the posts referred to by the petitioner. It was contended, that neither the qualifications nor the duties and functions of the posts referred to by the petitioner, were similar to that of Hearing Therapist. In the absence of equality between the post of Hearing Therapist, and

the other posts referred to by the petitioner, it was asserted, that the claim of the petitioner was not acceptable under the principle of 'equal pay for equal work'.

(iii) During the course of hearing, the petitioner confined his claim for parity only with the post of Audiologist. It was urged, that educational qualifications, as well as, duties and functions of the posts of Hearing Therapist and Audiologist were similar (if not the same). It was contended, that a Hearing Therapist was required to treat the deaf and other patients suffering from hearing defects. A Hearing Therapist is required to help in the rehabilitation of persons with hearing impairments. It was also pointed out, that an Audiologist's work was to coordinate the separate professional skills, which contribute to the study, treatment and rehabilitation of persons with impaired hearing. As such it was submitted, that a person holding the post of an Audiologist, was a specialist in the non-medical evaluation, habilitation and rehabilitation, of those who have language and speech disorders. On the aforesaid premise, the petitioner claimed parity with the pay-scale of Audiologists.

(iv) This Court held, that there was a qualitative difference between the two posts, on the basis of educational qualifications, and therefore, the principle of 'equal pay for equal work', could not be invoked or applied. It was further held, that the Third Pay Commission had considered the claim of Hearing Therapists, but did not accede to the grievances made by them. Since the Pay Commission was in better position to judge the volume of work, qualitative difference and the reliability and responsibility required of the two posts, this Court declined to

accept the prayer made by the petitioner, under the principle of 'equal pay for equal work'.

12. Grih Kalyan Kendra Workers' Union v. Union of India[6], decided by a two-Judge bench: The workers' union in the above case, had approached this Court, in the first instance in 1984, by filing writ petition no. 13924 of 1984. In the above petition, the relief claimed was for payment of wages under the principle of 'equal pay for equal work'. The petitioners sought parity with employees of the New Delhi Municipal Committee, and employees of other departments of the Delhi Administration, and the Union of India. They approached this Court again by filing civil writ petition no. 869 of 1988, which was disposed of by the judgment cited above.

(ii) The petitioners were employees of Grih Kalyan Kendras. They desired the Union of India to pay them wages in the regular pay-scale, on par with other employees performing similar work under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India. It would be relevant to mention, that the petitioner- Workers' Union was representing employees working in various centres of the Grih Kalyan Kendras, on ad-hoc basis. Some of them were being paid a fixed salary, described as a honorarium, while others were working on piece-rate wages at the production centres, without there being any provision for any scale of pay or other benefits like gratuity, pension, provident fund etc.

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[6] (1991) 1 SCC 619

(iii) In the first instance, this Court endeavoured to deal with the question, whether the employers of these workers were denying them wages as were being paid to other similarly placed employees, doing the same or similar work. The question came to be examined for the reason, that unless the petitioners could demonstrate that the employees of the Grih Kalyan Kendras, were being discriminated against on the subject of pay and other emoluments, with other similarly placed employees, the principle of 'equal pay for equal work' would not be applicable. During the course of the first adjudication in writ petition no. 13924 of 1984, this Court requested a former Chief Justice of India, to make recommendations after taking into consideration, firstly, whether other similarly situated employees (engaged in similar comparable posts, putting in comparable hours of work, in a comparable employment) were being paid higher pay, and if so, what should be the entitlement of the agitating employees, so as not to violate the principle of 'equal pay for equal work', and secondly, if there was no other similar comparable employment, whether the remuneration of the agitating employees, deserved to be revised on the ground, that their remuneration was unconscionable or unfair, and if so, to what extent. In the report filed by the former Chief Justice of India, it was concluded, that there was no employment comparable to the employment held by those engaged by the Grih Kalyan Kendras, and therefore, they could not seek parity with other employees working either with the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India.

(iv) Based on the aforesaid factual conclusion, this Court held that the concept of 'equal pay for equal work' implies and requires, equal treatment for those who are similarly situated. It was held, that a comparison could not be drawn between unequals. Since the workers who had approached the Court in the present case, had failed to establish that they were situated similarly as others, it was held, that they could not be extended benefits which were being given to those, with whom they claimed parity. In this behalf this Court also opined, that the question as to whether persons were situated equally, had to be determined by the application of broad and reasonable tests, and not by way of a mathematical formula of exactitude. And therefore, since there were no other employees comparable to the employees working in the Grih Kalyan Kendras, this Court declined to entertain the prayer made by the petitioners.

13. Union of India v. Pradip Kumar Dey[7], decided by a two-Judge bench: It was the case of the respondent, that he was holding the post of Naik (Radio Operator), in which capacity he was discharging similar duties as those performed in the Directorate of Coordination Police Wireless, and other central government agencies. It was also the claim of the respondent, that the duties performed by him as Naik (Radio Operator) were more hazardous than those performed by personnel with similar qualifications and experience in State services, and other organizations. Even though a learned single Judge

[7] (2000) 8 SCC 580

dismissed the writ petition, an intra-Court appeal preferred by the respondent, was allowed.

(ii) The Union of India raised three contentions, in its appeal to this Court. Firstly, that the pay-scale claimed by the respondent, was that of the post of Assistant Sub-Inspector of Police. It was pointed out, that the respondent was holding an inferior post - of Naik (Radio Operator). It was highlighted, that the post of Assistant Sub-Inspector of Police, was a promotional post, for the post held by the respondent. Secondly, it was asserted on behalf of the Union of India, that the respondent had not placed any material before the Court, on which the High Court could have arrived at the conclusion, that the essential qualifications of the post against which the respondent claimed parity, as also, the method of recruitment thereto, were the same as that of the post held by the respondent. Thirdly, the post of Naik (Radio Operator) held by the respondent was extended the benefit of special pay of Rs.80/- per month, and that, there was nothing on the record of the case to show, that Radio Operators in the Central Water Commission or the Directorate of Police Wireless, were enjoying similar benefits.

(iii) This Court while accepting the contentions advanced at the hands of the Union of India held, that the pay-scale claimed by the respondent was that for the post of Assistant Sub-Inspector, which admittedly was a promotional post for Naik (Radio Operator), i.e., the post held by the respondent. And as such, the claim made by the respondent, of parity with a post superior in hierarchy (to the post held by him), was not sustainable. Furthermore, this Court arrived at the

conclusion, that there was no material on the record of the case to demonstrate, that the essential qualifications and the method of recruitment for, as also, the duties and responsibilities of the post held by him, were similar to those of the post, against which the respondent was claiming parity.

14. State Bank of India v. M.R. Ganesh Babu[8], decided by a three-Judge bench: Entry into the management cadre in banking establishments, is Junior Management Grade Scale-1. The said cadre comprises of Probationary Officers, Trainee Officers and other officers who possess technical skills (specialized officers), such as Assistant Law Officers, Security Officers, Assistant Engineers, Technical Officers, Medical Officers, Rural Development Officers, and other technical posts. All the posts in the Junior Management Grade Scale-1 cadre, were divisible into two categories – generalist officers, and specialist officers. Under the prevalent rules – the 1979 Order, the benefit of a higher starting pay, was extended only to Probationary Officers and Trainee Officers (i.e. to generalist officers), while Rural Development Officers and other specialist officers like Assistant Law Officers, Security Officers, Assistant Engineers etc., were not entitled to a higher starting pay. Rural Development Officers, agitated their claim for similar benefits, as were extended to Probationary Officers and Trainee Officers (i.e. to the generalist officers). The question of viability of the claim raised by Rural Development Officers, was referred to the Bhatnagar Committee. The Bhatnagar Committee made its recommendation, in favour of Rural

[8] (2002) 4 SCC 556

Development Officers, finding that they were required to shoulder, by and large, the same duties and responsibilities, as Probationary Officers and Trainee Officers, so far as agricultural advances were concerned. The Committee accordingly recommended, that it was a fit case for removal of the anomaly in their salary fitment. It recommended that, Rural Development Officers be allowed the same fitment of salary at the time of appointment, as was extended to Probationary Officers and Trainee Officers (i.e. to the generalist officers). The recommendation made by the Bhatnagar Committee was accepted, and accordingly, Rural Development Officers were extended the same fitment of salary, as generalist officers.

(ii) Since the benefit of additional increment was denied to other specialist officers, they also made a grievance and claimed the benefit of additional increments, as had been extended to Rural Development Officers. Since the State Bank of India did not accede to their request, they approached the Karnataka High Court. The specialist officers claimed, that in all respects, they performed similar duties and responsibilities, as Rural Development Officers, and therefore, they were entitled to the benefit of additional increments, at the time of their appointment, as had been extended to Rural Development Officers. A learned single Judge of the High Court, on being impressed by the fact, that some of the Rural Development Officers, who had not opted for absorption in the generalist cadre (but had continued under the specialist cadre), were also extended the benefit of higher starting pay, accepted the claim of the specialist

officers. Appeals preferred against the judgment rendered by the learned single Judge, were dismissed by a division bench of the High Court.

(iii) This Court while examining the challenges, narrated the parameters on which the benefit of 'equal pay for equal work' can be made applicable, as under:-

> "16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystalised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide reasonably and rationally, was not open to interference by the court."

Based on the aforesaid parameters, this Court considered the acceptability of the claim of the specialist officers, for parity with the generalist officers. This Court recorded its conclusion, as under:-

> "19. We have carefully perused the order of the Bank and find that several reasons have been given for non-acceptance of the respondents' claim. It has been highlighted that the Probationary Officers/Trainee Officers are being recruited from market/promoted from clerical staff by the Bank by means of all-India written test and interview to get the best talent from the market and within, with a view to man the Bank's top

management in due course. Leaned counsel for the respondents submitted that the same is also true of specialist officers. However, it is contended on behalf of the appellant Bank that the generalist officers are exposed to various assignments including mandatory rural assignments. Unlike them, the services of Assistant Law Officers are utilized as in-house advisors on legal matters in administrative offices. The duties and responsibilities of Probationary Officers/Trainee Officers are more onerous while the specialist officers are not exposed to operational work/risk. It is, therefore, quite clear that there exists a valid distinction in the matter of work and nature of operations between the specialist officers and the general category officers. The general category officers are directly linked to the banking operations whereas the specialist officers are not so linked and they perform the specified nature of work. RDOs were given similar fitment as the generalist officers since it was found that they were required to shoulder, by and large, the same duties and responsibilities as Probationary Officers and Trainee Officers in so far as conducting Bank's agricultural advances work was concerned. This was done on the basis of the recommendations of the Bhatnagar Committee and keeping in view the fact that the decision has been taken that there would be no future recruitment of RDOs and the existing RDOs were proposed to be absorbed in general banking cadre. The recruitment of RDOs has been discontinued since 1985. Taking into account the nature of duties and responsibilities shouldered by the respondents the Bank has concluded that the duties and responsibilities of the respondents are not comparable to the duties and responsibilities of the RDOs, the Probationary Officers or the Trainee Officers.

20. Learned counsel for the respondents submitted that specialist officers are also recruited from the open market and are confirmed after successfully completing the probation of 2 years. Before the Order of 1979 came into force, they were similarly being granted benefit of additional increments at the time of appointment in the same manner as the generalist officers. However, after the order of 1979 they have been deprived of this benefit. Subsequently that benefit was extended to RDOs but not to the respondents and others like them. We have earlier noticed that the RDOs were given the benefit of advance increments on the basis of the report of an Expert Committee which justified their classification with the generalist officers, having regard to the nature of duties and responsibilities shouldered by them. However, on consideration of the case of the respondents, the Bank as reached a different conclusion. The Bank has found that their duties and responsibilities are not the same as those of Probationary Officers/Trainee Officers/RDOs. It is no doubt true that the specialist officers render useful service and their valuable advice in the specialised fields is of great assistance to the Bank in its banking operations. The officers who belong to the generalist cadre, namely the officers who actually conduct the banking operations and who take decisions in regard to all banking works are advised by the specialist

> officers. There can be no doubt that the service rendered by the specialist officers is also valuable, but that is not to say that the degree of responsibility and reliability is the same as those of the Probationary Officers, the Trainee Officers, and the RDOs, who directly carry on the banking operations and are required to take crucial decisions based on the advice tendered by the specialist officers. The Bank has considered the nature of duties and responsibilities of the various categories of officers and has reached bona fide decision that while generalist officers take all crucial decisions in banking operations with which they are directly linked, and are exposed to operational work and risk since the decisions that they take has significant effect on the functioning of the bank and quality of its performance, the specialist officers are not exposed to such risks nor are they required to take decisions as vital as those to be taken by the generalist officers. They at best render advice in their specialized field. The degree of reliability and responsibility is not the same. It cannot be said that the value judgment of the Bank in this regard is either unreasonable, arbitrary or irrational. Having regard to the settled principles and the parameters of judicial interference, we are of the considered view that the decision taken by the Bank cannot be faulted on the ground of its being either unreasonable, arbitrary or discriminatory and therefore judicial interference is inappropriate."

