



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : WA 25/2022

1: THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE COMMISSIONER,
GOVERNMENT OF NAGALAND, KOHIMA

2: THE DEPUTY COMMISSIONER, DIMAPUR
NAGALAND

3: THE ADDITIONAL DEPUTY COMMISSIONER
NIULAND, NAGALAND

-VERSUS-

1: SMTI. HESHENI SUMI
R/O KHUTOVI VILLAGE,
NIULAND, NAGALAND

Advocate for the appellants: Ms. V. Suokhrie, Addl. Advocate General,
Nagaland

Advocate for the respondent : Mr. A. Zhimomi,
Mr. Imti Longjem,
Ms. Esther,
Ms. Lhousino,
Ms. Viketsono, Advs.

Date of hearing : 14.09.2022

BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGEMENT & ORDER (CAV)

Date : 20-01-2023

(K. Sema, J)

The present appeal has been preferred by the State appellant against the order dated 14/06/2022 passed by the learned Single Judge directing the State to pay to the respondent/petitioner the minimum scale of pay of sweeper along with arrears from the date of filing of the writ petition within 4(four) months from the date of receipt of the certified copy of the order.

2. The facts of the case in brief is narrated as follows;

(i) That by an order bearing No. NL/ESTT/10/ADMN/2008 dated 08/08/2012, the writ petitioner was appointed as a sweeper on contingency basis in the Office of the Extra Assistant Commissioner, Aghunaqa under the establishment of the Addl. Deputy Commissioner, Nuiland, Nagaland, on a fixed pay of Rs.3000/- P.M. which has been enhanced to Rs.3450/- P.M.

(ii) The writ petitioner, it is contended, discharges the same work and duties as those sweepers appointed on regular basis. The category of post held by the writ petitioner and the regularly appointed sweeper is also the same. The writ petitioner is however paid only a fixed pay of Rs. 3450/- P.M whereas the sweeper appointed on regular basis are granted salary in accordance with the revision of pay adopted by the State Government from time to time.

(iii) That the writ petitioner submitted the representation dated 07/12/2018 to the Addl. Deputy Commissioner, Nuiland, who in turn by the letter dated 07/12/2018 forwarded the representation submitted by the

petitioner to the Deputy Commissioner, Dimapur, Nagaland stating that the petitioner has been rendering her service with sincerity and dedication. However, till date the State respondents has not taken any favourable action to pay the scale of pay to the petitioner as paid to the similarly circumstanced regular sweeper.

(iv) The State respondents contested the claim of the writ petitioner contending that the petitioner was appointed as sweeper on contingency basis which was temporary in nature and liable to be terminated without notice and therefore, the petitioner was not entitled to claim scale pay at par with the regular employees of the State Government.

(v) The State respondents had also relied in the Office Memorandum dated 17/07/2013, issued by the Government of Nagaland, Office of the Commissioner, Nagaland which reads as follows;

**“GOVERNMENT OF NAGALAND
OFFICE OF THE COMMISSIONER : NAGALAND : KOHIMA**

OFFICE MEMORANDUM

Dated Kohima, the th July, 2013

Sub: Matter relating to appointment made on the basis of casual/contingency/admissible pay and regularization thereof.

No. CNE-1/8/2013/DMR:: It has come to the attention of the undersigned that a number of proposals are being received from the districts in respect of employees who have been appointed either on casual or contingency basis, for releasing them “scale of pay” or for regularization of service;

2. It is hereby clarified that there is no difference between “casual” and “contingency” appointments and they are made without sanctioned posts. All such appointments are therefore on FIXED PAY. No application should therefore be submitted for release of “scale of pay” in respect of any employee in this category.

3. Regularization of service through the District Level Recruitment

Board (DLRB) is admissible, provide that there is a sanctioned post/vacancy and the employee has the prescribed qualification. Applications for regularization of service outside this shall not be entertained by this office and may therefore not be submitted/forwarded.

Kindly acknowledge receipt of this memorandum.

Sd/- BANUO Z JAMIR

Addl. Chief Secretary & Commissioner, Nagaland."

(vi) Further, the State respondents has also relied on the Office Memorandum dated 24/07/2017 which also reads as follows;

***"GOVERNMENT OF NAGALAND
OFFICE OF THE COMMISSIONER : NAGALAND : KOHIMA***

OFFICE MEMORANDUM

Dated Kohima, the 24th July, 2017

Sub : Matter relating to appointment made on the basis of casual/contingency/admissible pay and regularization thereof.

