



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

Case No. : WA/34/2023

THE STATE OF AP and 3 Ors
represented by Secretary, General Administration Department, Govt. of AP, Itanagar.
2: The Secretary

Age:
Occupation :

3: The Director

Age:
Occupation :

4: The District Food and Civil Supply Officer

Age:
Occupation

VERSUS

Bina Devi
Wife of Shri Kanta Hazarika, R/o Bam Parvatia, Near DRC Office Parvati Nagar,
Tezpur, District Sonitpur, Assam

Advocate for the Petitioner : I. Choudhury, AG (AP)

Advocate for the Respondent : S K Singha

**BEFORE
HONBLE MRS. JUSTICE MARLI VANKUNG
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order (CAV)

Date of hearing: 23.07.2024

Date of judgment: 26.07.2024

(N. Unni Krishnan Nair, J)

Heard Mr. I. Choudhury, learned Advocate General for the State of Arunachal Pradesh assisted by Mr. S. Tapin, learned Senior Government Advocate appearing for the appellants. Also heard Mr. S. K. Singha, learned counsel appearing for the sole respondent.

2. The appellants have instituted the present Intra Court Appeal, presenting a challenge to a Judgment and Order, dated 16.06.2023, passed by the learned Single Judge in WP(C)/485(AP)/2022, instituted by the respondent/writ petitioner.

3. The facts leading to the institution of the writ petition being no. WP(C)/485(AP)/2022 are noticed herein below;

I. The respondent/writ petitioner was initially appointed as a Skilled Contingent paid staff, vide an order dated 10.10.1990, issued by the Deputy Commissioner, Lower Subansiri District, Ziro. The petitioner thereafter, continued to discharge services in such capacity. The petitioner had projected in the writ petition that on vacancies arising in the post of Lower Division Clerk (LDC) in the establishment of the Deputy Commissioner, Lower Subansiri District, Ziro, on account of the incumbents therein proceeding on leave, the petitioner was so engaged on few occasions against such posts on

temporary basis and she was authorized a scale of pay during such period of engagement. The petitioner has projected that although she was being engaged for the works as discharged by a LDC in the said establishment, she was however paid her remuneration at a lower rate than that authorized to the incumbents holding the posts of LDC in the regular establishment.

II. The petitioner, in support of her claim that she was being engaged for works similar in nature to that discharged by an LDC, had relied upon the orders appointing her against the post of LDC from time to time and also upon an order dated 29.05.2012, issued by the District Food & Civil Supplies Officer, (DFCS), Lower Subansiri District, Ziro, pertaining to allocation of work to the employees of the establishment, wherein the petitioner was also allotted certain works, which she contends was the works so discharged by regular incumbents in the cadre of LDC.

III. The petitioner, vide an order dated 13.11.2014, was thereafter transferred and posted as a Skilled Contingency worker to the office of the Deputy Resident Commissioner (DRC), Tezpur, and the petitioner is presently discharging her duties in the said capacity in the said office.

IV. The petitioner, having rendered around 31 years of service and her services having not been regularized, she had approached this Court by way of instituting the above noted writ petition, praying for regularization of her services and in the same writ petition, she has also prayed for a direction upon the authorities for authorizing her wages at the minimum of the scale of pay as authorized to a regular incumbent in the post of LDC.

4. The above noted writ petition, being WP(C)/485(AP)/2022 was taken up for final consideration by the learned Single Judge; and upon hearing the learned counsels for the parties and on perusal of the materials brought on record, the learned Single Judge proceeded vide the Judgment and Order dated 16.06.2023 to dispose of the said writ petition. The learned Single Judge, vide the said Judgment and Order, dated 16.06.2023, rejected the prayer of the petitioner for a direction to the authorities for regularization of her services, noticing the fact that there were persons senior to the petitioner working as Contingency staff in the establishment. However, it was provided that the respondent authorities shall regularize the services of the petitioner on her turn as per the Rules holding the field.

5. The learned Single Judge with regard to the claim of the petitioner for being authorized the minimum of the pay scale, as authorized to the incumbents working as LDC in the regular establishment, proceeded by placing reliance on the decision of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs Jagjit Singh & Ors.**, reported in **(2017) 1 SCC 148** to direct that the petitioner be provided, the minimum of the pay scale as authorized to an incumbent working in the cadre of LDC in the regular establishment.

6. The State respondents being aggrieved by the directions as passed by the learned Single Judge, with regard to authorizing to the petitioner herein, the minimum of the scale of pay as authorized to the post of LDC working in the regular establishment, has instituted the present Intra Court appeal.

7. Mr. I. Choudhury, learned Advocate General after having taken this Court through the Judgment and Order, dated 16.06.2023, as passed by

the learned Single Judge in WP(C)/485(AP)/2022, has contended that the learned Single Judge had applied the ratio of the decision in the case of *Jagjit Singh* (supra) to the case of the petitioner herein, without however, examining the claim of the petitioner in the light of the parameters as set out in the said judgment for authorizing to a temporary employee, the minimum of the scale of pay of a regularly engaged government employee holding a comparable post.

8. Mr. Choudhury, learned Advocate General by placing reliance on the decision of the Hon'ble Supreme Court in the case of *Jagjit Singh* (supra) has contended that the exercise as required to be carried out to determine as to whether the petitioner herein was rendering similar duties and responsibilities, as were being discharged by regular employees holding the posts of LDC was admittedly, not carried out by the learned Single Judge.

9. Mr. Choudhury, learned Advocate General has further by relying on the conclusions as recorded by the Hon'ble Supreme Court in the said Judgment in Paragraph-42, proceeded to contend that the respondent/writ petitioner had not discharged the burden cast on her to establish that the duties and responsibilities discharged by her were similar in all aspects to the duties so discharged by an incumbent in the post of LDC as figuring in the regular cadre. It is contended by Mr. Choudhury, that the said onus, lies on the petitioner and she was required to discharge the same at the first instance before a case for being authorized the minimum of the pay scale, as authorized to a regular incumbent in the post of LDC, could have been so considered.

10. Mr. Choudhury, learned Advocate General has further contended that the learned Single Judge had not examined the issue as to whether the

duties discharged by the petitioner herein and that discharged by a regular incumbent in the cadre of LDC was of equal sensitivity and also qualitatively similar. Mr. Choudhury, has further submitted that the nature of work as discharged by a Contingency employee and that discharged by Regular incumbent in the post of LDC is not similar in any manner.

11. In support of his such contention, Mr. Choudhury, has placed reliance on an additional affidavit filed in the writ proceeding, in pursuance to the directions passed by the writ Court, wherein in Paragraph-2 thereof, it was categorically mentioned that the quality and quantity of works discharged by a regular incumbent in the cadre of LDC and that so discharged by a Contingent staff were different. It was projected that the Regular incumbent in the cadre of LDC are assigned with a particular branch/branches to handle the files and connected work thereon, whereas the services of the Contingent staff are utilized for typing, receipt, dispatch etc., and they so work in assistance to the Regular incumbents in the posts of LDC, MTS and UDC. It was further projected in the said affidavit that the Contingent staffs are so engaged for any residual work that may arise in any section of the department as per the demand of the job in the concerned office.

12. Mr. Choudhury, learned Advocate General has further submitted that although the said additional affidavit was filed in terms of the directions passed by the learned Single Judge, however, while passing the impugned Judgment and Order, dated 16.06.2023, the stand as brought on record by the State respondents in the matter with regard to the nature of duties discharged by the petitioner herein was not taken into consideration. Mr. Choudhury, by referring to the stand taken by the respondent/writ petitioner of having worked from time to time against a post of LDC, has

submitted that the respondent/writ petitioner on vacancies arising in the post of LDC, on account of incumbents therein proceeding on leave or, otherwise, was engaged for short durations and for the said durations, she was authorized a scale of pay. Mr. Choudhury, submits that the said engagement of the respondent/writ petitioner cannot be construed to mean that the respondent/writ petitioner was all along engaged for the works performed by a regular incumbent in the cadre of LDC with the same responsibility and sensitivity.

13. Mr. Choudhury, learned Advocate General has further submitted that the respondent/writ petitioner, vide an order dated 13.11.2014 was transferred as an Skilled Contingency worker from the office of the District Food & Civil Supplies Officer, Lower Subansiri District, Ziro to the office of Deputy Resident Commissioner, Tezpur. Mr. Choudhury, by referring to the contentions as made by the petitioner in the writ petition has submitted that the petitioner had made a categorical statement to the effect that on being transferred to the office of the DRC, Tezpur, she has been discharging her duties therein as a Skilled Contingent labour only.

14. Mr. Choudhury, learned Advocate General further submitted that the petitioner in the writ petition has not endeavored to bring on record any material to demonstrate that the petitioner after 13.11.2014, on being transferred and posted to the office of the Deputy Resident Commissioner, Tezpur, was discharging duties similar to one discharged by a LDC in the said office. Accordingly, Mr. Choudhury, submits that the respondent/writ petitioner has not discharged the onus as vested on her for establishing that the nature of duties performed by her in the establishment was similar both in quality as well as in responsibility with that discharged by a regular incumbent in the post of LDC and accordingly, the ratio of the

decision in the case of *Jagjit Singh* (supra) would not be applicable in the case of a Contingent worker like the respondent/writ petitioner herein, who admittedly, did not perform works of similar nature as that being discharged by a regular incumbent in the cadre of LDC.

15. Mr. Choudhury, learned AG in support of his submissions in addition to placing reliance upon the decision of the Supreme Court in the case of *Jagjit Singh* (supra), has placed reliance on the following decisions: -

1. *State of Haryana & Ors. Vs Jasmer Singh and Ors.*, reported in 1996 11 SCC 77.
2. *State of Maharashtra & Ors. Vs Bhagwan and Ors.*, reported in 2022 4 SCC 193.
3. *State of Haryana & Ors. Vs Charanjit Singh and Ors.*, reported in 2006 9 SCC 321.
4. *State of Madhya Pradesh Vs R. D. Sharma and Ors.*, reported in 2022 13 SCC 320.

16. In the above premises, Mr. Choudhury, learned Advocate General has submitted that the Judgment and Order, dated 16.06.2023 passed by the learned Single Judge in WP(C)/482(AP)/2023 to the extent that it directs the petitioner to be authorized the minimum of the scale of pay of the post of LDC, requires to be interfered with.

17. Per contra, Mr. S. K. Singha, learned counsel appearing for the respondent/writ petitioner has submitted that the decision of the learned Single Judge, assailed in the present proceeding would not call for any interference, inasmuch as, the same is a well-reasoned one.

18. Mr. Singha, learned counsel has submitted that the respondent/writ petitioner was appointed from time to time against the post of LDC on a

vacancy arising therein, which goes to demonstrate the fact that the petitioner was engaged in the establishment for performing the works being so performed by a regular incumbent in the post of LDC and accordingly, the respondent/writ petitioner herein in view of the ratio of the decision of the Hon'ble Supreme Court in the case of *Jagjit Singh* (supra) would be entitled to be extended with the minimum of the pay scale drawn by a regular incumbent in the cadre of LDC, by applying the principle of "equal pay for equal work".

19. Mr. Singha, learned counsel has further submitted that the respondent/writ petitioner was initially engaged against a regular vacant post as a Skilled Contingency staff and accordingly, the petitioner who was holding a regular post in the establishment was entitled to be authorized her remuneration, at least at the minimum of the scale of pay as authorized to a regular incumbent in the cadre of LDC. Mr. Singha, learned counsel has, in the above premises, submitted that the Judgment and Order, impugned in the present proceeding would not call for any interference.

20. We have heard the learned counsel appearing for the parties and also perused the materials brought on record.

21. Before proceeding to consider the reasoning as advanced by the learned Single Judge in the Judgment and Order, dated 16.06.2023 in WP(C)/485(AP)/2022, it would be called upon to consider certain facts which would have bearing on the issue arising in the present proceeding.

22. The materials brought on record, demonstrate that the petitioner herein had earlier approached the writ Court by way instituting WP(C)/277(AP)/2002, praying for regularization of her services. The

learned Single Judge, vide the Judgment dated 31.05.2005, proceeded to consider the said grievance and dispose of the writ petition by directing the respondent authorities to consider the case of the petitioner for regularization of her services in accordance with the law and in light of the existing circulars, as expeditiously as possible preferably within a period of 3(three) months from the date of receipt of certified copy of this order.

23. The Hon'ble Single Judge, while proceeding to pass the said direction, had also noticed in the said order that the petitioner was accommodated, vide orders dated 25.07.1994, 23.11.1994 and 26.04.2001, against vacancies arising in the post of LDC on account of the incumbent therein proceeding on leave or, otherwise so as to enable the petitioner to get some monetary benefits.

24. The State being aggrieved by the said order, dated 31.05.2005, passed by the learned Single Judge, proceeded to assail the same by way of instituting WA/06(AP)/2007.

25. The Division Bench of this Court, vide order dated 25.07.2007, on considering the issue as arising in the matter proceeded to record a conclusion to the effect that the respondent/writ petitioner herein was not appointed against any regular vacant post, however, she was appointed against regular vacant post for short durations, on the incumbent therein proceeding on leave. Accordingly, the Division Bench of this Court, interfered with the order dated 31.05.2005, passed by the learned Single Judge and allowed the writ appeal, however, with an observation that the petitioner having rendered long period of services as a Contingency employee, the authorities may consider her case for regularization by condoning the age bar, if any.

26. Reverting back to the issue involved in the present proceeding, it is seen that the learned Single Judge, vide the order dated 16.06.2022, for considering the grievance of the petitioner as raised therein, had formulated two issues, which are extracted herein below:-

“1. Whether the petitioner is entitled to regularization of her services as LDC.

2. Whether the petitioner is entitled to the minimum scale of pay of LDC, on the basis of the principle of "equal pay for equal work".

27. With regard to the first issue, the learned Single Judge, on considering the materials brought on record, proceeded to draw the following conclusions:-

“12. Under the aforesaid circumstances, this Court deemed it not fit and proper to direct the respondent authorities to regularize her service, else it would violate the right of the candidates, who are senior to her and whose names are in the Sl. No. 1 to 6 of the seniority list. In view of above discussion and finding, the first issue has to be answered in negative and accordingly, the same stands answered. Notwithstanding, it is provided that the respondent authority shall regularize her service when her turn will come as per the recruitment rule presently holding the field.”

28. Accordingly, the prayer of the respondent/writ petitioner for regularization of her services being not considered by the learned Single Judge, we would not in the present order, proceed to further consider the said issue and the conclusions as drawn by the learned Single Judge on the issue is upheld.

29. This bring us to the consideration as made by the learned Single Judge with regard to the second issue, i.e., "whether the petitioner herein is entitled to the minimum scale of pay of LDC on the basis of the principle of "equal pay for equal work".

30. The learned Single Judge, for determination of the said issue, had noticed the services as rendered by the respondent/writ petitioner and had also placed reliance on the temporary appointments as made in case of the respondent/writ petitioner against the posts of LDC on 3(three) occasions for limited periods on the account of the incumbents in the post proceeding on leave or, otherwise. The learned Single Judge had also placed reliance on a duty distribution chart of the employees as engaged in the office of the DFCS, Lower Subansiri, Ziro, for the purpose.

31. Having noticed the said service details of the respondent/writ petitioner, the learned Single Judge, proceeded to place reliance on the decision of the Hon'ble Supreme Court in the case of *Jagjit Singh* (supra) and by only relying on the orders as issued in the case of the respondent/writ petitioner towards appointing her on temporary basis against the post of LDC in the establishment on vacancies arising therein from time to time, on incumbents therein proceeding on leave or, otherwise, as well as the duty distribution chart of 2012, proceeded to conclude that the respondent/writ petitioner had discharged the onus of proof cast on her with regard to the parity of the duties and responsibilities discharged by her as an Contingent staff and the duties so discharged by regular incumbent in the post of LDC and accordingly, applying the principle of "equal pay for equal work", the respondent/writ petitioner was held to be entitled to the minimum of the pay scale as authorized to the post of LDC in the Regular cadre.

32. The learned Single Judge, further by placing reliance on the duty chart of the establishment as of 2012, proceeded to record a finding to the effect that the respondent/writ petitioner was discharging identical duties with that of the reference post i.e. LDC, available in the said establishment.

33. Having drawn the said conclusions, the learned Single Judge, vide the said Judgment and Order, dated 16.06.2023 in WP(C)/485/(AP)/2022, passed the following directions:-

“Thus, drawing premises from the principle of law, so enunciated in Jagjit Singh (supra), this Court is inclined answer the second issue, which has been framed in para no. 8, in favour of the petitioner. Accordingly, by a mandamus of this Court, the respondent authorities are directed to provide minimum of the scale of pay, in the lowest grade of the LDC to the petitioner, forthwith. The petitioner shall obtain a certified copy of his judgment and furnish the same to the respondent authorities within a week from today.”

34. It is the above noted direction passed by the learned Single Judge that is under challenge in the present Intra Court appeal.

35. The Hon’ble Supreme Court in its decision in the case of *Jagjit Singh* (supra), had upon considering the legal parameters with regard to the application of the principle of “equal pay for equal work” in relation to temporary employees laid down that the sole factor that requires determination is whether, the employee concerned was rendering similar duties and responsibilities as were being discharged by the regular employees holding same/corresponding posts. It was further provided that

the said exercise would require the application of the parameters of the principle of "equal pay for equal work" as summarized by the Court in Paragraph-42 of the said Judgment.

36. Paragraph-42 of the said Judgment being relevant is extracted herein below:-

"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 case, UT Chandigarh, Admn. v. Manju Mathur 22, SAIL case 28 and National Aluminium Co. Ltd. case).

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 and D.S. Nakara case).

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 case²). 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, Mewa Ram Kanojla case, GrihKalyan Kendra Workers' Union case 12 and S.C. Chandra case)

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, State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.¹⁵ and Hukum Chand Gupta case 30). 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 case and SBI case). 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 and GrihKalyan Kendra Workers' Union case).

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 case).*

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).*

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 case and State of W.B. v. Tarun K. Roy). 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 and Hukum Chand Gupta case).*

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 case). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see Official Liquidator v. Dayanand).*

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 case).

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.)

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. Minimum Wages Inspectors Assn. 22).

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 22).

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 case), 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 case).

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 and National Aluminium Co. Ltd. case).

37. Applying the parameters as summarized by the Hon'ble Supreme Court in the Paragraph-42 of the decision in the case of *Jagjit Singh (supra)* to the facts of the present case, it is found that the respondent/writ petitioner herein was required to establish parity as regards the duties and responsibilities as discharged by her as a Contingent staff with that of the reference post i.e., the post of LDC figuring in the regular establishment. The respondent/writ petitioner, for the said purpose, it is seen, had only relied upon the orders dated 25.07.1994, 23.11.1994, 26.04.2001 and the duty chart dated 29.05.2012. The orders dated 25.07.1994, 23.11.1994 and 26.04.2001; pertains to the engagement of the respondent/writ petitioner on temporary basis against the post of LDC on the incumbents therein proceeding on leave or, otherwise and all such appointments were for short durations only. The duty chart, relied upon by the respondent/writ petitioner and brought on record in the writ proceeding as Annexure-F thereof, does not reflect that

the respondent/writ petitioner was continuously discharging the said duties and it cannot be concluded there from that by the nature of the works as assigned therein to the respondent/writ petitioner, she was discharging works similar in nature as being discharged by an incumbent in the post of LDC in the regular establishment.

38. What is further striking in the present proceeding is that the respondent/writ petitioner, on being transferred vide an order dated 13.11.2014 to the office of Deputy Resident Commissioner, Tezpur, has not brought on record any material to demonstrate that she was after 13.11.2014, discharging duties of same nature and with the same responsibilities as was being discharged by a LDC working in the same establishment on regular basis.

39. Contrary to the above position, it is the categorical contention of the petitioner in Paragraph-8 of the writ petition that upon her said transfer and joining in the office of Deputy Resident Commissioner, Tezpur, she was discharging her duties therein only as a Skilled Contingent worker. Accordingly, the petitioner cannot be held to have discharged the onus of proof as placed on her with regard to the establishment of the fact that she was discharging duties and responsibilities as a Contingent staff, similar in all aspects to one discharged by the incumbents in the post of LDC in the regular establishment.

40. Applying the parameters as culled out in Paragraph-42.5 of the decision of the Hon'ble Supreme Court in the case of *Jagjit Singh* (supra) to the facts of the present case, it is seen that the respondent/writ petitioner has not brought on record any material to establish that the duties as discharged by her is of equal sensitivity and also qualitatively similar to the one discharged by an incumbent in the post of LDC in the

regular establishment. The Hon'ble Supreme Court has categorically held that the nature of works as discharged in the subject post should be the same and not less onerous than the reference post. It further had held that even the volume of work should be the same along with the similar level responsibility.

41. Poised thus, this Court had made a pointed query to the learned counsel for the respondent/writ petitioner as to whether any material was brought on record to establish the fact that the duties as discharged by the respondent/writ petitioner as a Contingent staff after her transfer to the office of DRC, Tezpur vide the order dated 13.11.2014 was with equal sensitivity and also qualitatively similar and not less onerous than the work as discharged by the regular incumbent in the post of LDC. The learned counsel for the respondent/writ petitioner, in response very fairly has submitted that no such material was brought on record, either before the writ Court or in the present proceeding.

42. At the stage, this Court would like to refer to the additional affidavit filed by the State respondents in the writ proceeding, which was so filed in terms of the categorical directions issued in the matter by the learned Single Judge.

43. The State respondents in the said affidavit had made categorical contentions to the effect that the quality and quantity of the work performed by the regular incumbent in the cadre of LDC and that so performed by the Contingent staff are not similar. The said additional affidavit, proceeded further to highlight that the regular LDCs are assigned with a particular branch/branches to handle the files and connected works thereon, whereas, the services of the Contingent staff are utilized for typing, receipt, dispatch etc., in assistance to the regular LDCs, MTS and

UDCs and that they are so engaged for any residual works that may arise in any section of the department as per the demand of the job in the establishment. It was further highlighted that there was no regular post for Contingency staff in the department and they were so engaged for any residual work that may arise in the department. However, the learned Single Judge while drawing conclusions in the matter had ignored the projections as made in the said additional affidavit so filed in the matter.

44. Having considered the above position and also on application of the decision of the Hon'ble Supreme Court in the case of *Jagjit Singh* (supra) to the facts of the present case, we, having found that the respondent/writ petitioner herein having not discharged the responsibility as vested on her to establish the fact that the works as discharged by her were similar in all respects with that so discharged by a incumbent in the post of LDC in the regular cadre, we are of the considered view that the principle of "equal pay for equal work" would not stand attracted in the case of the respondent/writ petitioner. Accordingly, the conclusions drawn by the learned Single Judge in the impugned judgment in this connection cannot be concurred to by us.

45. In view of the above discussions, we find that the learned Single Judge had applied the decision of the Hon'ble Supreme Court in the case of ***Jagjit Singh (Supra)*** to the case of the respondent/writ petitioner without first proceeding to make the required evaluation by applying the parameters as culled out in Paragraph 42 of the said decision. The petitioner admittedly having failed to establish that the works as discharged by her was similar in all respects with that of the works so discharged by an incumbent in the post of LDC in the regular establishment, we hold that no right of the petitioner came to be infringed

in she being not authorized her remuneration at the minimum of the scale of pay as applicable to the post of LDC. Accordingly, in the facts and circumstances as arising in the present case, we are of the considered view that the decision of the Hon'ble Supreme Court in ***Jagjit Singh (Supra)*** would not stand attracted.

46. In view of the conclusions reached by us, the judgments as relied upon on behalf of the appellants, other than the judgment of the Hon'ble Supreme Court in the case of ***Jagjit Singh (Supra)***, are not being discussed.

47. In view of the foregoing discussions, it being apparent that the respondent/writ petitioner having not established the parity as required to be so established with regard to the duties as discharged by her in the establishment in comparison to the duties discharged by a regular incumbent in the post of LDC, as well as considering the categorical statements as made by the State respondents in the additional affidavit filed in the writ proceeding, highlighting therein the nature of duties discharged by a Contingent employee, we are of the considered view that the decision of the learned Single Judge, vide the Judgment and Order, dated 16.06.2023 in WP(C)/485/(AP)/2022 to the extent of the issue no. 2 as framed therein, would call for an interference of this Court and accordingly, the Judgment and Order, dated 16.06.2023 stands interfered to the extent of the conclusions as reached therein by the learned Single Judge with regard to the issue no. 2 so framed.

48. Accordingly, the respondent/writ petitioner herein is held not to be entitled to receive her remuneration in the minimum of the pay scale as authorized to the post of LDC in the regular establishment. However, the conclusions as drawn by the learned Single Judge with regard to the

regularization of the services of the respondent/writ petitioner herein, is not interfered with.

49. With the above observations and directions, the writ appeal stands allowed.

JUDGE

JUDGE

Comparing Assistant