On account of the reasons recorded above, specialist officers could not substantiate their claim of parity. They were held not entitled to benefit of the principle of 'equal pay for equal work'.

15. State of Haryana v. Haryana Civil Secretariat Personal Staff Association[9], decided by a two-Judge bench: The respondent Association in the above case, filed a writ petition before the Punjab and Haryana High Court, seeking a direction to the appellant herein, to grant Personal Assistants in the Civil Secretariat, Haryana, the pay-scale of Rs.2000-3500 + Rs.150 as special pay, which had been given to Personal Assistants working in the Central Secretariat. The aforesaid prayer was made in the background of the fact, that the State of

[9] (2002) 6 SCC 72

Haryana had accepted the recommendations of the Fourth Central Pay Commission, with regard to revision of pay-scales, with effect from 1.1.1986. The case of Personal Assistants before the High Court was, that prior to 1986, Personal Assistants working in the Civil Secretariat, Haryana, were enjoying a higher scale of pay, than was extended to Personal Assistants working in the Central Secretariat. On the receipt of Fourth Central Pay Commission report, the Central Government revised the pay-scale of Personal Assistants to Rs.2000-3500 with effect from 1.1.1986. It was pointed out, that even though the Government of Haryana had accepted the recommendation of the Fourth Central Pay Commission, and had also implemented the same, in respect of certain categories of employees, it did not accept the same in the case of Personal Assistants. The pay-scale of Personal Assistants in the Civil Secretariat, Haryana, was revised to Rs.1640-2900 + 150 as special pay.

(ii) It was also the contention of Personal Assistants, that in respect of certain categories of employees of different departments of the State of Haryana, like Education, Police, Transport, Health and Engineering and Technical staff, the State Government had fully adopted the recommendations of the Fourth Central Pay Commission, by granting them the pay-scale of Rs.2000-3500. The claim of the Personal Assistants was also premised on the fact, that Personal Assistants working in the Civil Secretariat, Haryana, discharged duties which were comparable with that of Personal Assistants in the Central Secretariat. And so also, their responsibilities.

(iii) The High Court allowed the claim of the Association. It held, that Personal Assistants working in the Civil Secretariat, Haryana, were entitled to the pay-scale of Rs.2000-3500, with effect from 1.1.1986. The State of Haryana approached this Court. This Court, while recording its consideration, expressed the view, that the High Court had ignored certain settled principles of law, while determining the claim of Personal Assistants, by applying the principle of parity. This Court felt, that the High Court was persuaded to accept the claim of Personal Assistants, only because of the designation of their post. This, it was held, was a misconceived application of the principle. In its analysis, it was recorded, that the High Court had assumed, that the assertions made at the behest of the Personal Assistants, that they were discharging similar duties and responsibilities as Personal Assistants in the Central Secretariat, had remained unrebutted. That, this Court found, was factually incorrect. The State of Haryana, in its counter affidavit before the High Court, had adopted the specific stance, that there was no comparison between the Personal Assistants working in the Civil Secretariat, Haryana, and Personal Assistants working in the Central Secretariat. It was highlighted, that the qualifications prescribed for Personal Assistants in the Central Secretariat, were different from those prescribed for Personal Assistants in Civil Secretariat, Haryana. The High Court was also found to have erred in its determination, by not making any comparison of the nature of duties and responsibilities, or about the qualifications prescribed for recruitment. This Court accordingly set aside the order passed by the High Court, allowing parity.

(iv) In order to delineate the parameters, on the basis of which the principle of 'equal pay for equal work' can be made applicable, this Court observed as under:-

> "10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the government to implement the same. As noted earlier, in the present case the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of the employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre."

16. Orissa University of Agriculture & Technology v. Manoj K. Mohanty[10], decided by a two-Judge bench: The respondent in the above case, was appointed as a Typist in 1990, on a consolidated salary of Rs.530/- per month, against a vacancy of the post of Junior Assistant. It was his averment, that even though in the appointment order, he was shown to have been appointed against the post of Typist, he had actually been working as a Junior Assistant, in the Examination Section of the institute. In order to demonstrate the aforesaid factual position, the respondent placed reliance on two certificates dated 4.12.1993 and 25.3.1996, issued to him by the Dean of the institute, affirming his stance. Despite the passage of five years since his induction into service, he was paid the same consolidated salary (referred to above), and was also not being regularized. It was also pointed out, that another individual junior to him was regularized against the post of Junior Assistant. The respondent then approached the Orissa High Court by way of a writ petition, seeking appointment on regular basis. The High Court disposed of the said writ petition, by directing, that the respondent be not disengaged from service. The High Court further directed, that the respondent be paid salary in the regular scale of pay admissible to Junior Assistants, with effect from September, 1997. A review petition filed against the High Court's order dated 11.9.1997, was dismissed. Dissatisfied with the above orders, the Orissa University of Agriculture & Technology approached

[10] (2003) 5 SCC 188

this Court. While dealing with the question of 'equal pay for equal work', this Court, noticed the factual position as under:-

> "10. The High Court before directing to give regular pay-scale to the respondent w.e.f. September, 1997 on the principle of "equal pay for equal work" did not examine the pleadings and facts of the case in order to appreciate whether the respondent satisfied the relevant requirements such as the nature of work done by him as compared to the nature of work done by the regularly appointed Junior Assistants, the qualifications, responsibilities etc. When the services of the respondent had not been regularized, his appointment was on temporary basis on consolidated pay and he had not undergone the process for regular recruitment, direction to give regular pay-scale could not be given that too without examining the relevant factors to apply the principle of "equal pay for equal work". It is clear from the averments made in the writ petition extracted above, nothing is stated as regards the nature of work, responsibilities attached to the respondent without comparing them with the regularly recruited Junior Assistants. It cannot be disputed that there were neither necessary averments in the writ petition nor any material was placed before the High Court so as to consider the application of principle of "equal pay for equal work"."

Based on the fact, that the respondent had not placed sufficient material on the record of the case, to demonstrate the applicability of the principle of 'equal pay for equal work', this Court set aside the order passed by the High Court, directing that the respondent be paid wages in the regular scale of pay, with effect from September, 1997.

17. Government of W.B. v. Tarun K. Roy[11], decided by a three-Judge bench: There were two technical posts, namely, Operator-cum-Mechanic and Sub-Assistant Engineer, in the Irrigation Department, of the Government of West Bengal. In 1970, the State Government revised pay-scales. During the aforesaid revision, the pay-scale of the post of Operator-cum-Mechanic, which

[11] (2004) 1 SCC 347

was initially Rs.180-350, was revised to Rs.230-425, with effect from 1.4.1970. The pay-scale of the post of Sub-Assistant Engineer was simultaneously revised to Rs.350-600, with a higher initial start of Rs.330, with effect from the same date. Some persons in the category of Operator-cum-Mechanic, possessing the qualification of diploma in engineering, claimed entitlement to the nomenclature of Sub-Assistant Engineer, as also, the scale of pay prescribed for the post of Sub-Assistant Engineer. The Government of West Bengal, during the course of hearing of the matter before this Court, adopted the position, that diploma holder engineers working as Operator-cum-Mechanics in the Irrigation Department, were not entitled to be designated as Sub-Assistant Engineers. The said plea was negatived by this Court in State of West Bengal v. Debdas Kumar, 1991 Supp. (1) SCC 138.

(ii) Another group of Operator-cum-Mechanics, who did not possess diploma in engineering, and were graduates in science, or were holding school final examination certificate, claimed parity with Operator-cum-Mechanics, possessing the qualification of diploma in engineering. This Court, while rejecting their claim, observed as under:-

> "30. The respondents are merely graduates in Science. They do not have the requisite technical qualification. Only because they are graduates, they cannot, in our opinion, claim equality with the holders of diploma in Engineering. If any relief is granted by this Court to the respondents on the aforementioned ground, the same will be in contravention of the statutory rules. It is trite that this Court even in exercise of its jurisdiction under Article 142 of the Constitution of India would not ordinarily grant such a relief which would be in violation of a statutory provision."

18. S.C. Chandra v. State of Jharkhand[12], decided by a two-Judge bench: In the above matter, a number of civil appeals were disposed of, through a common order. The appellants had approached the High Court with the prayer, that directions be issued to the respondents, to fix their pay-scale at par with the pay-scale of government secondary school teachers, or at par with Grade I and II Clerks of the respondent company (Bharat Coking Coal Ltd. – BCCL). The appellants also prayed, that facilities such as provident fund, gratuity, pension and other retiral benefits, should also be made available to them. In addition to the above prayers, the appellants also sought a direction, that the management of the school, be taken over by the State Government. Dissatisfied with the orders passed by the High Court, the employees of the school approached this Court. This Court disposed of the matter by recording the following conclusion:-

> "21. Learned counsel for the appellants have relied on Article 39(d) of the Constitution. Article 39(d) does not mean that all the teachers working in the school should be equated with the clerks in BCCL or the Government of Jharkhand for application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in State of Haryana v. Charanjit Singh, (2006) 9 SCC 321, wherein Their Lordships have put the entire controversy to rest and held that the principle, "equal pay for equal work" must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our

[12] (2007) 8 SCC 279

> consideration but no useful purpose will be served as in State of Haryana v. Charanjit Singh, (2006) 9 SCC 321, all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL."

A perusal of the determination rendered by this Court reveals, that for claiming parity under the principle of 'equal pay for equal work', there should be total identity between the post held by the claimants, and the reference post, with whom parity is claimed.

19. Official Liquidator v. Dayanand[13], decided by a three-Judge bench: Directions were issued by the Calcutta and Delhi High Courts to the appellant, in the above matter, to absorb persons employed by the Official Liquidators (attached to those High Courts) under Rule 308 of the Companies (Court) Rules, 1959, against sanctioned posts, in the Department of Company Affairs. By virtue of the above directions, the respondents who were employed/engaged by Official Liquidators, were paid salaries and allowances from the Company's funds. The question that arose for consideration before this Court was, whether the respondents were entitled to sanctioned Government posts, in the office of the Official Liquidator(s). While disposing of the above issue, this Court held as under:-

> "100. As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor were they paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the

[13] (2008) 10 SCC 1

> regular employees of the Offices of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the Offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company-paid staff in the regular pay scale from the Consolidate Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits on a par with regular employees by applying the principle of equal pay for equal work."