No. CNE-1/GEN/2017 :: In continuation to the Office O.M No. CNE-1/8/2013/DMR/285 dated 19/07/2013, letter NO. CNE-4/1/2013/DMR/2288 dated 22/06/2015 and letter No. CNE-1/SP/2016/2257 dated 02/03/2016, it has been found that applications for grant of scale/service regularization of contingency/casual employees are still being forwarded by the concerned Deputy Commissioners, despite repeated reminders not to forward such cases.

- 1. It is hereby reiterated that these appointments were made without sanctioned posts and therefore, no application should be submitted for grant of scale pay in respect of any employee in this category.*
- 2. Regularization of service through District Level Recruitment Board (DLRB) is admissible, provided there is a sanctioned post/vacancy and the employee has the prescribed qualification. Applications for regularization of service outside this shall not be entertained by this Office and therefore should not be forwarded.*

Kindly acknowledge receipt of this memorandum.

Sd/- (SENTIYANGER IMCHEN) IAS
Deputy Commissioner
Nagaland : Kohima."

(vii) The O.M dated 17/07/2013 and the O.M dated 24/07/2017 has been relied upon by the State respondents to substantiate that the benefit of scale pay is extended only to person who are regularized in service but not to those who are appointed on contingency/casual basis.

(viii) The learned Single Judge after hearing the parties has by the order dated 14/06/2022 come to a finding that, in a welfare State, persons engaged for the same work cannot be paid less than another who performs the same duties and responsibilities and has accordingly directed the State respondents to pay to the writ petitioner the minimum scale of pay of sweeper along with arrears from the date of filing the present writ petition.

3. It is the correctness of the order dated 14/06/2022 which is challenged in the present appeal.

4. We have heard Ms. V. Suokhrie, learned Addl. Advocate General, Nagaland for the appellants and Mr. A. Zhimomi, learned counsel for the respondent/writ petitioner.

5. Ms. V. Suokhrie, learned Addl. Advocate General, Nagaland submits that the order dated 14/06/2022 passed by the learned Single Judge is unsustainable in law and liable to be dismissed inasmuch as the respondent/writ petitioner who was appointed as sweeper on contingency basis is not entitled to claim scale pay at par with the sweeper regularly appointed in service. The learned Addl. Advocate General by relying on the 2(two) Office Memorandum dated 17/07/2013 and dated 24/07/2017 submits that it is only when a person is regularized in service in a sanctioned post that he/she becomes entitled to receive the scale pay and not

otherwise. The learned Addl. Advocate General has also referred to section 15 of the Nagaland Work-Charged and Casual Employee Regulation Act, 2001 to submit that the casual employee shall be paid a wage as may be prescribed by the State Government on consideration of the recommendation of the commission constituted under Section-3 of the Act. Lastly, the learned Addl. Advocate General has submitted that the learned Single Judge has erroneously relied in the case of the **State of Punjab & Others -versus- Jagjit Singh & Others**, reported in **(2017) 1 SCC 148**, as the judgment in the said case pertains to employees engaged on regular basis who were claiming higher wages to similarly situated employees under the principle of equal pay for equal work. It has further been submitted that in Jagjit Singh's case all the temporary employees (such as daily wage employees, adhoc appointees, employees appointed on casual basis, contractual employees and the like) were appointed against sanctioned posts and therefore, the learned Single Judge erroneously applied the ratio laid down by the Hon'ble Apex Court in Jagjit Singh case to the present case.

6. In support of her submission, the learned Addl. Advocate General has relied in the case of the **State of Bihar & Others -versus- Bihar Secondary Teachers Struggle Committee Munger and Others**, reported in **(2019) 18 SCC 301**, to buttress the point that fixation of pay and determination of parity is a complex matter which is for the executive to discharge and granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences for the Government and the authorities. It is also submitted that principle of equal pay for equal work can only be applied if there is complete and wholesome identity between the two groups of employees similarly circumstanced, which is not so in the present case.

