



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
ITANAGAR PERMANENT BENCH

WP(C) No. 33(AP)/2021

1. Smt. Yabi Mindo,
D/o Late Taba Mindo,
permanent resident of Vill-Poyom,
PO & PS-Darak, West Siang District,
Arunachal Pradesh.
2. Smt. Dubi Bagra,
W/o Shri Tate Rina,
permanent resident of Village-Mane,
PO & PS-Korang, East Siang District,
Arunachal Pradesh.
3. Ms. Obur Riram,
D/o Shri Tanya Riram,
permanent resident of Village-Bilat,
PO-Bilat, East Siang District, Arunachal Pradesh.
4. Smt. Nagami Bogo,
W/o Shri Karre Potom,
permanent resident of Village-Bogo, PO-Darak,
PS-Kamba, West Siang District, Arunachal Pradesh.
5. Smt. Ating Tamuk,
W/o Kaling Pangu,
permanent resident of Village-Bogne,
PO & PS-Kaying, Siang District, Arunachal Pradesh.
6. Smt. Nabam Yasso,
W/o Shri Toko Sakha,
permanent resident of Village-Langher,
PO & PS-Sagalee, Papum Pare District,

Arunachal Pradesh.

7. Smt. Mudang Yanyung,
W/o Hibu Tadil,
permanent resident of village-Hong,
PO & PS-Ziro, Lower Subansiri District,
Arunachal Pradesh.

.....Petitioners.

-Versus-

1. The State of Arunachal Pradesh,
represented by the Commissioner/Secretary,
PHE & WS Department, Govt. of Arunachal Pradesh,
Civil Secretariat, Itanagar-791111.
2. The Superintending Engineer, Coordination,
PHE & WS Department, Govt. of Arunachal Pradesh,
Itanagar-791111.
3. The Chief Engineer, Eastern Zone, PHE & WS,
Itanagar, Arunachal Pradesh.
4. The Chief Engineer, PHE & WS-Western Zone,
Senki Park, Itanagar, Arunachal Pradesh.
5. Smt. Yompu Gadi,
D/o Layam Eshi,
resident of Village-Talap, PO-Darak, PS-Kamba Aalo,
District-West Siang, presently working in the office of the
Chief Engineer, Eastern Zone, PHED & WS Namsai,
PO & PS-Namsai, District-Namsai, Arunachal Pradesh.
6. Ms. Kabin Laye,
D/o Deka Laye,
resident of Village-Tirbin, Lepa Rada District,
Arunachal Pradesh and presently working in the office of the
Chief Engineer, Eastern Zone, PHED & WS, Namsai,
PO & PS-Namsai, Arunachal Pradesh.
7. Ms. Kenyir Bogo,
D/o Bomken Bogo,
resident of Village-Talap, PO-Darak, PS-Kamba, Aalo,

West Siang District, Arunachal Pradesh and presently working in the office of the Chief Engineer, Eastern Zone, PHED & WS, Namsai, PO & PS-Namsai, District-Namsai, Arunachal Pradesh.

8. Shri Bamar Ado,
S/o Late Duba Ado,
resident of Village-Darka, PO-Aalo, District West Siang, Arunachal Pradesh and presently working in the office of the Chief Engineer, Eastern Zone, PHED & WS, Namsai, PO & PS-Namsai, District-Namsai, Arunachal Pradesh.

.....Respondents.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Petitioner(s) : Mr. A. Apang, Sr. Adv.,
Ms. N. Anju. Advocates.

For the Respondent(s) : Mr. S. Tappin, Addl. AG, AP,
Mr. K. Bogo,
Mr. D. Ado.
.....Advocates.

Date of Hearing : 13.06.2023

Date of Judgment : 10.08.2023

JUDGMENT AND ORDER

Heard Mr. A. Apang, learned Senior counsel assisted by Ms. N. Anju, learned counsel for the petitioners. Also heard Mr. S. Tappin, learned Senior Government Advocate, Arunachal Pradesh, appearing for the respondent Nos. 1 - 4, Mr. K. Bogo, learned counsel appearing for the private respondent Nos. 5 - 7 and Mr. D. Ado, learned counsel appearing for the respondent No.8.