20. State of West Bengal v. West Bengal Minimum Wages Inspectors Association[14], decided by a two-Judge bench: The respondent Association represented the cadre of Inspector (Agricultural Minimum Wages), before the High Court of Calcutta. The claim made before the High Court was, that the said cadre was entitled to parity in pay-scales, with the posts of Inspector (Cooperative Societies), Extension Officer (Panchayats) and Revenue Officer. The aforesaid claim of parity was based on the sole consideration, that the posts of Inspector (Agricultural Minimum Wages) on the one hand, and the posts of Inspector (Cooperative Societies), Extension Officer (Panchayats) and Revenue Officer on the other, were in the same pay-scale, prior to the revision of pay-scales, i.e., Pay-Scale 9 (– Rs.300-600). After the pay revision in 1981, while the Inspector (Agricultural Minimum Wages) cadre, was retained in Pay-Scale 9 (– Rs.300-600), the other three cadres – Inspector (Cooperative Societies), Extension Officer (Panchayats) and Revenue Officer, were placed in Pay-Scale 11 (– Rs.425-1050). It was based on the above factual assertion, that the

[14] (2010) 5 SCC 225

respondents claimed placement in Pay-Scale 11 (- Rs.425-1050). The claim of the respondents, was not based on the assertion, that Inspectors (Agricultural Minimum Wages) were discharging duties and responsibilities, which were similar/identical to those of Inspectors (Cooperative Societies), Extension Officers (Panchayats) and Revenue Officers. It is this aspect, which weighed with this Court while determining the claim of the respondents for parity. In the above adjudication, this Court recorded the following observations:-

> "20. The burden to prove disparity is on the employees claiming parity – vide State of U.P. v. Ministerial Karamchari Sangh, (1998) 1 SCC 422; Associate Banks Officers' Association v. SBI, (1998) 1 SCC 428; State of Haryana v. Haryana Civil Secretariat Personal Staff Association, (2002) 6 SCC 72; State of Haryana v. Tilak Raj, (2003) 6 SCC 123; S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 and U.P. SEB v. Aziz Ahmad, (2009) 2 SCC 606.
>
> 21. What is significant in this case is that parity is claimed by Inspectors, AMW, by seeking extension of the pay scale applicable to Inspector (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) not on the basis that the holders of those posts were performing similar duties or functions as Inspectors, AMW. On the other hand, the relief was claimed on the ground that prior to ROPA Rules 1981, the posts in the said three reference categories, and Inspectors, AMW were all in the same pay scale (Pay Scale 9), and that under ROPA Rules 1981, those other three categories have been given a higher Pay Scale of No.11, while they – Inspectors, AMW - were discriminated by continuing them in the Pay Scale 9.
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> 22. The claim in the writ petition was not based on the ground that subject post and reference category posts carried similar or identical duties and responsibilities but on the contention that as the subject post holders and the holders of reference category posts who were enjoying equal pay at an earlier point of time, should be continued to be given equal pay even after pay revision. In other words, the parity claimed was not on the basis of equal pay for equal work, but on the basis of previous equal pay.
>
> 23. It is now well-settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts.

> 24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.
>
> 25. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust."

Based on the above consideration, this Court observed, that Inspectors (Agricultural Minimum Wages), had neither pleaded nor proved, that they were discharging duties and functions similar to the duties and functions of the Inspectors (Cooperative Societies), Extension Officers (Panchayats) and Revenue Officers, and therefore held, that their claim for pay parity, under the principle of 'equal pay for equal work', could not be accepted.

21. Union Territory Administration, Chandigarh v. Manju Mathur[15], decided by a two-Judge bench: In the above matter, the respondents were working as Senior Dieticians and Dieticians in the Directorate of Health Services of the Chandigarh Administration. They were posted in the General Hospital, Chandigarh, under the Union Territory Administration of Chandigarh. They were placed in the pay-scale of Rs.1500-2540 and Rs.1350-2400, respectively. They

[15] (2011) 2 SCC 452

moved the Chandigarh Administration, seeking the pay-scale extended to their counterparts, employed in the State of Punjab. The posts against which they were claiming equivalence, were those of Dietician (gazetted) and Dietician (non-gazetted) in the Directorate of Research and Medical Education, Punjab. The posts with which they were seeking equivalence, were sanctioned posts in the Rajindera Hospital (Patiala) and the Shri Guru Teg Bahadur Hospital (Amritsar). These posts were in the pay-scale of Rs.2200-4000 and Rs.1500-2640, respectively. After the State Government declined to accept their claim, they approached the High Court of Punjab and Haryana, which accepted their claim. Dissatisfied with the judgment rendered by the High Court, the Union Territory Administration of Chandigarh, approached this Court.

(ii) During the pendency of the proceedings before this Court, a direction was issued to the Union Territory Administration of Chandigarh, to appoint a 'High Level Equivalence Committee', to examine the nature of duties and responsibilities of the post of Senior Dietician working under the Union Territory Administration of Chandigarh, vis-a-vis, Dietician (gazetted) working under the State of Punjab. And also to examine the nature of duties and responsibilities of the post of Dietician, working under the Union Territory Administration of Chandigarh, vis-a-vis, Dietician (non-gazetted) working under the State of Punjab, and submit a report. A report was accordingly submitted to this Court (which is extracted in the above judgment).

(iii) In its report, the 'High Level Equivalence Committee' arrived at the conclusion, that the duties and responsibilities of the posts held by the

respondents, and the corresponding reference posts with which they were claiming parity, were not comparable or equivalent. As such, this Court recorded the following observations:-

> "9. We have heard the learned Counsel for the parties. We find from the report of the High Level Equivalence Committee extracted above that the Directorate of Research and Medical Education, Punjab, is a teaching institution in which the Dietician has to perform multifarious duties such as teaching the probationary nurses in subjects of nutrition dietaries, control and management of the kitchen, etc., whereas, the main duties of the Dietician and Senior Dietician in the Government Multi-Specialty Hospital in the Union Territory Chandigarh are only to check the quality of food being provided to the patients and to manage the kitchen."

Based on the above determination, the prayer for parity under the principle of 'equal pay for equal work' was declined to the respondents, and accordingly the judgment of the High Court, was set aside.

22. Steel Authority of India Limited v. Dibyendu Bhattacharya[16], decided by a three-Judge bench: The respondent in the above case, was appointed against the post of Speech Therapist/Audiologist, in the Durgapur Steel Plant, in S-6 grade in Medical and Health Services. After serving for a few years, he addressed a representation to the appellant, claiming parity with one B.V. Prabhakar, employed at the Rourkela Steel Plant (a different unit of the same company). The said B.V. Prabhakar was holding the post of E-1 grade in the executive cadre, though designated as Speech Therapist/Audiologist. In his representation, the respondent did not claim parity in pay, but only claimed

[16] (2011) 11 SCC 122

change of the cadre and upgradation of his post, and accordingly relaxation in eligibility, so as to be entitled to be placed in the pay-scale of posts in E-1 grade.

(ii) The appellant did not accept the claim raised by the respondent. He accordingly approached the High Court of Calcutta. A division bench of the High Court, accepted his claim for pay parity. It is in the aforesaid background, that the appellant approached this Court, to assail the judgment rendered by the High Court. The issue of pay parity was dealt with by this Court, by recording the following observations:-

> "30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.
> 31. The onus to establish the discrimination by the employer lies on the person claiming the parity of pay. The Expert Committee has to decide such issues, as the fixation of pay scales etc. falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible for administration i.e. service conditions, etc., is found to be bonafide, reasonable, and on intelligible criteria which has a rational nexus of objective of differentiation, such differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just or prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesale/wholesome identity between the two posts they should not be treated as equivalent and the Court should avoid applying the principle of equal pay for equal work."

Based on the above consideration, this Court recorded its analysis, on the merits of the controversy, as under:-

> "34. Shri B.V. Prabhakar, had been appointed in E-1 Grade, in the Rourkela unit, considering his past services in the Bokaro Steel Plant, another unit of the Company, for about two decades prior to the recruitment of the respondent. As every unit may make appointments taking into consideration the local needs and requirement, such parity claimed by the respondent cannot be held to be tenable. The reliefs sought by the respondent for upgradation of the post and waiving the eligibility criteria had rightly been refused by the appellants and by the learned Single Judge. In such a fact-situation, there was no justification for the Division Bench to allow the writ petition, granting the benefit from the date of initial appointment of the respondent. The respondent has not produced any tangible material to substantiate his claim, thus, he could not discharge the onus of proof to establish that he had made some justifiable claim. The respondent miserably failed to make out a case for pay parity to the post of E-1 Grade in executive cadre. The appeal, thus, deserves to be allowed."

It is, therefore apparent, that this Court did not accept the prayer of pay parity, in the above cited case, based on the principle of 'equal pay for equal work'.

23. Hukum Chand Gupta v. Director General, Indian Council of Agricultural Research[17], decided by a two-Judge bench: In the above matter, the appellant was originally appointed as a Laboratory Assistant in Group D, in the National Dairy Research Institute. He was promoted as a Lower Division Clerk, after he qualified a limited departmental competitive examination. He was further promoted as a Senior Clerk, again after qualifying a limited departmental competitive examination. At this stage, he was placed in the pay-scale of Rs.1200-2040. He was further promoted to the post of Superintendent in the pay-scale of Rs.1640-2900, yet again, after passing a departmental examination.

[17] (2012) 12 SCC 666

Eventually, he was promoted as an Assistant Administrative Officer, on the basis of seniority-cum-fitness. The Indian Council of Agricultural Research revised the pay-scales of Assistants, from Rs.1400-2600 to Rs.1640-2900, with effect from 1.1.1986. However, the pay-scale of the post of Superintendent was not revised.

(ii) The appellant submitted a representation seeking revision of his pay-scale on the ground, that in the headquarters of the Indian Council of Agricultural Research, the post of Superintendent is a promotional post, from the post of Assistant (which carried the pay-scale of Rs.1640-2900). He also claimed parity in pay-scale with one J.I.P. Madan. The claim of the appellant was not accepted by the authorities, whereupon, he first approached the Administrative Tribunal and eventually the High Court of Punjab and Haryana, which also did not accept his contention. It is, therefore, that he approached this Court.

(iii) While adjudicating upon the above controversy, this Court relied and endorsed the reasons recorded by the Administrative Tribunal in rejecting the claim of the appellant in the following manner:-

> "9. By a detailed order, the Tribunal rejected both the claims. It was observed that the post at headquarters cannot be compared with the post at institutional level as both are governed by different sets of service rules. The second prayer with regard to the higher pay scale given to Shri J.I.P. Madan was rejected on the ground that he had been given the benefit of second upgradation in pay since he had earned only one promotion throughout his professional career. Aggrieved by the aforesaid, the appellant filed a writ petition C.W.P. No. 9595 CAT of 2004 before the High Court. The writ petition has also been dismissed by judgment dated 8-7-2008. This judgment is impugned in the present appeal."

This Court, recorded the following additional reasons, for not accepting the claim of the appellant, by observing as under:-

"15. In our opinion, the explanation given by Mrs. Sunita Rao does not leave any room for doubt that the claim made by the appellant is wholly misconceived. There is no comparison between the appellant and Shri J.I.P. Madan. The appellant had duly earned promotion in his cadre from the lowest rank to the higher rank. Having joined in Group D, he retired on the post of AAO. On the other hand, Shri J.I.P. Madan had been working in the same pay scale till his promotion on the post of AAO. Therefore, he was held entitled to the second upgradation after 24 years of service. He had joined as an Assistant by Direct Recruitment and promoted on 24-8-1990 as a Superintendent. After the merger of the post of Assistant with the Superintendent, the earlier promotion of Shri Madan was nullified, as Assistant was no longer a feeder post for the promotion on the post of Superintendent. Thus, a financial upgradation, in view of ACP Scheme, was granted to him since he had no opportunity for the second promotion."

This Court concluded the issue by holding as under:-

"20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at headquarters and the employees working at the institutional level. It is a matter of record that the employees working at headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. In our opinion, the prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There can not be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a Writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the Writ Court would lack the necessary expertise undertake the complex exercise of equation of posts or the pay scales.

21. In expressing the aforesaid opinion, we are fortified by the observations made by this Court in State of Punjab vs. Surjit Singh, (2009) 9 SCC 514. In that case, upon review of a large number of judicial

precedents relating to the principle of "equal pay for equal work", this Court observed as follows: (SCC pp. 527-28, para 19)

> "19. … '19. … Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation….. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus, normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof.'*" (emphasis supplied)
>
> In our opinion, the aforesaid observations would be a complete answer to all the submissions made by the appellant."

For the above reasons, this Court rejected the claim of the appellant, based on the principle of 'equal pay for equal work'.

24. National Aluminum Company Limited v. Ananta Kishore Rout[18], decided by a two-Judge bench: The appellant in the above matter, i.e., National Aluminum Company Limited (hereinafter referred to as, NALCO) had established two schools. In the first instance, NALCO itself looked after the management of the said schools. In 1985, it entered into two separate but identical agreements with the Central Chinmoy Mission Trust, Bombay, whereby the management of the schools was entrusted to the above trust. In 1990, a similar agreement was entered into for the management of the above two schools, with the Saraswati Vidya Mandir Society (affiliated to Vidya Bharati Akhila Bharatiya Shiksha Sansthan). Accordingly, with effect from 1990, the said Society commenced to manage the affairs of the employees, of the above two schools. Two writ petitions were filed by the employees of the two schools before the High Court of Orissa at Cuttack, seeking a mandamus, that they be declared as employees of NALCO, and be treated as such, with the consequential prayer, that the employees of the two schools be accorded suitable pay-scales, as were admissible to the employees of NALCO. The High Court accepted the above prayers. It is, therefore, that NALCO approached this Court.

(ii) In adjudicating upon the above matter, this Court recorded its consideration as under:-

> "33. Insofar as their service conditions are concerned, as already conceded by even the respondents themselves, their salaries and other perks which they are getting are better than their counter parts in Government schools or aided/ unaided recognised schools in the State of

[18] (2014) 6 SCC 756

Orissa. In a situation like this even if, for the sake of argument, it is presumed that NALCO is the employer of these employees, they would not be entitled to the pay scales which are given to other employees of NALCO as there cannot be any comparison between the two. The principle of ''equal pay for equal work'' is not attracted at all. Those employees directly employed by NALCO are discharging altogether different kinds of duties. Main activity of NALCO is the manufacture and production of alumina and aluminium for which it has its manufacturing units. The process and method of recruitment of those employees, their eligibility conditions for appointment, nature of job done by those employees etc. is entirely different from the employees of these schools. This aspect is squarely dealt with in the case of SC Chandra vs. State of Jharkhand, (2007) 8 SCC 279, where the plea for parity in employment was rejected thereby refusing to give parity in salary claim by school teachers with class working under Government of Jharkhand and BCCL. The discussion which ensued, while rejecting such a claim, is recapitulated hereunder in the majority opinion authored by A.K. Mathur, J.: (SCC p. 289, paras 20-21)

> "20. After going through the order of the Division Bench we are of opinion that the view taken by the Division Bench of the High Court is correct. Firstly, the school is not being managed by BCCL as from the facts it is more than clear that BCCL was only extending financial assistance from time to time. By that it cannot be saddled with the liability to pay these teachers of the school as being paid to the clerks working with BCCL or in the Government of Jharkhand. It is essentially a school managed by a body independent of the management of BCCL. Therefore, BCCL cannot be saddled with the responsibilities of granting the teachers the salaries equated to that of the clerks working in BCCL.
>
> 21. Learned counsel for the appellants have relied on Article 39(d) of the Constitution. Article 39(d) does not mean that all the teachers working in the school should be equated with the clerks in BCCL or the Government of Jharkhand for application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be educated with the clerks of the State Government or of BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in State of Haryana v. Charanjit Singh, (2006) 9 SCC 321, wherein Their Lordships have put the entire controversy to rest and held that the principle, 'equal pay for equal work' must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal

> and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in Charanjit Singh all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL."

Based on the above consideration, this Court recorded its conclusion as follows:-

> "35. We say at the cost of repetition that there is no parity in the nature of work, mode of appointment, experience, educational qualifications between the NALCO employees and the employees of the two schools. In fact, such a comparison can be made with their counter parts in the Government schools and/or aided or unaided schools. On that parameter, there cannot be any grievance of the staff which is getting better emoluments and enjoying far superior service conditions."

It is, therefore apparent, that the principle of 'equal pay for equal work' was held to be not applicable to the employees of the two schools, so as to enable them to claim parity, with the employees of NALCO.

25. We shall now attempt an analysis of the decisions rendered by this Court, wherein temporary employees (differently designated as work-charge, daily-wage, casual, ad-hoc, contractual, and the like) raised a claim for being extended wages, equal to those being drawn by regular employees, and the parameters determined by this Court, in furtherance of such a claim. Insofar as the present controversy is concerned, the same falls under the present category.

26. Dhirendra Chamoli v. State of U.P.[19], decided by a two-Judge bench: Two Class-IV employees of the Nehru Yuvak Kendra, Dehradun, engaged as casual workers on daily-wage basis, claimed that they were doing the same work as Class-IV employees appointed on regular basis. The reason for denying them

[19] (1986) 1 SCC 637

the pay-scale extended to regular employees was, that there was no sanctioned post to accommodate the petitioners, and as such, the assertion on behalf of the respondent-employer was, that they could not be extended the benefits permissible to regular employees. Furthermore, their claim was sought to be repudiated on the ground, that the petitioners had taken up their employment with the Nehru Yuvak Kendra knowing fully well, that they would be paid emoluments of casual workers engaged on daily-wage basis, and therefore, they could not claim beyond what they had voluntarily accepted.

(ii) This Court held, that it was not open to the Government to exploit citizens, specially when India was a welfare state, committed to a socialist pattern of society. The argument raised by the Government was found to be violative of the mandate of equality, enshrined in Article 14 of the Constitution. This Court held that the mandate of Article 14 ensured, that there would be equality before law and equal protection of the law. It was inferred therefrom, that there must be 'equal pay for equal work'. Having found, that employees engaged by different Nehru Yuvak Kendras in the country were performing similar duties as regular Class-IV employees in its employment, it was held, that they must get the same salary and conditions of service as regular Class-IV employees, and that, it made no difference whether they were appointed on sanctioned posts or not. So long as they were performing the same duties, they must receive the same salary.

27. Surinder Singh v. Engineer-in-Chief, CPWD[20], decided by a two-Judge bench: The petitioners in the instant case were employed by the Central Public Works Department on daily-wage basis. They demanded the same wage as was being paid to permanent employees, doing identical work. Herein, the respondent-employer again contested the claim, by raising the plea that petitioners could not be employed on regular and permanent basis for want of permanent posts. One of the objections raised to repudiate the claim of the petitioners was, that the doctrine of 'equal pay for equal work' was a mere abstract doctrine and was not capable of being enforced in law.

(ii) The objection raised by the Government was rejected. It was held, that all organs of the State were committed to the directive principles of the State policy. It was pointed out, that Article 39 enshrined the principle of 'equal pay for equal work', and accordingly this Court concluded, that the principle of 'equal pay for equal work' was not an abstract doctrine. It was held to be a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. Referring to the decision rendered by this Court in the D.S. Nakara case[2], it was held, that the above proposition had been affirmed by a Constitution Bench of this Court. It was held, that the Central Government, the State Governments and likewise, all public sector undertakings, were expected to function like model and enlightened employers and further, the argument that the above principle was merely an abstract doctrine, which could not be enforced through a Court of law,

[20] (1986) 1 SCC 639

could not be raised either by the State or by State undertakings. The petitions were accordingly allowed, and the Nehru Yuvak Kendras were directed to pay all daily-rated employees, salaries and allowances as were paid to regular employees, from the date of their engagement.

28. Bhagwan Dass v. State of Haryana[21], decided by a two-Judge bench: The Education Department of the State of Haryana, was pursuing an adult education scheme, sponsored by the Government of India, under the National Adult Education Scheme. The object of the scheme was to provide functional literacy to illiterates, in the age group of 15 to 35, as also, to impart learning through special contract courses, to students in the age group of 6 to 15, comprising of dropouts from schools. The petitioners were appointed as Supervisors. They were paid remuneration at the rate of Rs.5,000/- per month, as fixed salary. Prior to 7.3.1984, they were paid fixed salary and allowance, at the rate of Rs.60/- per month. Thereafter, the fixed salary was enhanced to Rs.150/- per month. The reason for allowing them fixed salary was, that they were required to work, only on part-time basis. The case set up by the State Government was, that the petitioners were not full-time employees; their mode of recruitment was different from Supervisors engaged on regular basis; the nature of functions discharged by them, was not similar to those discharged by Supervisors engaged in the regular cadre; and their appointments were made for a period of six months,

[21] (1987) 4 SCC 634

because the posts against which they were appointed, were sanctioned for one year at a time.

(ii) Having examined the controversy, this Court rejected all the above submissions advanced on behalf of the State Government. It was held, that the duties discharged by the petitioners even though for a shorter duration, were not any different from Supervisors, engaged in the regular cadre. Even though recruitment of Supervisors in the regular cadre was made by the Subordinate Selection Board by way of an open selection, whereas the petitioners were selected through a process of consideration which was limited to a cluster of a few villages, it was concluded that, that could not justify the denial to the petitioners, wages which were being paid to Supervisors, working in the regular cadre. It was held, that so long as the petitioners were doing work, which was similar to the work of Supervisors engaged in the regular cadre, they could not be denied parity in their wages. Accordingly it was held, that from the standpoint of the doctrine of 'equal pay for equal work', the petitioners could not be discriminated against, in regard to pay-scales. Having concluded that the petitioners possess the essential qualification for appointment to the post of Supervisor, and further the duties discharged by them were similar to those appointed on regular basis, it was held, that the petitioners could not be denied wages payable to regular employees. This Court also declined the plea canvassed on behalf of the Government, that they were engaged in a temporary scheme against posts which were sanctioned on year to year basis. On the instant aspect of the matter, it was held, that the same had no bearing to the

principle of 'equal pay for equal work'. It was held, that the only relevant consideration was, whether the nature of duties and functions discharged and the work done was similar. While concluding, this Court clarified that in the instant case, it was dealing with temporary employees engaged by the same employer, doing work of the same nature, as was being required of those engaged in the regular cadre, on a regular basis. It was held, that the petitioners, who were engaged on temporary basis as Supervisors, were entitled to be paid on the same basis, and in the same pay-scale, at which those employed in the regular cadre discharging similar duties as Supervisors, were being paid.

29. Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India[22], decided by a two-Judge bench: The persons on whose behalf the Mazdoor Manch had approached this Court under Article 32 of the Constitution of India, were working as daily-rated casual labourers, in the Posts and Telegraphs Department. They included three broad categories of workers, namely, unskilled, semi-skilled and skilled. The unskilled labour consisted of Safai Workers, Helpers, Peons, and the like. The unskilled labour was engaged in digging, carrying loads and other similar types of work. The semi-skilled labour consisted of Carpenters, Wiremen, Draftsmen, A.C. Mechanics etc. They needed to have technical experience, but were not required to possess any degree or diploma qualification. The skilled labour

[22] (1988) 1 SCC 122

consisted of labourers doing technical work. The skilled labourers were required to possess technical degree/diploma qualification.

(ii) All the three categories of employees, referred to above, were engaged as casual labourers. They were being paid very low wages. Their wages were far less than the salary and allowances paid to regular employees, of the Posts and Telegraphs Department, engaged for the same nature of work. The Director General, Posts and Telegraphs Department, by an order dated 15.5.1980 prescribed the following wages for casual labourers in the Department:-

> "(i) Casual labour who has not completed 720 days of service in a period of three years at the rate of 240 days per annum with the Department as on April 1, 1980.
>
> No change. They will continue to be paid at the approved local rates.
>
> (ii) Casual labour who having been working with the Department from April 1, 1977 or earlier and have completed 720 days of service as on April 1, 1980.
>
> Daily wages equal to 75 per cent of 1/30th of the minimum of Group D Time Scale plus admissible DA.
>
> (iii) Casual labour who has been working in the Department from April 1, 1975 or earlier and has completed 1200 days of service as on April 1, 1980.
>
> Daily wages equal to 1/30th of the minimum of the Group D Time Scale plus 1/30th of the admissible DA.
>
> (iv) All the casual labourers will, however, continue to be employed on daily wages only.
>
> (v) These orders for enhanced rates for category (ii) and (iii) above will take effect from May 1, 1980.
>
> (vi) A review will be carried out every year as on the first of April for making officials eligible for wages indicated in paras (ii) and (iii) above.
>
> (vii) The above arrangement of enhanced rates of daily wages will be without prejudice to absorption of casual mazdoors against regular vacancies as and when they occur…."

Four years later, by an order dated 26.7.1984, the rate of wages payable to casual labourers in Posts and Telegraphs Department, was revised as under:-

"(i) Casual semi-skilled/skilled labour who has not completed 720 days of service over a period of three years or more with the department.

No change. They will continue to be paid at the approved local rates.

(ii) Casual semi-skilled/skilled labour who has completed 720 days of service over a period of three years or more.

Daily wage equal to 75 per cent of 1/30th of the minimum of the scale of semi-skilled (Rs.210-270) or skilled (Rs.260-350) as the case may be, plus admissible DA/ADA thereon.

(iii) Casual labour who has completed 1200 days of service over a period of 5 years or more.

Daily wage equal to 1/30th of the minimum of the pay scale of semi-skilled (Rs.210-270) skilled (Rs.260-350) as the case may be, plus DA/ADA admissible thereon.

(iv) All the casual semi-skilled/skilled labour will, however continue to be employed on daily wages only.

(v) These orders for enhanced rates for category (ii) and (iii) above will take effect from April 1, 1984.

(vi) A review for making further officials eligible for wages vide (ii) and (iii) above will take effect as on first of April every year.

(vii) If the rates calculated vide (ii) and (iii) above happen to be less than the approved local rates, payment shall be made as per approved local rates for above categories of labour.

(viii) The above arrangements of enhanced rates of daily wages will be without prejudice to absorption of casual semi-skilled/skilled labour against regular vacancies as and when they occur….."

(iii) Aggrieved by the discrimination made against them, through the aforementioned orders dated 15.5.1980 and 26.7.1984, the Mazdoor Manch submitted a statement of demands, inter alia, claiming the same salary and allowances and other benefits, as were being paid to regular and permanent employees of the Union of India, in the corresponding cadres. The aforesaid demands were departmentally rejected on 13.12.1985. It is, therefore, that the petitioners approached this Court for the redressal of their grievances.

(iv) Before this Court the Union of India contended, that the employees in question belonged to the category of casual labourers, and had not been

regularly employed. As such, it was urged that they were not entitled to the same privileges, which were extended to regular employees.

(v) This Court while adjudicating upon the controversy, took into consideration the fact that, the employees in question were rendering the same kind of service which was being rendered by regular employees. The submission advanced before this Court, on behalf of the casual labourers, was under Article 38(2) of the Constitution, which provides that "The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." It was also urged on behalf of the employees, that the State could not deny (at least) the minimum pay in the pay-scales of regularly employed workmen, even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees.

(vi) While adjudicating upon the controversy, this Court expressed the view, that the denial of wages claimed by the workers in question, amounted to exploitation of labour. It was held, that the Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It was pointed out, that a casual labourer who had agreed to work on such low wages, had done so, because he had no other choice. In the opinion of this Court, it was poverty, that had driven the workers to accept such low wages. In the above view of the matter, in the facts and circumstances of the case, this Court held that classification of employees into

regularly recruited employees and casual employees for the purpose of paying less than the minimum wage payable to employees in the corresponding regular cadres, particularly in the lowest rung in the department, where the pay-scales were the least, was not tenable. This Court also held that the classification of labourers into three categories (depicted in the orders dated 15.5.1980 and 26.7.1984, extracted above) for the purpose of payment of wages at different rates, was not tenable. It was held, that such a classification was violative of Articles 14 and 16 of the Constitution, besides being opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966, which exhorts all State parties to ensure fair wages and equal wages for equal work. Accordingly, this Court directed the Union of India, and the other respondents, to pay wages to the workmen, who were engaged as casual labourers, belonging to different categories, at rates equivalent to the minimum pay, in the pay-scales of regularly employed workers, in the corresponding cadres, but without any increments. The workers were also held to be entitled to corresponding dearness allowance and additional dearness allowance, if any, payable thereon. It was also directed, that whatever other benefits were being extended to casual labourers hitherto before, would be continued.

30. Harbans Lal v. State of Himachal Pradesh[23], decided by a two-Judge bench: The petitioners in this case were Carpenters (1st and 2nd grade), employed at the Wood Working Centre of the Himachal Pradesh State Handicraft

[23] (1989) 4 SCC 459

Corporation. They were termed as daily-rated employees. Their claim in their petition was for emoluments in terms of wages paid to their counterparts in regular Government service, under the principle of 'equal pay for equal work'. On the factual matrix, based on the averments made in the pleadings, this Court felt that the Corporation with which the petitioners were employed, had no regularly employed Carpenter. It is, therefore evident, that the claim of the petitioners was only with reference to Carpenters engaged in different Government services. In the instant factual backdrop, this Court expressed the view, that the claim made by the petitioners could not be accepted, because the discrimination complained of, must be within the same establishment, owned by the same management. It was emphasized, that a comparison under the principle of 'equal pay for equal work' could not be made with counterparts in other establishments, having a different management, or even with establishments in different geographical locations, though owned by the same master. It was held, that unless it was shown, that there was discrimination amongst the same set of employees under the same master, in the same establishment, the principle of 'equal pay for equal work' would not be applicable. It is, therefore, that the claim of the petitioners was rejected.

31. Grih Kalyan Kendra Workers' Union v. Union of India[6], decided by a two-Judge bench: The workers' union had approached this Court, for the first time, in 1984, by filing writ petition no. 13924 of 1984. In the above petition, the relief claimed was for payment of wages under the principle of 'equal pay for equal work'. The petitioners sought parity with employees of the New Delhi Municipal

Committee, and also, with employees of other departments of the Delhi Administration, and the Union of India. They approached this Court again by filing civil writ petition no. 869 of 1988, which was disposed of by the above cited case.

(ii) The petitioners were employees of Grih Kalyan Kendras. They desired the Union of India, to pay them wages in the regular pay-scales, at par with other employees performing similar work, under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India. It would be relevant to mention, that the petitioner- Workers' Union, was representing employees working on ad-hoc basis. Some of them were being paid a fixed salary (described as honorarium), while others were working on piece-rate wages at the production centres, without there being any provision for any scale of pay, or other benefits like gratuity, pension, provident fund etc.

(iii) This Court, in the first instance, endeavoured to deal with the question, whether employers of these workers, were denying them wages as were being paid to other similarly placed employees, doing the same or similar work. The question came to be examined on account of the fact, that unless the petitioners could demonstrate, that the employees of the Grih Kalyan Kendras were being discriminated against, on the subject of pay and other emoluments, with other similarly placed employees, the principle of 'equal pay for equal work' would not be applicable. During the course of the first adjudication, in writ petition no. 13924 of 1984, this Court requested a former Chief Justice of India to make recommendations after taking into consideration, firstly, whether other similarly

situated employees (engaged in similar comparable works, putting in comparable hours of work, in a comparable employment) were being paid higher pay, and if so, what should be the entitlement of the agitating employees, in order to comply with the principle of 'equal pay for equal work'; and secondly, if there is no other similar comparable employment, whether the remuneration of the agitating employees deserved to be revised, on the ground that their remuneration was unconscionable or unfair, and if so, to what extent. Pursuant to the above request, the former Chief Justice of India, concluded, that there was no employment comparable to the employment held by those engaged by the Grih Kalyan Kendras, and therefore, they could not seek parity with employees, working either under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India.

(iv) Based on the aforesaid factual conclusion, this Court held, that the concept of equality implies and requires equal treatment, for those who are situated equally. Comparison between unequals is not possible. Since the workers who had approached this Court had failed to establish, that they were situated similarly as others, they could not be extended benefits which were being given to those, with whom they claimed parity. And therefore, since there were no other employees comparable to the employees working in the Grih Kalyan Kendras, this Court declined to entertain the prayer made by the petitioners.

32. Ghaziabad Development Authority v. Vikram Chaudhary[24], decided by a two-Judge bench: The respondents in this case were engaged by the Ghaziabad Development Authority, on daily-wage basis. The instant judgment has been referred to only because it was cited by the learned counsel for the appellants. In the cited case, the claim raised by the respondents was not based on the principle of 'equal pay for equal work', yet it would be relevant to mention, that while disposing of the appeal preferred by the Ghaziabad Development Authority, this Court held that the respondents, who were engaged as temporary daily-wage employees, would not be entitled to pay at par with regular employees, but would be entitled to pay in the minimum wages prescribed under the statute, if any, or the prevailing wages as available in the locality. It would, therefore, be improper for us to treat this judgment as laying down any principle emerging from the concept of 'equal pay for equal work'.

33. State of Haryana v. Jasmer Singh[25], decided by a two-Judge bench: The respondents were employed as Mali-cum-Chowkidars/Pump Operators on daily-wage basis, under the employment of the Government of Haryana. They had approached the High Court claiming the same salary as was being paid to the regularly employed persons, holding similar posts in the State of Haryana. The instant prayer was made by the respondents, under the principle of 'equal pay for equal work'. The above prayer made by the respondents, was granted by the High Court. The High Court issued a direction to the State Government, to pay

[24] (1995) 5 SCC 210

[25] (1996) 11 SCC 77

the respondents, the same salary and allowances as were being paid to regular employees holding similar posts, with effect from the dates on which the respondents were engaged by the State Government.

(ii) This Court held, that the respondents who were employed on daily-wage basis, could not be treated at par with persons employed on regular basis, against similar posts. It was concluded, that daily-rated workers were not required to possess the qualifications required for regular workers, nor did they have to fulfill the postulated requirement of age, at the time of recruitment. Daily-rated workers, it was felt, were not selected in the same manner as regular employees, inasmuch as, their selection was not as rigorous as that of employees selected on regular basis. This Court expressed the view, that there were also other provisions relating to regular service, such as the liability of a member of the service to be transferred, and his being subjected to disciplinary jurisdiction. It was pointed out, that daily-rated employees were not subjected to either of the aforesaid contingencies/consequences. In view of the aforesaid consideration, this Court held that the respondents, who were employed on daily-wage basis, could not be equated with regular employees for purposes of their wages, nor were they entitled to obtain the minimum of the regular pay-scale extended to regular employees. This Court, however held, that if a minimum wage was prescribed for such workers, the respondents would be entitled to it, if it was higher than the emoluments which were being paid to them.

(iii) It would be relevant to mention that in the above decision this Court took notice of the fact, that the State of Haryana had taken policy decisions from time

to time to regularize the services of the employees, similarly placed as the respondents, wherein daily-wage employees on completion of 3/5 years' service, were entitled to regularization. On their being regularized, they were entitled to wages payable to regular employees.

34. State of Punjab v. Devinder Singh[26], decided by a two-Judge bench: The respondents were daily-wage Ledger-Keepers/Ledger Clerks engaged by the State of Punjab. They approached the Punjab & Haryana High Court, claiming salary and allowances, as were being paid to regular employees holding similar posts. The High Court held in their favour, and directed the State Government to pay to the respondents, salary and allowances, as were being paid to regular employees holding similar posts. The aforesaid decision was rendered because the High Court accepted their contention, that they were doing the same work as was taken from regular Ledger-Keepers/Ledger Clerks. Their prayer was accordingly accepted, under the principle of 'equal pay for equal work'.

(ii) This Court was of the view that the principle of 'equal pay for equal work' could enure to the benefit of the respondents to the limited extent, that they could have been paid the minimum of the pay-scale of Ledger-Keepers/Ledger Clerks, appointed on regular basis. This conclusion was drawn by applying the principle of 'equal pay for equal work'. This Court, therefore, allowed the prayer made by the State Government to the aforesaid limited extent. The right claimed by the

[26] (1998) 9 SCC 595

respondents, to be paid in the same time scale, as regularly employed Ledger-Keepers/Ledger Clerks were being paid, was declined.

35. State of Haryana v. Tilak Raj[27], decided by a two-Judge bench: Thirty five respondents were appointed at different points of time, as Helpers on daily-wages by the Haryana Roadways. They filed a writ petition before the Punjab and Haryana High Court, claiming regularization because they had rendered long years of service. They also claimed salary, as was payable to regular employees, engaged for the same nature of work, as was being performed by them. Even though, the High Court did not accept the prayer made by the respondents, either for regularization or for payment of wages at par with regular employees, it directed the State of Haryana to pay to the respondents, the minimum pay in the scale of pay applicable to regular employees. The State of Haryana being aggrieved by the order passed by the High Court, approached this Court.

(ii) While disposing of the appeal preferred by the State of Haryana, this Court accepted the contention advanced on its behalf, that a scale of pay is attached to a definite post. This Court also accepted, that a daily-wager holds no post. In view of the above factual/legal position, this Court arrived at the conclusion, that the prayer made by the respondents before the High Court, that they be granted emoluments in the pay-scale of the regular employees, could not be acceded to. Since no material was placed before the High Court, comparing the nature of

[27] (2003) 6 SCC 123

duties of either category, it was held, that it was not possible to hold that the principle of 'equal pay for equal work' could be invoked by the respondents, to claim wages in the regular pay-scale.

(iii) Despite having found that the respondents were not eligible to claim wages in the regular scale of pay, on account of the fact that they were engaged on daily-wage basis, this Court directed the State of Haryana to pay to the respondents, the minimum wages as prescribed for such workers.

36. Secretary, State of Karnataka v. Umadevi[28], decided by a five-Judge Constitution Bench: Needless to mention, that the main proposition canvassed in the instant judgment, pertained to regularization of government servants, based on the employees having rendered long years of service, as temporary, contractual, casual, daily-wage or on ad-hoc basis. It is, however relevant to mention, that the Constitution Bench did examine the question of wages, which such employees were entitled to draw. In paragraph 8 of the judgment, a reference was made to civil appeal nos. 3595-612 of 1999, wherein, the respondent-employees were temporarily engaged on daily-wages in the Commercial Taxes Department. As they had rendered service for more than 10 years, they claimed permanent employment in the department. They also claimed benefits as were extended to regular employees of their cadre, including wages (equal to their salary and allowances) with effect from the dates from which they were appointed. Even though the administrative tribunal had rejected

[28] (2006) 4 SCC 1

their claim, by returning a finding, that they had not made out a case for payment of wages, equal to those engaged on regular basis, the High Court held that they were entitled to wages, equal to the salary of regular employees of their cadre, with effect from the date from which they were appointed. The direction issued by the High Court resulted in payment of higher wages retrospectively, for a period of 10 and more years. It would also be relevant to mention, that in passing the above direction, the High Court had relied on the decision rendered by a three-Judge bench of this Court in Dharwad District PWD Literate Daily-Wage Employees Association v. State of Karnataka[29]. The Constitution Bench, having noticed the contentions of the rival parties, on the subject of wages payable to daily-wagers, recorded its conclusions as under:-

> "55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages

[29] (1990) 2 SCC 396

> equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. Nos. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

We have extracted the aforesaid paragraph, so as not to make any inference on our own, but to project the determination rendered by the Constitution Bench, as was expressed by the Bench. We have no hesitation in concluding, that the Constitution Bench consciously distinguished the issue of pay parity, from the issue of absorption/regularization in service. It was held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary at the lowest grade of their cadre. The Constitution Bench expressed the view, that the concept of equality would not be applicable to the issue of absorption/regularization in service. And conversely, on the subject of pay parity, it was unambiguously held, that daily-wage earners should be paid wages equal to the salary at the lowest grade (without any allowances).

37. State of Haryana v. Charanjit Singh[30], decided by a three-Judge bench: A large number of civil appeals were collectively disposed of by a common order. In all these appeals, the respondents were daily-wagers, who were appointed as Ledger Clerks, Ledger Keepers, Pump Operators, Mali-cum-Chowkidar, Fitters, Petrol Men, Surveyors, etc. All of them claimed the minimum wages payable under the pay-scale extended to regular Class-IV employees. The above relief was claimed with effect from the date of their initial appointment. It would be relevant to mention, that while the appeals disposed of by the common order were pending before this Court, all the respondents were regularized. From the date of their regularization, they were in any case, being paid salary in the scales applicable to regular Class-IV employees. The limited question which came up for adjudication before this Court in the matters was, whether the directions issued by the High Court to pay the minimum wage in the scale payable to Class-IV employees to the respondents, from the date of their filing the respective petition before the High Court, was required to be interfered with. While adjudicating upon the aforesaid issue, this Court made the following observations:-

> "19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of State of Haryana v. Jasmer Singh, (1996) 11 SCC 77, State of Haryana v. Tilak Raj, (2003) 6 SCC 123, Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188, Govt. of W.B. v. Tarun K. Roy, (2004) 1 SCC 347, lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of

[30] (2006) 9 SCC 321

> "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regards. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof. <u>If the High Court, is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition</u>. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors."

Having made the above observations, the judgments rendered by the High Court were set aside, and the matters were remanded back to the High Court, to

examine each case in order to determine whether the respondents were discharging the same duties and responsibilities, as the employees with whom they claimed parity. In sum and substance therefore, this Court acceded to the proposition that daily-wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage in the pay-scale payable to regular employees. It is only because the said factual determination had not been rendered by the High Court, the matter was remanded back, for a fresh adjudication on the above limited issue.

38. State of U.P. v. Putti Lal[31], decided by a three-Judge bench: The question which arose for adjudication was, whether the respondents who were daily-rated wage earners in the Forest Department, were entitled to regularization, and should be paid the minimum of the pay-scale as was payable to a regular worker, holding a corresponding post in the Government. On the above issue, this Court in the above judgment, recorded the following conclusion:-

> "5. In several cases this Court applying the principle of equal pay for equal work has held that a daily-wager, if he is discharging the similar duties as those in the regular employment of the Government, should at least be entitled to receive the minimum of the pay scale though he might not be entitled to any increment or any other allowance that is permissible to his counterpart in the Government. In our opinion that would be the correct position and we, therefore, direct that these daily-wagers would be entitled to draw at the minimum of the pay scale being received by their counterparts in the Government and would not be entitled to any other allowances or increment so long as they continue as daily-wagers. The question of their regular absorption will obviously be dealt with in accordance with the statutory rules already referred to."

[31] (2006) 9 SCC 337

It is therefore apparent, that in the instant judgment, the three-Judge bench extended the benefit of the principle of 'equal pay for equal work' to persons engaged on daily-wage basis.

39. State of Punjab v. Surjit Singh[32], decided by a two-Judge bench: The respondents in the above mentioned matter, were appointed in different posts in the Public Health Department of the State of Punjab. All of them were admittedly appointed on daily-wage basis. Inter alia, because the respondent-employees had put in a number of years of service, they were held by the High Court to be entitled to the benefit of the principle of 'equal pay for equal work'. In the challenge raised before this Court, it was concluded as under:-

> "36. With utmost respect, the principle, as indicated hereinbefore, has undergone a sea change. We are bound by the decisions of larger Benches. This Court had been insisting on strict pleadings and proof of various factors as indicated heretobefore. Furthermore, the burden of proof even in that case had wrongly been placed on the State which in fact lay on the writ petitioners claiming similar benefits. The factual matrix obtaining in the said case particularly similar qualification, interchangeability of the positions within the regular employees and the casual employees and other relevant factors which have been noticed by us also had some role to play."

Rather than determining whether or not the respondents were entitled to any benefit under the principle of 'equal pay for equal work', on account of their satisfying the conditions stipulated by this Court in different judgments including the one in State of Haryana v. Charanjit Singh[30], this Court while disposing of the above matter, required the State to examine the cases of the respondents by appointing an expert committee, which would determine whether or not the

[32] (2009) 9 SCC 514

parameters laid down in the judgments rendered by this Court, would entitle the respondent-employees to any benefit under the principle of 'equal pay for equal work'. Herein again, the principle in question, was considered as applicable to temporary employees.

40. Uttar Pradesh Land Development Corporation v. Mohd. Khursheed Anwar[33], decided by a two-Judge bench: In the instant case, the respondents were employed on contract basis, on a consolidated monthly salary of Rs.2000/-. Prior to their appointment, they were interviewed by a selection committee alongwith other eligible candidates, and were found to be suitable for the job. Their contractual appointment was continued from time to time. Though they were employed on contract basis, the fact that two posts of Assistant Engineer and one post of Junior Engineer were vacant at the time of their engagement, was not disputed. The respondents were not given any specific designation. The Allahabad High Court, while accepting the claim filed by the respondents, held that they were entitled to wages in the regular pay-scale of Rs.2200-4000, prescribed for the post of Assistant Engineer.

(ii) This Court, while adjudicating upon the controversy arrived at the conclusion, that the High Court had granted relief to the respondents on the assumption that two vacant posts of Assistant Engineer were utilized for appointing the respondents. The above impression was found to be ex-facie fallacious, by this Court. This Court was of the view, that the orders of

[33] (2010) 7 SCC 739

appointment issued to the respondents, did not lead to the inference, that they were appointed against the two vacant posts of Assistant Engineer. Despite the above, this Court held, that the decision of the appellant Corporation to effect economy by depriving the respondents even, the minimum of pay-scale, was totally arbitrary and unjustified. This Court expressed the view, that the very fact that the respondents were engaged on a consolidated salary of Rs.2000 per month, while the prescribed pay-scale of the post of Assistant Engineer in the other branches was Rs.2200-4000, and that of Junior Engineer was Rs.1600-2660, was sufficient to infer, that both the respondents were engaged to work against the posts of Assistant Engineer. The appellants were directed to pay emoluments to the respondents, at the minimum of the pay-scale, prescribed for the post of Assistant Engineer (as revised from time to time), from the date of their appointment, till they continued in the employment of the Corporation.

41. Surendra Nath Pandey v. Uttar Pradesh Cooperative Bank Ltd.[34], decided by a two-Judge bench: The appellants in the above mentioned case, were appointed during 1978 to 1981 on daily-wage basis, by the U.P. Cooperative Bank Ltd. Upto 30.6.1981, they were paid daily-wages. From 1.7.1981, they were paid consolidated salary of Rs.368 per month, which was increased to Rs.575 per month with effect from 1.4.1982. From 1.7.1983, they were extended the benefit of minimum in the pay-scale applicable to regular employees, with allowances, but without yearly increments. Based on regulations framed for

[34] (2010) 12 SCC 400

regularization of ad-hoc appointees in 1985, the appellants were regularized from different dates in 1985-86, whereafter, they were paid wages in the regular pay-scale, with all allowances. In 1990, they approached the Allahabad High Court, seeking benefit of regular pay-scale, allowances and other benefits, which were extended to regular employees, with effect from the date of their original appointment. Their claim was rejected by the High Court. While adjudicating upon the appeal preferred by the appellants, this Court held as under:-

> "9. We are of the view that the real issue is whether persons employed on stopgap or ad hoc basis were entitled to the benefit of pay scales with increments during the period of service on daily or stopgap or ad hoc basis. Unless the appellants are able to establish that either under the contract, or applicable rules, or settled principles of service jurisprudence, they are entitled to the benefit of pay scale with increments during the period of their stopgap/ad hoc service, it cannot be said that the appellants have the right to claim the benefit of pay scales with increments."

The Consideration

42. All the judgments noticed in paragraphs 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of 'equal pay for equal work'. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them, were against the same post for which a higher pay-scale was being allowed, in other Government departments. Or alternatively, their duties and responsibilities were the same, as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of 'equal pay for equal work' was invoked and considered, it would be just and appropriate, to delineate

the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of 'equal pay for equal work'. Our consideration, has led us to the following deductions:-

(i) The 'onus of proof', of parity in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see – the Orissa University of Agriculture & Technology case[10], Union Territory Administration, Chandigarh v. Manju Mathur[15], the Steel Authority of India Limited case[16], and the National Aluminum Company Limited case[18]).

(ii) The mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of 'equal pay for equal work'. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see – the Randhir Singh case[1], and the D.S. Nakara case[2]).

(iii) The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (see – the Randhir Singh case[1]). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally

equal, should be of the same quality and sensitivity (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case[3], the Mewa Ram Kanojia case[5], the Grih Kalyan Kendra Workers' Union case[6] and the S.C. Chandra case[12]).

(iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of 'equal pay for equal work' (see – the Randhir Singh case[1], State of Haryana v. Haryana Civil Secretariat Personal Staff Association[9], and the Hukum Chand Gupta case[17]). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case[3] and the State Bank of India case[8]). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of

'equal pay for equal work' (see - State of U.P. v. J.P. Chaurasia[4], and the Grih Kalyan Kendra Workers' Union case[6]).

(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – the Orissa University of Agriculture & Technology case[10]).

(vii) Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria (see - State of U.P. v. J.P. Chaurasia[4]).

(viii) If the qualifications for recruitment to the subject post vis-a-vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see – the Mewa Ram Kanojia case[5], and Government of W.B. v. Tarun K. Roy[11]). In such a cause, the principle of 'equal pay for equal work', cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior

post, such as a promotional post (see - Union of India v. Pradip Kumar Dey[7], and the Hukum Chand Gupta case[17]).

(x) A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see – the Harbans Lal case[23]). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - Official Liquidator v. Dayanand[13]).

(xi) Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see – the State Bank of India case[8]).

(xii) The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable (see - State of Haryana v. Haryana Civil Secretariat Personal Staff Association[9]).

(xiii) The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post

and the reference post, were placed in the same pay-scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see - State of West Bengal v. West Bengal Minimum Wages Inspectors Association[14]).

(xiv) For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see - Union Territory Administration, Chandigarh v. Manju Mathur[15]).

(xv) There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see – the Hukum Chand Gupta case[17]), when the duties are qualitatively dissimilar.

(xvi) The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating

stagnation, or on account of lack of promotional avenues (see – the Hukum Chand Gupta case[17]).

(xvii) Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of 'equal pay for equal work', even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of 'equal pay for equal work' would not apply (see – the S.C. Chandra case[12], and the National Aluminum Company Limited case[18]).

43. We shall now venture to summarize the conclusions recorded by this Court, with reference to a claim of pay parity, raised by temporary employees (differently designated as work-charge, daily-wage, casual, ad-hoc, contractual, and the like), in the following two paragraphs.

44. We shall first outline the conclusions drawn in cases where a claim for pay parity, raised at the hands of the concerned temporary employees, was accepted by this Court, by applying the principle of 'equal pay for equal work', with reference to regular employees:-

(i) In the Dhirendra Chamoli case[19] this Court examined a claim for pay parity raised by temporary employees, for wages equal to those being disbursed to regular employees. The prayer was accepted. The action of not paying the same wage, despite the work being the same, was considered as violative of

Article 14 of the Constitution. It was held, that the action amounted to exploitation – in a welfare state committed to a socialist pattern of society.

(ii) In the Surinder Singh case[20] this Court held, that the right of equal wages claimed by temporary employees emerged, inter alia, from Article 39 of the Constitution. The principle of 'equal pay for equal work' was again applied, where the subject employee had been appointed on temporary basis, and the reference employee was borne on the permanent establishment. The temporary employee was held entitled to wages drawn by an employee on the regular establishment. In this judgment, this Court also took note of the fact, that the above proposition was affirmed by a Constitution Bench of this Court, in the D.S. Nakara case[2].

(iii) In the Bhagwan Dass case[21] this Court recorded, that in a claim for equal wages, the duration for which an employee would remain (- or had remained) engaged, would not make any difference. So also, the manner of selection and appointment would make no difference. And therefore, whether the selection was made on the basis of open competition or was limited to a cluster of villages, was considered inconsequential, insofar as the applicability of the principle is concerned. And likewise, whether the appointment was for a fixed limited duration (six months, or one year), or for an unlimited duration, was also considered inconsequential, insofar as the applicability of the principle of 'equal pay for equal work' is concerned. It was held, that the claim for equal wages would be sustainable, where an employee is required to discharge similar duties and responsibilities as regular employees, and the concerned employee

possesses the qualifications prescribed for the post. In the above case, this Court rejected the contention advanced on behalf of the Government, that the plea of equal wages by the employees in question, was not sustainable because the concerned employees were engaged in a temporary scheme, and against posts which were sanctioned on a year to year basis.

(iv) In the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch case[22] this Court held, that under principle flowing from Article 38(2) of the Constitution, Government could not deny a temporary employee, at least the minimum wage being paid to an employee in the corresponding regular cadre, alongwith dearness allowance and additional dearness allowance, as well as, all the other benefits which were being extended to casual workers. It was also held, that the classification of workers (as unskilled, semi-skilled and skilled), doing the same work, into different categories, for payment of wages at different rates, was not tenable. It was also held, that such an act of an employer, would amount to exploitation. And further that, the same would be arbitrary and discriminatory, and therefore, violative of Articles 14 and 16 of the Constitution.

(v) In State of Punjab v. Devinder Singh[26] this Court held, that daily-wagers were entitled to be placed in the minimum of the pay-scale of regular employees, working against the same post. The above direction was issued after accepting, that the concerned employees, were doing the same work as regular incumbents holding the same post, by applying the principle of 'equal pay for equal work'.

(vi) In the Secretary, State of Karnataka case[28], a Constitution Bench of this Court, set aside the judgment of the High Court, and directed that daily-wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization. But, the concept was held as applicable, and was indeed applied, to the issue of pay parity – if the work component was the same. The judgment rendered by the High Court, was modified by this Court, and the concerned daily-wage employees were directed to be paid wages, equal to the salary at the lowest grade of the concerned cadre.

(vii) In State of Haryana v. Charanjit Singh[30], a three-Judge bench of this Court held, that the decisions rendered by this Court in State of Haryana v. Jasmer Singh[25], State of Haryana v. Tilak Raj[27], the Orissa University of Agriculture & Technology case[10], and Government of W.B. v. Tarun K. Roy[11], laid down the correct law. Thereupon, this Court declared, that if the concerned daily-wage employees could establish, that they were performing equal work of equal quality, and all other relevant factors were fulfilled, a direction by a Court to pay such employees equal wages (from the date of filing the writ petition), would be justified.

(viii) In State of U.P. v. Putti Lal[31], based on decisions in several cases (wherein the principle of 'equal pay for equal work' had been invoked), it was held, that a daily-wager discharging similar duties, as those engaged on regular basis, would

be entitled to draw his wages at the minimum of the pay-scale (drawn by his counterpart, appointed on regular basis), but would not be entitled to any other allowances or increments.

(ix) In the Uttar Pradesh Land Development Corporation case[33] this Court noticed, that the respondents were employed on contract basis, on a consolidated salary. But, because they were actually appointed to perform the work of the post of Assistant Engineer, this Court directed the employer to pay the respondents wages, in the minimum of the pay-scales ascribed for the post of Assistant Engineer.

45. We shall now attempt an analysis of the judgments, wherein this Court declined to grant the benefit of 'equal pay for equal work' to temporary employees, in a claim for pay parity with regular employees:-

(i) In the Harbans Lal case[23], daily-rate employees were denied the claimed benefit, under the principle of 'equal pay for equal work', because they could not establish, that the duties and responsibilities of the post(s) held by them, were similar/equivalent to those of the reference posts, under the State Government.

(ii) In the Grih Kalyan Kendra Workers' Union case[6], ad-hoc employees engaged in the Kendras, were denied pay parity with regular employees working under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India, because of the finding returned in the report submitted by a former Chief Justice of India, that duties and responsibilities discharged by employees holding the reference posts, were not comparable with the posts held by members of the petitioner union.

(iii) In State of Haryana v. Tilak Raj[27], this Court took a slightly different course, while determining a claim for pay parity, raised by daily-wagers (- the respondents). It was concluded, that daily-wagers held no post, and as such, could not be equated with regular employees who held regular posts. But herein also, no material was placed on record, to establish that the nature of duties performed by the daily-wagers, was comparable with those discharged by regular employees. Be that as it may, it was directed, that the State should prescribe minimum wages for such workers, and they should be paid accordingly.

(iv) In State of Punjab v. Surjit Singh[32], this Court held, that for the applicability of the principle of 'equal pay for equal work', the respondents who were daily-wagers, had to establish through strict pleadings and proof, that they were discharging similar duties and responsibilities, as were assigned to regular employees. Since they had not done so, the matter was remanded back to the High Court, for a re-determination on the above position. It is therefore obvious, that this Court had accepted, that where duties, responsibilities and functions were shown to be similar, the principle of 'equal pay for equal work' would be applicable, even to temporary employees (otherwise the order of remand, would be meaningless, and an exercise in futility).

(vi) It is, therefore apparent, that in all matters where this Court did not extend the benefit of 'equal pay for equal work' to temporary employees, it was because the employees could not establish, that they were rendering similar duties and responsibilities, as were being discharged by regular employees, holding corresponding posts.

46. We have consciously not referred to the judgment rendered by this Court in State of Haryana v. Jasmer Singh[25] (by a two-Judge division bench), in the preceding two paragraphs. We are of the considered view, that the above judgment, needs to be examined and explained independently. Learned counsel representing the State government, had placed emphatic reliance on this judgment. Our analysis is recorded hereinafter:-

(i) In the above case, the respondents who were daily-wagers were claiming the same salary as was being paid to regular employees. A series of reasons were recorded, to deny them pay parity under the principle of 'equal pay for equal work'. This Court expressed the view, that daily-wagers could not be treated at par with persons employed on regular basis, because they were not required to possess qualifications prescribed for appointment on regular basis. Daily-wagers, it was felt, were not selected in the same manner as regular employees, inasmuch as, a regular appointee had to compete in a process of open selection, and would be appointed, only if he fell within the zone of merit. It was also felt, that daily-wagers were not required to fulfill the prescribed requirement of age, at the time of their recruitment. And also because, regular employees were subject to disciplinary proceedings, whereas, daily-wagers were not. Daily-wagers, it was held, could also not be equated with regular employees, because regular employees were liable to be transferred anywhere within their cadre. This Court therefore held, that those employed on daily-wages, could not be equated with regular employees, and as such, were not entitled to pay parity, under the principle of 'equal pay for equal work'.

(ii) First and foremost, it is necessary to emphasise, that in the course of its consideration in State of Haryana v. Jasmer Singh[25], this Court's attention had not been invited to the judgment in the Bhagwan Dass case[21], wherein on some of the factors noticed above, a contrary view was expressed. In the said case, this Court had held, that in a claim for equal wages, the manner of selection for appointment would not make any difference. It will be relevant to notice, that for the posts under reference in the Bhagwan Dass case[21], the selection of those appointed on regular basis, had to be made through the Subordinate Selection Board, by way of open selection. Whereas, the selection of the petitioners as daily-wagers, was limited to candidates belonging to a cluster of villages, and was not through any specialized selection body/agency. Despite thereof, it was held, that the benefit under the principle of 'equal pay for equal work', could not be denied to the petitioners. The aforesaid conclusion was drawn on the ground, that as long as the petitioners were performing similar duties, as those engaged on regular basis (on corresponding posts) from the standpoint of the doctrine of 'equal pay for equal work', there could be no distinction on the subject of payment of wages.

(iii) Having noticed the conclusion drawn in State of Haryana v. Jasmer Singh[25], it would be relevant to emphasise, that in the cited judgments (noticed in paragraph 26 onwards, upto paragraph 41), the employees concerned, could not have been granted the benefit of the principle of 'equal pay for equal work' (in such of the cases, where it was so granted), because temporary employees (daily-wage employees, in the said case) are never ever selected through a

process of open selection, by a specialized selection body/agency. We would therefore be obliged to follow the large number of cases where pay parity was granted, rather than, the instant singular judgment recording a divergent view.

(iv) Temporary employees (irrespective of their nomenclature) are also never governed by any rules of disciplinary action. As a matter of fact, a daily-wager is engaged only for a day, and his services can be dispensed with at the end of the day for which he is engaged. Rules of disciplinary action, are therefore to the advantage of regular employees, and the absence of their applicability, is to the disadvantage of temporary employees, even though the judgment in State of Haryana v. Jasmer Singh[25], seems to project otherwise.

(v) Even the issue of transferability of regular employees referred to in State of Haryana v. Jasmer Singh[25], in our view, has not been examined closely. Inasmuch as, temporary employees can be directed to work anywhere, within or outside their cadre, and they have no choice but to accept. This is again, a further disadvantage suffered by temporary employees, yet the judgment projects as if it is to their advantage.

(vi) It is also necessary to appreciate, that in all temporary appointments (-work-charge, daily-wage, casual, ad-hoc, contractual, and the like), the distinguishing features referred to in State of Haryana v. Jasmer Singh[25], are inevitable, yet in all the judgments referred to above (rendered before and after, the judgment in the State of Haryana v. Jasmer Singh[25]), the proposition recorded in the instant judgment, was never endorsed.

(vii) It is not the case of the appellants, that the respondent-employees do not possess the minimum qualifications required to be possessed for regular appointment. And therefore, this proposition would not be applicable to the facts of the cases in hand.

(viii) Another reason for us in passing by, the judgment in State of Haryana v. Jasmer Singh[25] is, that the bench deciding the matter had in mind, that daily-wagers in the State of Haryana, were entitled to regularization on completion of 3/5 years of service, and therefore, all the concerned employees, would in any case be entitled to wages in the regular pay-scale, after a little while. This factual position was noticed in the judgment itself.

(ix) It is not necessary for us to refer the matter for adjudication to a larger bench, because the judgment in State of Haryana v. Jasmer Singh[25], is irreconcilable and inconsistent with a large number of judgments, some of which are by larger benches, where the benefit of the principle in question was extended to temporary employees (including daily-wagers).

(x) For all the above reasons, we are of the view that the claim of the appellants cannot be considered, on the basis of the judgment in State of Haryana v. Jasmer Singh[25].

47. We shall now endeavour to examine the impugned judgments.

48. First and foremost, it is essential for us to deal with the judgment dated 11.11.2011 rendered by the full bench of the High Court (in Avtar Singh v. State of Punjab & Ors., CWP no. 14796 of 2003). A perusal of the above judgment reveals, that the High Court conspicuously focused its attention to the decision of

the Constitution Bench in the Secretary, State of Karnataka case[28]. While dealing with the above judgment, the full bench expressed the view, that though at the first impression, the judgment appeared to expound that payment of minimum wages drawn by regular employees, had also to be extended to persons employed on temporary basis, but a careful reading of the same would show that, that was not so. Learned counsel, representing the State of Punjab, reiterated the above position. In order to understand the tenor of the aforesaid assertion, reference was made to paragraphs 44 and 48, of the judgment of the Constitution Bench, which are extracted hereunder:-

> "44. The concept of "equal pay for equal work'' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment….
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> …..It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.
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> 48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting

more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

We have given our thoughtful consideration to the observations recorded by this Court, as were relied upon by the full bench (- as also, by the learned counsel representing the State of Punjab). It is not possible for us to concur with the inference drawn by the full bench, for the reasons recorded hereunder:-

(i) We are of the considered view, that in paragraph 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity, and regularization in service. It was held, that on the issue of pay parity, the concept of 'equality' would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of 'equality' could not be invoked for absorbing temporary employees in Government service, or for making temporary employees regular/permanent. All the observations made in the above extracted paragraphs, relate to the subject of regularization/permanence, and not, to the

principle of 'equal pay for equal work'. As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good, by making such a direction.

(ii) Insofar as paragraph 48 extracted above is concerned, all that needs to be stated is, that they were merely submissions of learned counsel, and not conclusions drawn by this Court. Therefore, nothing further needs to be stated, with reference to paragraph 48.

(iii) We are therefore of the view, that the High Court seriously erred in interpreting the judgment rendered by this Court in the Secretary, State of Karnataka case[28], by placing reliance on paragraphs 44 and 48 extracted above, for drawing its inferences with reference to the subject of pay parity. On the above subject/issue, this Court's conclusions were recorded in paragraph 55 (extracted in paragraph 36, hereinabove), which have already been dealt with by us in an earlier part of this judgment.

49. It would also be relevant to mention, that to substantiate its inference drawn from the judgment rendered by this Court in the Secretary, State of Karnataka case[28], the full bench of the High Court, placed reliance on State of Punjab v. Surjit Singh[32], and while doing so, reference was made to the following observations recorded in paragraphs 27 to 30 (of the said judgment). Learned counsel for the State of Punjab has reiterated the above position. Paragraphs 27 to 30 aforementioned are being extracted hereunder:-

"27. While laying down the law that regularization under the constitutional scheme is wholly impermissible, the Court in State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, had issued certain directions relating to the employees in the services of the Commercial Taxes Department, as noticed hereinbefore. The employees of the Commercial Taxes Department were in service for more than ten years. They were appointed in 1985-1986. They were sought to be regularized in terms of a scheme. Recommendations were made by the Director, Commercial Taxes for their absorption. It was only when such recommendations were not acceded to, the Administrative Tribunal was approached. It rejected their claim. The High Court, however, allowed their prayer which was in question before this Court.

28. This Court stated: (Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1, pp. 19-20, para 8)

> "8. … It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka, (1990) 2 SCC 396, and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts."

29. It is in the aforementioned factual backdrop, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India, directed: (Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1, p. 43, para 55)

> "55. … Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for

> making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."
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> 30. We, therefore, do not see that any law has been laid down in para 55 of the judgment in Umadevi case. Directions were issued in view of the limited controversy. As indicated, the State's grievances were limited."

Yet again, we are of the view, that the full bench erred in referring to the above observations, to draw its conclusions. Our reasons are summarized hereinbelow:-

(i) It is apparent, that this Court in State of Punjab v. Surjit Singh[32], did hold, that the determination rendered in paragraph 55 of the judgment in the Secretary, State of Karnataka case[28], was in exercise of the power vested in this Court, under Article 142 of the Constitution of India. But the above observation does not lead, to the conclusion or the inference, that the principle of 'equal pay for equal work' is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded, that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee, discharging the same duties. It needs to be noticed, that on

the subject of pay parity, the findings recorded by this Court in the Secretary, State of Karnataka case[28], were limited to the conclusions recorded in paragraph 55 thereof (which we have dealt with above, while dealing with the case law, on the principle of 'equal pay for equal work').

(ii) Even in the case under reference - State of Punjab v. Surjit Singh[32], this Court accepted the principle of 'equal pay for equal work', as applicable to temporary employees, by requiring the State to examine the claim of the respondents for pay parity, by appointing an expert committee. The expert committee was required to determine, whether the respondents satisfied the conditions stipulated in different judgments of this Court including State of Punjab v. Charanjit Singh[30], wherein this Court had acceded to the proposition, that daily-wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage payable to regular employees. And had therefore, remanded the matter back to the High Court for a fresh adjudication. Paragraph 38 of the judgment in State of Punjab v. Surjit Singh[32], wherein the remand was directed, is being extracted below:-

> "38. We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by appointing an expert committee as to whether the principles of law laid down herein viz. as to whether the respondents satisfy the factors for invocation of the decision in State of Haryana v. Charajnit Singh, (2006) 9 SCC 321 in its entirety including the question of appointment in terms of the recruitment rules have been followed."

(iii) For all the above reasons, we are of the view, that the claim of the temporary employees, for minimum wages, at par with regularly engaged

Government employees, cannot be declined, on the basis of the judgment in State of Punjab v. Surjit Singh[32].

50. The impugned judgment rendered by the full bench, also relied upon the judgment in Satya Prakash v. State of Bihar[35], which also attempted to interpret the judgment in the Secretary, State of Karnataka case[28]. Learned counsel for the State of Punjab also referred to the same, to canvass the case of the State government. Relevant observations relied upon, are reproduced below:-

> "7. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. The appellants were only engaged on daily wages in the Bihar Intermediate Education Council.
> 8. In State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.
> 9. Paragraph 53 of Umadevi (3) judgment, deals with irregular appointments (not illegal appointments). The Constitution Bench specifically referred to the judgments in State of Mysore vs. S.V. Narayanappa, AIR 1967 SC 1071, and R.N. Nanjundappa vs. T. Thimmiah, (1972) 1 SCC 409, in para 15 of Umadevi (3) judgment as well. Let us refer to paras 15 and 16 of Umadevi (3) judgment in this context.
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> 15. In our view, the appellants herein would fall under the category of persons mentioned in paras 8 and 55 of the judgment and not in para 53 of judgment of Umadevi (3)."

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[35] (2010) 4 SCC 179

Yet again, all that needs to be stated is, that the observations relied upon by the full bench of the High Court, dealt with the issue of regularization, and not with the concept of 'equal pay for equal work'. Paragraph 7 extracted above, leaves no room for any doubt, that the issue being considered in the Satya Prakash case[35], pertained to regularization of the appellants in service. Our view, that the issue being dealt with pertained to regularization gains further ground from the fact (recorded in paragraph 1 of the above judgment), that the appellants in the Satya Prakash case[35] had approached this Court, to claim the benefit of paragraph 53 of the judgment in the Secretary, State of Karnataka case[28]. Paragraph 53 aforementioned, is reproduced below:-

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Maysore v. S.V. Narayanappa, AIR 1967 SC 1071, R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409, and B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

A perusal of paragraph 53 extracted above, leaves no room for any doubt, that the issue canvassed was of regularization, and not pay parity. We are therefore of the view, that reliance on paragraph 53, for determining the question of pay parity (claimed by the concerned employees), resulted in the High Court drawing an incorrect inference.

51. The full bench of the High Court, while adjudicating upon the above controversy had concluded, that temporary employees were not entitled to the minimum of the regular pay-scale, merely for the reason, that the activities carried on by daily-wagers and regular employees were similar. The full bench however, made two exceptions. Temporary employees, who fell in either of the two exceptions, were held entitled to wages at the minimum of the pay-scale drawn by regular employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder:-

> "(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.
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> (2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.
>
> (3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months."

A perusal of the above conclusion drawn in the impugned judgment (passed by the full bench), reveals that the full bench carved an exception for employees who were not appointed against regular sanctioned posts, if their services had remained continuous (with notional breaks, as well), for a period of 10 years. This category of temporary employees, was extended the benefit of wages at the minimum of the regular pay-scale. In the Secretary, State of Karnataka case[28], similarly, employees who had rendered 10 years service, were granted an exception (refer to paragraph 53 of the judgment, extracted in the preceding paragraph). The above position adopted by the High Court reveals, that the High Court intermingled the legal position determined by this Court on the subject of regularization of employees, while adjudicating upon the proposition of pay parity, emerging under the principle of 'equal pay for equal work'. In our view, it is this mix-up, which has resulted in the High Court recording its afore-extracted conclusions.

(ii) The High Court extended different wages to temporary employees, by categorizing them on the basis of their length of service. This is clearly in the teeth of judgment in the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch case[22]. In the above judgment, this Court held, that classification of employees based on their length of service (- those who had not completed 720 days of service, in a period of 3 years; those who had completed more than 720 days of service - with effect from 1.4.1977; and those who had completed 1200 days of service), for payment of different levels of wages (even though they were admittedly discharging the

same duties), was not tenable. The classification was held to be violative of Articles 14 and 16 of the Constitution.

(iii) Based on the consideration recorded hereinabove, the determination in the impugned judgment rendered by the full bench of the High Court, whereby it classified temporary employees for differential treatment on the subject of wages, is clearly unsustainable, and is liable to be set aside.

52. In view of all our above conclusions, the decision rendered by the full bench of the High Court in Avtar Singh v. State of Punjab & Ors. (CWP no. 14796 of 2003), dated 11.11.2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the division bench of the High Court in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009) is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010), with the modification, that the concerned employees would be entitled to the minimum of the pay-scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.

53. We shall now deal with the claim of temporary employees before this Court.

54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court.

The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"Article 7
The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
(a) Remuneration which provides all workers, as a minimum, with:
(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
(b) Safe and healthy working conditions;
(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

57. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work'

summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post.

59. Disposed of in the above terms.

60. It would be unfair for us, if we do not express our gratitude for the assistance rendered to us by Mr. Rakesh Khanna, Additional Advocate General, Punjab. He researched for us, on our asking, all the judgments on the issue of pay parity. He presented them to us, irrespective of whether the conclusions recorded therein, would or would not favour the cause supported by him. He also assisted us, on different parameters and outlines, suggested by us, during the course of hearing.

.....J.
(Jagdish Singh Khehar)

.....J.
(S.A. Bobde)

New Delhi;
October 26, 2016.

Note: The emphases supplied in all the quotations in the instant judgment, are ours.