7. Ms. V. Suokhrie has further relied in the case of the **State of Madhya Pradesh -versus- R.D Sharma & Another**, reported in **2022 SCC online SC 94**, to substantiate that the Hon'ble Supreme Court has consistently held that the equation and determination of pay scales is the primary function of the executive and not the judiciary and therefore, ordinarily court will not enter upon the task of job evaluation which is generally left to the expert bodies like the pay commission. This is because the job evaluation may include various factors including the relevant data and scales for evaluating performances of different group of employees and such evaluation would be both difficult and time consuming apart from carrying financial implication. Ms. V. Suokhrie therefore, submits that it will be more prudent to leave such task of equation of post and determination of pay scale to an expert body unless there is a cogent material on record to come to a firm conclusion that the grave error has crept in while fixing the pay scale for a given post and that the court's interference was absolutely necessary to undo the justice. The learned Addl. Advocate General has also placed reliance in the case of **Inbasakaran and Another -versus- S. Nataranjan** (Dead) through Legal representatives, reported in **(2015) 11 SCC 12**, to substantiate that the ratio of any decision must be understood in the background of the facts of that case.

8. Mr. A. Zhimomi, learned counsel for the sole respondent/writ petitioner on the other hand submits that the respondent has been diligently and sincerely discharging her duties from morning till late hours in the evening on daily basis except for the holidays. The learned counsel submits that the category of post held by the respondent and the regularly appointed sweepers is the same and the respondent discharges the same works and duties as perform by the sweepers appointed on regular basis, however it is only the regularly appointed sweepers who are granted salary in accordance

with the Revision of Pay adopted by the State Government from time to time whereas, the respondent is paid only a meager fixed pay of Rs. 3450/- P.M. The learned counsel accordingly submits that it is most arbitrary and discriminatory for the respondent to be denied the fruits of her labour and the action of the State Government goes against the very mandate of the constitution more particularly, Part-III thereof.

9. We have considered the submissions made by the learned counsel for the parties. We have also perused the order dated 14/06/2022 passed by the learned Single Judge in W.P.(C) No. 228/2019.

10. Firstly, we will dwell on the issue as to whether the respondent/petitioner discharges the same work, duties and responsibilities as that of the sweepers appointed on regular basis for entitling the respondent to receive the same pay benefits. In support of his submission, Mr. A. Zhimomi has taken us to paragraph-4 & 9 of the writ petition wherein it has been averred that the respondent discharges the same nature of works and duties as that performed by the regular sweepers but the respondent has been denied the salary as paid to the regular sweepers. On a pointed query as to whether the State appellant has rebutted/countered the statement made by the respondent in paragraph-4 & 9 of the writ petition, the State appellant has not been able to give any satisfactory answer refuting the same. We have perused the affidavit-in-opposition filed by the State to the writ petition wherein at paragraph-6 of the affidavit, the State has inter-alia averred that "*the deponent offers no comment regarding the petitioner's daily routine*". The statement made by the State in their affidavit-in-opposition is by itself a clear admission that the respondent/appellant discharges the same nature of works and duties as that performed by the regularly appointed sweepers. The State having failed to rebut that the respondent/petitioner performs similar and identical nature

of works and duties as performed by the regularly appointed sweepers who are receiving the scale pay, we are of the considered view that the principle of equal pay for equal work is squarely applicable and the respondent/petitioner is entitled to receive the minimum of the pay scale of regularly appointed sweepers who are serving in the same establishment of the Government.

11. Secondly, the State appellant has contended that the respondent was appointed as sweeper on contingency basis which is liable to be terminated without notice and as such, the respondent is not entitled to claim the scale pay at par with the regularly appointed sweepers. The State has also relied on the O.M dated 17/07/2013 and the O.M dated 24/07/2017 primarily to contend that unless regular appointments are made against sanction post, persons appointed on casual or contingency basis are not entitled to scale pay. The issue to be decided in the present case is not with regard to the regularization of service or the appointment of a person in a sanction post, but as to whether the respondent is entitled to equal pay for discharging equal works and duties as performed by the regularly appointed sweepers. We have in the forgoing paragraphs observed that the State itself has not disputed that the respondent discharges the same works and duties as that performed by the regularly appointed sweepers. It is now a well settled proposition of law that the concept of equality is not applicable to the absorption/regularization in service since a regular appointment can be made only by making appointments consistent with the requirements of Article-14 & 16 of the Constitution of India, but the concept of equality is applicable to the issue of pay parity if the work component is the same. The law is well settled that classification of workers doing the same work into different categories for payment of wages at different rates is not tenable and such an act of the employer would amount to exploitation and is

violation of Article-14 of the Constitution of India.