2. This petition, under Article 226 of the Constitution of India, is preferred by seven petitioners, praying for following relief(s):-

- (i) To direct the respondent authorities to consider and expeditious disposal of the representation dated 07.02.2020, submitted by the petitioners.
- (ii) To regularize the service of the petitioners in the post of LDC/LDC Typist.
- (iii) To give pay and allowances equal to a regular Lower Division Clerk (LDC)/LDC- Typist from the day when they were engaged as contingency typist, as they have been discharging the duty of regular LDC and also to quash the appointment of private respondent Nos.5 – 8, being the same made without following proper procedure.

3. The background facts, leading to filing of the present petition, is briefly stated as under:-

"The writ petitioners have been working as casual employees in the Public Health Engineering and Water Supply Department (in short 'the PHE & WSD'), Govt. of Arunachal Pradesh. They were appointed on different dates, starting from the year 1996 to

2007, and they have been continuing their service in the said capacity till date.

The petitioners have filed several representations for regularization of their services to the concerned authorities, but the same failed to yield any result. It is their pleaded case that though they have been categorized and appointed as contingency staff, but, they have been discharging their duties as regular Lower Division Clerk (LDC). The respondent authorities, without considering the length of services of the petitioners for regularization, have been appointing, regularizing and promoting their juniors/private respondents, without following the due process of appointment, regularization and promotion. And though the petitioners have been working like regular LDC/LDC - Typist, yet they have not been provided with the salary equal to regular LDC/LDC - Typist and since the petitioners have been discharging the same functions, like the regular LDC/LDC - Typist as well as Computer Operator, they are entitled to equal pay for equal work. But, they are being deprived of the same and they are being paid lesser amount of pay, than the work performed by them.

It is also the case of the petitioners that the respondent Nos. 5 - 8 are junior to the petitioners and they have been given higher pay scale and allowance by following the pick and choose policy. The petitioners have filed several representations for cancellation of the appointment of the said private respondents and also prayed for regularization of their service, but no response has been received till date. The action of the respondent authorities, thus violated the right guaranteed to them by Articles 14, 16 and 21 of the Constitution of India and

therefore, they have approached this Court with the aforesaid prayers.”

4. The respondent Nos.3 & 4 have filed their affidavit-in-opposition denying the assertions made by the petitioners in their writ petition. It is stated that in the State of Arunachal Pradesh, the CPWD Manual is being followed by the Engineering Department across the State and the Department Promotion Committee (DPC), deals with the issues/matters regarding promotion of regular LDC/LDC Typist as well as Computer Operator and it is the responsibility of the Chief Engineer (Coordination) for the entire PHE & WSD and in the case of service of Work Charge staff, the respective Superintending Engineer of the Circle are assigned with the responsibility. It is stated that after the decision of the Government to re-functionalize the office of the Divisional Commissioners with shifting of all offices of the Chief Engineer, Eastern Zone from Itanagar to Eastern Zone Belt, it was found that many of the staff in the office of the Chief Engineer, PHE & WSD, Eastern Zone (EZ) were on dual charge basis with the office of the Chief Engineer, PHE & WSD (D&P) and against a standard norms of 65 officials, only 21 officials were working and the same was also further reduced to 17, with many of the staff of the Zonal Office of the Chief Engineer, PHE & WSD, Eastern Zone getting themselves transferred without their relievers and since the number of regular posts in the Department has not increased for a long time, whereas many functional offices have been created in the recent times without supplementary post creation of regular staff, the Department find it difficult in the distribution of the staff and considering this constrain and shortage of staff in the Zonal Office of the Chief Engineer, PHE & WSD, the State Government was approached to create at least few Work Charge posts in the Zonal

Office, who could be engaged to look after the works of regular staff and handle the file works and other assigned duties and pursuant to the said request, the Government has approved creation of two Work Charge posts of drivers, four Work Charge posts of Computer Operator and five Contingent Posts for the office of the Chief Engineer, PHE & WSD, Eastern Zone, vide its No.Sectt/PHE-(E)-153/2011, for smooth functioning of the office. As the Work Charge posts mentioned above were created in the office of the Chief Engineer, PHE & WSD, Eastern Zone, under the Chairmanship of the Superintending Engineer, Head Quarter in the Zonal Office, the trade tests were conducted amongst all the contingent/MTS Computer Operators, working in the Zonal Office and accordingly, the qualified staffs were given appointment to the aforesaid posts and as the petitioners were working under the Western Zone, there is no question of depriving of anyone of his or her right and the appointments have not been done on pick and choose basis.

5. In their affidavit-in-opposition, the respondent Nos.5—7 have stated that they were appointed as contingent menial on 21.11.2007 and the respondent No.6 was appointed as Casual Typist on 22.11.2016, under the establishment of the Chief Engineer, PHE Department and their services were renewed from time to time by the Government and while they were serving in the Department of Public Health Engineering, the Government of Arunachal Pradesh, in the public interest, restructured the Department into two zones, i.e. PHED, Eastern Zone and PHED, Western Zone, headed by Chief Engineer on 12.06.2009. Thereafter, the manpower between the two zones were shared and all the petitioners choose to remain in the establishment of PHED, Western Zone and the respondents opted for PHED, Eastern Zone. Thereafter, on 18.02.2019, two Work Charge posts of drivers,

four Work Charge posts of Computer Operator and five Contingent Posts were created by the Government in the establishment of the Chief Engineer, PHED, Eastern Zone and the said posts were filled up by conducting interview on 03.01.2020, and they have appeared in the interview and cleared the selection process and thereafter, they were appointed as Work Charge Computer Operator (Temporary) and as the petitioners are employees of PHED, Western Zone, they have no *locus standi* to challenge appointment made in the posts, created exclusively for the PHED, Eastern Zone and that they have never been appointed by adopting pick and choose policy and the averments, so made by the petitioners, are misleading and misconceived and therefore, it is contended to dismiss the petition.

6. In his affidavit-in-opposition, the respondent No.8 has also reiterated the same facts like the respondent Nos.5 - 7 and he had applied for and appeared in the Typing Test conducted by a Board comprising of three members and he secured 92.67 marks and cleared the selection process and thereafter, appointed as Work Charge Computer Operator on temporary basis. It is also stated that the averments made by the petitioners that they have been selected by adopting the pick and choose policy is misconceived, as for filling up the aforesaid posts, advertisement was published on 26.12.2019 and a Board was constituted to conduct the tests on 02.01.2020 and the interview was conducted on 03.01.2020 and as such, the allegation leveled by the petitioners are unfounded and therefore, it is contended to dismiss the petition.

7. The petitioners have filed their reply to the affidavit-in-opposition filed by the respondents and denied the averments made by the State as well as by the private respondents both. It is also stated that the

petitioners have obtained some documents of the Department by filing RTI application and found 58 numbers of Ad-hoc LDC were appointed without publishing advertisement and maintaining codal formalities and that the respondent authorities have appointed 18 person as the LDC, by holding DPC, but, no record could be produced by them. Under the aforementioned facts and circumstances, the petitioners contended to allow their petition, by setting aside the averments of the respondent Nos. 5 - 8.

8. Mr. A. Apang, learned Senior Counsel appearing for the petitioners, submits that the petitioners were appointed as Casual Employee at first, but, they have been working as LDC/LDC - Typist/Computer Operator, since their appointment from the year 1996 to 2007. But the private respondents, submits Mr. Apang, were appointed from 2016 onward and they have been given the opportunity to appear in the interview and they have been selected on pick and choose basis and they have been getting the salary @ Rs.25,000/- (Rupees twenty five thousands) per month, with other service benefits, but the petitioners, who have been discharging the same function, have been deprived of the same and the petitioners were also not allowed to participate in the selection process for filling up the 11 (eleven) posts of contingency staff and no public advertisement was made and that the Chief Engineer, PHE Department, Eastern Zone has no power to appoint staff and as per the CPWD Manual, the Superintending Engineer, Coordination is the only appointing authority. Mr. Apang further submits that while selecting the candidates for the aforementioned posts, the respondent State Authorities have not placed the matter before the Staff Selection Board and that the DPC so constituted ought to have been made by

the Deputy Commissioner and that the Secretary of the concerned Department, though made a party has not filed any affidavit and therefore, Mr. Apang, learned Senior Counsel submits that the selection process was tainted with mala fide and the respondent Nos.5—8 have been selected on the basis of pick and choose policy and therefore, it is contended to set aside their selection and to re-advertise the aforesaid posts, and to give opportunities to the petitioners to participate in the selection process.

9. Controverting the submission of Mr. A. Apang, learned Senior Counsel for the petitioners, Mr. S. Tapin, learned Senior Govt. Advocate, appearing for the State respondent Nos.1 - 4 submits that the question of regularization arises only when vacancy arises and such regularization has to be made as per the The General Arunachal Service, Group - C (Ministerial) (Common) Lower Division Clerk /Lower Division Clerk cum Computer Operator/ Data Entry Operator Recruitment Rules of 2019, which provides that 25% of posts have to be filled up from MTS through Limited Departmental Competitive Examination, 15% of post from skilled contingency staffs through Limited Departmental Competitive Examination and 60% by direct recruitment. Mr. Tapin further submits that had the posts been there, then the case of the petitioners could have been considered for regularization. It is the further submission of Mr. Tapin that the appointments of the private respondents were made prior to shifting of the Eastern Zone and thereafter, no appointment has been made. Further, Mr. Tapin submits that in case of appointment, the CPWD Manual is also followed and as the posts were created for the Eastern Zone, the petitioners, who have been working in the Western Zone, cannot participate in the selection process and since the posts are not

regular and not included in the list of posts to be filled up through the Staff Selection Board, filling up the posts of the Work Charge employees, created for the Eastern Zone, could not be given to the Board. Mr. Tapin further submits that there is no merit in this petition and therefore contended to dismiss the same.

10. On the other hand, the learned counsel for the respondent Nos.5—8 submits that the petitioners have no *locus standi* to challenge the appointment of the private respondent Nos.5—8 and no pick and choose policy had been adopted for filling up the aforesaid posts and they have applied for the posts and appeared before the Interview Board and thereafter, they have been selected and appointed by the respondent authorities and as such the writ petition has no merit and therefore, it is contended to dismiss the same.

11. In his reply to the submissions of learned counsel for the respondents, Mr. A. Apang, learned Senior Counsel for the petitioners reiterated that no public advertisement was made and the appointment of the respondents were made on pick and choose basis and after their appointment, their tenure is being extended from time to time and the aforesaid posts should have been filled up through the Staff Selection Board. Mr. Apang further pointed out that the respondents have not completed 12 years and that no seniority list is prepared by the Department and after appointment of the respondents their tenure is being extended from time to time and the such extension is illegal and that the Chief Engineer, PHED, Western Zone is the appointing authority and the Superintending Engineer has no right to appoint the respondents and there is no Recruitment Rule and the Recruitment Rule of RWD is being followed and the CPWD Manual has not been

followed. Referring to the case of **Secretary, State of Karnataka vs. Umadevi and others**, reported in **2006 (4) SCC 1** and **State of Punjab and others vs. Jagjit Singh and others**, reported in **2017 (1) SCC 148**, Mr. Apang, learned Senior Counsel submits that the petitioners have been discharging their duties as LDC/LDC - Typist/Computer Operator, like a regular LDC/LDC - Typist/Computer Operator and as such they are entitled to get the minimum of the pay scale of LDC and therefore, it is contended to allow the petition.

12. In view of the contention made by the petitioners in the petition and by the respondents in their affidavit-in-opposition and also in view of the submissions so advanced at the Bar, the issues, that have arisen for consideration before this Court is formulated as under:-

- (i) Whether the petitioners are entitled to regularization of their services in the post of LDC/LDC cum Typists, since they have completed more than 20 years in the Public Health Engineering and Water Supply Department, Govt. of Arunachal Pradesh?
- (ii) Whether the private respondent Nos.5 to 8 were appointed as Work Charge employees, without following the due procedure of law and on such count, their appointments are liable to be set aside and quashed?
- (iii) Whether the petitioners are entitled to minimum scale of pay and allowances like regular LDC/LDC cum Typists, since they have been discharging the same duty like the regular LDC/LDC cum Typists, on the basis of the principle of '*equal pay for equal work*'?

13. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also gone through the case laws referred by Mr. A. Apang, learned Senior Counsel for the petitioners.

14. It is not in dispute that the petitioners were appointed as Casual Typist, Contingency Peon/LDC, contingency computer operator, casual LDC/Skilled worker from 12.10.1996 to 21.09.2007 and their appointment letters were enclosed with the petition as Annexure-1 (colly) from page 19 to 36. The date of appointment of the petitioners, their respective posts and their educational qualifications, as reflected in the petition is shown below:-

Sl. No.	Name of the petitioners	Date of appointment	Designation/ Post	Educational Qualification
01.	Smti. Tam Yami	1996	LDC, since 05.06.2007	Class-XII
02.	Smti. Yabi Mindo	12.10.1996	Casual Typist	Class-XII
03.	Smti. Dubi Bagra	07.07.1997	Contingency Peon	Class-XII
04.	Smti. Obur Riram	01.09.1997	Casual Typist	Class-XII
05.	Smti. Nagami Bogo	04.03.1998	Casual Computer Operator	Class-XII
06.	Smti. Ating Tamuk	03.08.2002	Casual Skilled Worker	Class-XII
07.	Nabam Yasso	21.07.2003	Casual Typist	B.A.
08.	Mudong Yanyung	21.09.2007	Casual Computer Operator	B.A.

15. It is apparent from the aforementioned chart that all the petitioners have been working in their present position for more than 12 years. Thus, there is substance in the submission of Mr. Apang, the learned Senior Counsel for the petitioners that since the petitioners have been discharging their duties for more than 12 years in the

present post, and some of whom are discharging their duties for more than 20 years, they are entitled to regularization in their present posts.

16. Mr. S. Tapin, learned Senior Government Advocate, Arunachal Pradesh, also fairly submits that the petitioners are entitled to be regularized in their present posts given the length of their service but, at present there is no post for their regularization. Mr. Tappin further submits that Recruitment Rule of 2019 is adopted and the contingency staffs are regularized as LDC by holding Limited Departmental Competitive Examination and as per Recruitment Rule only 15% posts are to be filled up by holding Limited Departmental Competitive Examination. Since there is no post at present, the regularization of the petitioners cannot be made and the department will consider the same whenever the vacancy arises and that too by following the relevant Recruitment Rules.

17. In view of above, this Court is of the considered opinion that the petitioners are not entitled to any relief on this count. However, having regards to the period of service rendered by the petitioners in the present post, the State respondents are directed to consider their regularization as and when the vacancy arises in future by following relevant Recruitment Rules.

In terms of above, the issue No. (I) formulated herein above stands answered.

18. Now coming to the issue of appointment of private respondents No. 5 to 8, as Work Charge employees in the newly created posts on

18.02.2019, in the pay matrix 4 level @ Rs.25,000/- per month, without following due process of law, it appears from the affidavit-in-opposition filed by respondent Nos.3 and 4, that there is no substance in such allegation. The submission of Mr. A. Apang, learned Senior counsel for the petitioners that private respondent Nos.5 to 8, were appointed on pick and choose basis and without advertising the said posts yet, such submission left this Court unimpressed inasmuch as the respondent Nos.3 and 4, in their affidavit, categorically stated that a selection committee comprising of 3 members namely, (i) Er. Takir Taloh-SSW, (ii) Er. Toni Taki SW-1 (iii) Roka Padu, Supdt, was formed vide Order dated 2nd January 2020 (Annexure-D) of Affidavit in opposition of respondent No.3 to recommend the roaster of merit on the basis of seniority, typing performance and viva voce test. Thereafter, an order, dated 26.12.2019, No. PHED-I/EZ/131/09(Pt-III) (Annexure-3 of affidavit in opposition of respondent No. 5, 6 and 7, was issued by the Chief Engineer (EZ) PHE & WSD, Namsai that there will be a typing test on 03.01.2020, in the office of the Chief Engineer (EZ) PHE & WSD, Namsai to finalize a roaster amongst the Contingency/MTS Staffs working in the office of the Chief Engineer Eastern Zone, whose services are either being utilized or are likely to be utilized as typist at 2.00 pm onward.

19. And only thereafter a list of 10 selected candidates (At Annexure-5) of the affidavit in opposition of respondent No. 5, 6 and 7 have been prepared on the basis of marks obtained by them. The relevant documents submitted in support of such contention in the affidavit-in-opposition, thus goes a long way to negate the claims so made by the petitioners and by their engaged counsel.

20. That, as regard the submission of Mr. Apang, the learned counsel for the petitioners, that the Staff Selection Board ought to have been entrusted the task of selection of newly created posts, I find from the record that the posts in which the privates respondents were appointed, are not regular posts. The said posts were created up to 29.02.2020. Being the same tenure posts, the same cannot be termed as "Subordinate Service Posts" as defined in Section 2(o) of the Arunachal Pradesh Staff Selection Board Act 2008. Mr. Tapin, the learned Senior Government Advocate has rightly pointed this out during hearing, and I find substance in the same and consequently, record concurrence with the same. Therefore, this court is in respectful disagreement with the submission of Mr. Apang.

21. Since the respondent Nos.5 to 8 were selected and appointed thereafter following at least some selection process, this Court is of the considered opinion that their appointments are not liable to be set aside and quashed as no illegality or impropriety shown to have committed by the state respondents while selecting and making appointment of the respondent Nos.5 to 8, that too against temporary posts.

The issue No.(ii), formulated herein above, is answered in negative, accordingly.

22. Now, coming to the Issue No.(ii), I find that it is the categorical stand of the petitioners that since the day of their appointment, they have been discharging the function like a regular LDC. Mr. Apang, learned Senior Counsel for the petitioners also submits that since the petitioners have been discharging the same function like the regular

LDC, they are entitled to equal pay like the regular LDCs based on the principle of equal pay for equal work.

23. The submissions, so advanced by Mr. Apang, learned Senior Counsel for the petitioners is not controverted by Mr. S. Tappin, learned Senior Government Advocate for the respondent Nos.1 to 4. Thus, there appears to be substance in the submission of Mr. Apang, learned Senior Counsel, for the petitioners and the ratio laid in the case of **Uma Devi** (supra) and **Jagjit Singh** (supra) also strengthen his submission. In the case of **Uma Devi** (supra), Hon'ble Supreme Court has held that the contingent employees who have been working for more than 10 years are entitled to be regularized as one time measure.

24. And in the case of **Jagjit Singh** (supra) in paragraph No. 42, Hon'ble Supreme Court has summarized the parameters, which are required to be fulfilled for application of the principle of 'equal pay for equal work', in respect of temporary employees It has been held as under:-

42. All the judgments noticed in paras 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:

- 42.1. 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 *Orissa University of Agriculture & Technology v. Manoj K. Mohanty*, (2003) 5 SCC 188, *U.T. Chandigarh, Admn. v. Manju Mathur*, (2011) 2 SCC 452, *SAIL v. Dibyendu Bhattacharya*, (2011) 11 SCC 122] and *National Aluminium Co. Ltd. v. Ananta Kishore Rout*, (2014) 6 SCC 756).
- 42.2. The mere fact that the subject post occupied by the claimant is in a "different department" vis-à-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 the Government (see *Randhir Singh case* [*Randhir Singh v. Union of India*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] and *D.S. Nakarav. Union of India*, (1983) 1 SCC 305).
- 42.3. The principle of "equal pay for equal work", applies to cases of unequal scales of pay, based on no classification or irrational classification (see *Randhir Singh v. Union of India*, (1982) 1 SCC 618). For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see *Federation of All India Customs and Central Excise Stenographers case* [*Federation of All India Customs and Central Excise Stenographers v. Union of India*, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] , *Mewa Ram Kanojia case* [*Mewa Ram Kanojia v. All India Institute of Medical Sciences*, (1989) 2 SCC 235, *Grih Kalyan Kendra Workers' Union v. Union of India*, (1991) 1 SCC 619] and *S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279).

42.4. 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 *Randhir Singh case* [*Randhir Singh v. Union of India*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] , *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72] and *Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666). Therefore, the principle would not be automatically invoked merely because the subject and reference posts have the same nomenclature.

42.5. 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 *Federation of All India Customs and Central Excise Stenographers v. Union of India*, (1988) 3 SCC 91 and *SBI v. M.R. Ganesh Babu*, (2002) 4 SCC 556). 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*, (1989) 1 SCC 121 and *Grih Kalyan Kendra Workers' Union v. Union of India*, (1991) 1 SCC 619).

42.6. 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 *Orissa University of Agriculture & Technology v. Manoj K. Mohanty*, (2003) 5 SCC 188).

42.7. 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*, (1989) 1 SCC 121 : 1989 SCC (L&S) 71]).

42.8. If the qualifications for recruitment to the subject post vis-à-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 *Mewa Ram Kanojia v. All India Institute of Medical Sciences*, (1989) 2 SCC 235 : and *State of W.B. v. Tarun K. Roy*, (2004) 1 SCC 347). In such a case the principle of “equal pay for equal work” cannot be invoked.

42.9. 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*, (2000) 8 SCC 580 and *Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).

42.10. 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 *Harbans Lal v. State of H.P.*, (1989) 4 SCC 459). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see *Official Liquidator v. Dayanand*, (2008) 10 SCC 1).

42.11. 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 *SBI v. M.R. Ganesh Babu*, (2002) 4 SCC 556).

- 42.12. 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 Assn.* (2002) 6 SCC 72)
- 42.13. 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 W.B. v. W.B. Minimum Wages Inspectors Assn.*, (2010) 5 SCC 225).
- 42.14. 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 *U.T. Chandigarh, Admn. v. Manju Mathur*, (2011) 2 SCC 452.
- 42.15. 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 *Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666, when the duties are qualitatively dissimilar.
- 42.16. 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 *Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666.

42.17. Where there is no comparison between one set of employees of one organisation, and another set of employees of a different organisation, there can be no question of equation of pay scales under the principle of "equal pay for equal work", even if two organisations have a common employer. Likewise, if the management and control of two organisations is with different entities which are independent of one another, the principle of "equal pay for equal work" would not apply (see *S.C. Chandra case* [*S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] and *National Aluminium Co. Ltd. v. Ananta Kishore Rout*, (2014) 6 SCC 756.

25. In paragraph No. 44, Hon'ble Supreme Court has dealt with the claim for pay parity, raised at the hands of the temporary employees concerned, by applying the principle of "equal pay for equal work" with reference to regular employees, has held as under :-

44.1. In *Dhirendra Chamoli v. State of U.P.*, (1986) 1 SCC 637 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.

44.2. In *Surinder Singh v. CPWD*, (1986) 1 SCC 639 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 *D.S. Nakara v. Union of India*, (1983) 1 SCC 305.

44.3. In *Bhagwan Dass v. State of Haryana*, (1987) 4 SCC 634 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 employee concerned 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 employees concerned were engaged in a temporary scheme, and against posts which were sanctioned on a year-to-year basis.

44.4. In *Daily Rated Casual Labour v. Union of India*, (1988) 1 SCC 122] this Court held, that under the principle flowing from Article 38(2) of the Constitution, the Government could not deny a temporary employee, at least the minimum wage being paid to an employee in the corresponding regular cadre, along with 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.

44.5. In *State of Punjab v. Devinder Singh*, (1998) 9 SCC 595, 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 employees concerned were doing the same work as regular incumbents holding the same post by applying the principle of "equal pay for equal work".

44.6. In *State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1, 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 regularisation. It was held that the concept of equality would not be applicable to issues of absorption/regularisation. 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 daily-wage employees concerned were directed to be paid wages equal to the salary at the lowest grade of the cadre concerned.

44.7. In *State of Haryana v. Charanjit Singh*, (2006) 9 SCC 321] , a three-Judge Bench of this Court held that the decisions rendered by this Court in *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 and *State of W.B. v. Tarun K. Roy*, (2004) 1 SCC 347] laid down the correct law. Thereupon, this Court declared that if the daily-wage employees concerned 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.

44.8. In *State of U.P. v. Putti Lal*, (2006) 9 SCC 337, 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.

44.9. In *U.P. Land Development Corpn. v. Mohd. Khursheed Anwar*, (2010) 7 SCC 739 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.

26. Further, having culled out the principles of 'equal pay for equal work' Hon'ble Supreme Court in paragraph Nos. 57, 58 and 59 held as under:-

57. 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 summarised by us in para 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 summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. 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. Anyone, 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 dependants 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.

59. 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:

"7. The States Parties to the present Covenant recognise 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."***

(emphasis supplied)

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.

27. It is also to be noted here that in the case of **Dilip Bhuyan & Ors. vs. State of Assam & Ors.** in WP(C) No.1353/2020, this Court has held that those workers, who have been working for more than 10 years, the respondent APDCL shall consider them for the benefit of providing them their salary at least in the minimum pay scale that are otherwise payable to the equivalent regularly appointed employees.

28. Now, advertent to the factual scenario of the case in hand I find that some of the petitioners have been discharging their duties in their present positions like a regular employee for more than 20 years. The petitioner No. 1 - **Smti. Tam Yami** has been working as **adhoc LDC** since the year 2007, and she was appointed in the year 1996. The petitioner No. 2 - **Smti. Yabi Mindo** was appointed as **Casual Typist** on **12.10.1996**. The petitioner No. 3 - **Smti. Dubi Barga** was appointed as **Contingency Peon** on **12.10.1996**. The petitioner No. 4 - **Smti. Obur Riram** was appointed as **Casual Typist** on **01.09.1997**. The petitioner No. 5 - **Smti. Nagami Bogo** was appointed as **Casual Computer operator** on **04.03.1998**. The petitioner No. 6 - **Smti. Ating Tamuk** was appointed as **Casual Skilled Worker** on **03.08.2002**. The petitioner No. 7 - **Smti. Nabam Yasso** was appointed as **Casual Typist** on **21.07.2003**. And the petitioner No. 8 - **Smti. Mudong Yanyung** was appointed as **Casual Computer Operator** on **21.09.2007**. Though Mr. Apang, the learned counsel for the petitioner submits that the petitioners have

been rendering services like regular LDC, yet except the petitioner No. 1, rest could not submit any documentary proof to substantiate such contention.

29. Thus, it is apparent that some of the petitioners have been rendering their services in the present posts for more than 20 years and even the last appointee, i.e. the petitioner No.8 also rendered services for more than 15 years. As submitted at the Bar, 12 years service is required for regularization. There is no immediate prospect of regularization of their services, as presently there are no such posts for regularization, as submitted by Mr. Tapin, the learned Senior Government Advocate.

30. As discussed herein above, the aforesaid contention of the petitioners have not been seriously disputed by the State respondents. Having considered above and also having considered the submissions of learned Advocates of both side, and also drawing premises from the proposition of law, so laid down in the case of **Jagjit Singh** (supra) and **Umadevi (3)**, (supra), this Court is of the considered opinion that the petitioners are entitled to at least minimum scale of pay in their present position, based on the principle of 'equal pay for equal work'. Accordingly, it is provided that the State respondents shall provide minimum pay scale to the petitioners from the date of filing the present writ petition i.e. **with effect from 03.02.2021.**

In terms of above, the Issue No.(ii), formulated herein above, stands answered.

31. In the result, the petition is allowed to the extent indicated herein above, leaving the parties to bear their own cost. It is, however, provided that the petitioners shall obtain a certified copy of this judgment and order and produce the same before the State respondents and upon receipt of the same, the State respondents shall complete the exercise within a period of 2(two) months, from the date of receipt of the certified copy of this judgment.

Sd/- Robin Phukan
J U D G E

Comparing Assistant