12. In the case of **Dhirendra Chamoli & Another -versus- State of U.P.**, reported in **(1986) 1 SCC 637**, the Hon'ble Supreme Court examined a claim for pay parity raise by temporary employees for wages equal to those being disbursed to regular employees. The prayer was accepted by holding that the action of not paying the same wage despite the work being the same was considered as violative of Article-14 of the Constitution and it was further held that such action amounted to exploitation in a welfare State committed to a socialist pattern of society. The relevant portion of paragraph-2 of the said judgment is extracted as under;

“2. The argument envisaged in the counter affidavit is that since there are no sanctioned posts to which regular appointments can be made, the casual employees employed by different Nehru Yuvak Kendras cannot claim to receive the same salary and perquisites as Class IV employees appointed regularly to sanctioned posts. But while raising this argument, it is conceded in the counter affidavit that “the persons engaged by the Nehru Yuvak Kendras perform the same duties as is performed by Class IV employees appointed on regular basis against sanctioned posts”. If that be so, it is difficult to understand how the Central Government can deny to these employees the same salary and conditions of service as Class IV employees regularly appointed against sanctioned posts. It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a Welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to

avoid the mandate of equality enshrined in [Article 14](#) of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees.”

13. So also in the case of State of Punjab & Others -versus- Jagjit Singh & Others (supra), the Hon'ble Supreme Court held as under;

“44.6. In State of Karnataka case⁴³, 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 cadre concerned.

49.1. We are of the considered view, that in para 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.”

14. Thirdly, the submission made by the learned Addl. Advocate General that the legal parameters with reference to the principle of “*Equal pay for Equal work*” as applied in Jagjit Singh (supra) has no application to the present case as all the temporary employees (daily wage employees, adhoc appointees, employees appointed on casual basis, contractual employees and the like) before the Hon’ble Supreme Court were appointed against sanctioned posts is absolutely fallacious and it appears to us that the learned Addl. Advocate General has completely misread the facts in Jagjit Singh’s case. The Hon’ble Supreme Court in the said case while discussing the principle of the applicability of equal pay for equal work in relation to different categories of employees has extensively dealt with the question as to whether the temporarily engaged employees (daily wage employees, adhoc appointees, employees appointed on casual basis, contractual employees and the like) are entitled to minimum of the regular pay scale along with dearness allowance, on account of their performing the same duties which are discharged by those appointed on regular basis against sanctioned posts. The Hon’ble Supreme Court in Jagjit Singh (supra) after a thorough discussion by referring to a catena of decisions on the subject held as follows;

“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 summarized 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

summarized 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. 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.

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 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.

60. 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 employees concerned (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 para 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 para 42 hereinabove. There can be no doubt, that the principle of “equal pay for equal work” would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay-scale of

regularly engaged Government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, 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.”

15. Furthermore, we are in respectful agreement and there is no quarrel with the law laid down by the Hon'ble Apex Court that equation of post and determination of pay scale is the primary function of the executive and not the judiciary and therefore, the Courts ordinarily will not embark upon the task of job evaluation which is generally left to the expert bodies. It is however well settled that the principle for equal pay for equal work is applied where there is complete and wholesale identity between two groups of employees discharging the same work and even a daily wage employee who is performing duties similar to that of regular employees is at least entitled to receive the minimum pay scale as paid to a regular employee. In the instant case, the respondent who is serving as a sweeper on contingency basis on a fixed pay of Rs. 3450/- P.M has satisfactorily discharged her responsibilities of explaining that she performs the same work, duties and responsibilities as discharged by the regular sweepers by making clear averments to that effect which has not been dislodged by the State appellant. We are therefore of the considered view that the respondent performs the same nature of works and duties as that discharged by regular sweepers and is accordingly entitled to equal pay as that received by the regular sweepers.

16. In view of the discussion made above and the law laid down by the Hon'ble Apex Court and taking into consideration all attending facts and circumstances, we find no infirmity with the order dated 14/06/2022 passed by the learned Single Judge in W.P.(C) No. 228/2019. The State appellants

are accordingly directed to carry out the order dated 14/06/2022 passed by the learned Single Judge within a period of 60(sixty) days from the date of passing of this order.

17. Appeal dismissed. No cost.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant