

GAHC020001262022



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

Case No. : WP(C)/54/2022

SHRI. KHONSAO LOTH AND 37 ORS
DOBASHI, PLACE OF POSTING EAC-LOTSU, WOKHA NAGALAND

2: SHRI. NRIBEMO KIKON
GRADE II
DB
PLACE OF POSTING DC
HQ
WOKHA NAGALAND

3: SHRI. E. MHATHUNG KIKON
GRADE II DB
PLACE OF POSTING CHUKITONG
WOKHA NAGALAND

4: SHRI. YANSARHOMO ODYUO
DOBASHI
PLACE OF POSTING ADC DOYANG
WOKHA NAGALAND

5: SHRI. CHUMREMO LOTH
GRADE II DB
PLACE OF POSTING DC HQ
WOKHA NAGALAND

6: SHRI. NSEO KIKON
GRADE II DB
PLACE OF POSTING EAC-SUNGRO
WOKHA NAGALAND

7: SHRI. LITHUNGBEMO LOTH
DOBASHI
PLACE OF POSTING SDO RALAN

WOKHA NAGALAND

8: SHRI. KHUDEMO ODYUO

DOBASHI

PLACE OF POSTING EAC-WOZHURO

WOKHA NAGALAND

9: SHRI. MONGPEMO TUNGEO

DOBASHI

PLACE OF POSTING EAC-WOZHURO

WOKHA NAGALAND

10: SHRI. NCHEMO EZUNG

DOBASHI

PLACE OF POSTING SDO-RALAN

WOKHA NAGALAND

11: SHRI. Y MHATHUNG LOTH

DOBASHI

PLACE OF POSTING ADC DOYANG

WOKHA NAGALAND

12: SHRI. M THECHAMO LOTH

DOBASHI

PLACE OF POSTING EAC-NIRO

WOKHA NAGALAND

13: SHRI. L. MHATHUNG SHITTRI

DOBASHI

PLACE OF POSTING DC HQ

WOKHA NAGALAND

14: SHRI. LICHANTHUNG EZUNG

DOBASHI

PLACE OF POSTING DC HQ

WOKHA NAGALAND

15: SHRI. K. CHUMZAMO KIKON

DOBASHI

PLACE OF POSTING EAC-CHUKITONG

WOKHA NAGALAND

16: SHRI. SHILOTHUNG EZUNG

DOBASHI

PLACE OF POSTING ADC-SANIS

WOKHA NAGALAND

17: SHRI. YIKHO LOTH

DOBASHI
PLACE OF POSTING DC HQ
WOKHA NAGALAND

18: SHRI. ROLLAND N JAMI
DOBASHI
PLACE OF POSTING EAC-CHANGPANG
WOKHA NAGALAND

19: SHRI. Y. MYINTHUNGO ODYUO
DOBASHI
PLACE OF POSTING ADC DOYANG
WOKHA NAGALAND

20: SHRI. RENTHUNGO EZUNG
DOBASHI
PLACE OF POSTING ADC RALAN
WOKHA NAGALAND

21: SHRI. T.CHICHAMO KIKON
DOBASHI
PLACE OF POSTING EAC-CHUKITONG
WOKHA NAGALAND

22: SHRI. N. ELHIBEMO PATTON
DOBASHI
PLACE OF POSTING EAC-CHANGPANG
WOKHA NAGALAND

23: SHRI. Y. OPENTHUNG JAMI
DOBASHI
PLACE OF POSTING EAC-SUNGRO
WOKHA NAGALAND

24: SHRI. Z. MHATHUNG JUNGIO
DOBASHI
PLACE OF POSTING DC HQ
WOKHA NAGALAND

25: SHRI. TSENPONTHUNG KIKON
DOBASHI
PLACE OF POSTING EAC-NIRO
WOKHA NAGALAND

26: SHRI. Y. NREBEMO LOTH
DOBASHI
PLACE OF POSTING EAC-CHUKITONG
WOKHA NAGALAND

27: SHRI. M. THUNGPEN LOTH
DOBASHI
PLACE OF POSTING EAC-CHUKITONG
WOKHA NAGALAND

28: SHRI. AJANTHUNG YANTHAN
DOBASHI
PLACE OF POSTING DC HQ
WOKHA NAGALAND

29: SHRI. BENRITHUNG LOTH
DOBASHI
PLACE OF POSTING DC HQ
WOKHA NAGALAND

30: SHRI. S. ECHUNGBEMO YANTHAN
DOBASHI
PLACE OF POSTING DC HQ
WOKHA NAGALAND

31: SHRI. N. RENBEMO OVUNG
DOBASHI
PLACE OF POSTING EAC-LOTSU
WOKHA NAGALAND

32: SHRI. PYINGTHUNGO YANTHAN
DOBASHI
PLACE OF POSTING EAC-BAGHTY
WOKHA NAGALAND

33: SHRI. R. YANPAN MURRY
DOBASHI
PLACE OF POSTING DC HQ
WOKHA NAGALAND

34: SHRI. BENTHUNGO KIKON
DOBASHI
PLACE OF POSTING DC HQ
WOKHA NAGALAND

35: SHRI. NYANBEMO MURRY
DOBASHI
PLACE OF POSTING DC HQ
WOKHA NAGALAND

36: SHRI. ORENTHUNG LOTH
DOBASHI

PLACE OF POSTING EAC-CHUKITONG
WOKHA NAGALAND

37: SHRI. LONGSHITHUNG LOTH
DOBASHI
PLACE OF POSTING EAC-CHUKITONG
WOKHA NAGALAND

38: SHRI. CHUMBEMO JAMI
DOBASHI
PLACE OF POSTING ADC - SANIS
WOKHA NAGALAN

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2:THE HOME COMMISSIONER TO THE GOVERNMENT OF
NAGALAND
KOHIM NAGALAND

3:THE COMMISSIONER TO THE GOVERNMENT OF NAGALAND
NAGALAND KOHIMA

4:THE DEPUTY COMMISSIONER
WOKHA NAGALAN

Advocate for the Petitioner : JOSHUA SHEQI, IMTONG KICHU,NAGALI
SHOHE,CHINGMEI KONYAK,MIKA H AYE,ATOKA,TOSHIKA,A. ACHUMI,KEDI
KOSO,K LILY SWU

Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

JUDGMENT & ORDER (Oral)

Date : 14.11.2024

Heard Mr. Joshua Sheqi, learned counsel for the petitioners. Also heard Mr. V. Zhimomi, learned Junior Government Advocate for the State respondent.

2. By way of this petition under Article 226 of the Constitution of India, the petitioners are seeking direction to the State respondent to pay them the equal pay for equal work as per the latest ROP rules as that of the Dobashi's appointed against sanctioned post through regular selection.

3. The facts of the case is that the petitioners were appointed as Dobashi, Grade-II in between 1996 to 2014 as contingency, casual, temporary or ex-cadre in the pay scale of Rs. 1150-30-1450-35-1800-40-2120.

4. Since, the Dobashis appointed regularly in sanctioned post were granted the benefit of pay under the latest ROP rules, the instant petition has been filed by the petitioners for granting of the same benefit of pay to them as that of the regularly employed Dobashis.

5. Mr. Joshua Sheqi, learned counsel for the petitioners by relying on the judgments of the Apex Court, i.e ***State of Punjab and Others vs. Jagjit Singh and Others reported***

in (2017) 1 SCC 148 and Sabha Shankar Dube vs Divisional Forest Officer and Others reported in (2019) 12 SCC 297 submitted that the case of the present petitioners are covered by the aforesaid two judgments of the Apex Court, wherein it has been clearly held by the Apex Court that the daily wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and likewise are entitled to the minimum of the regular pay scale on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned post .

6. He further submits the petitioners are performing the same duties which are being discharged by the Dobashi engaged regularly against the sanctioned post and therefore there is no justifiable basis for denying them the same pay scale as that of the dobashis appointed regularly against sanctioned post.

7. To buttress his submission, he further draws the attention of this Court to the letter date 14.08.2019, issued by the Joint Commission, office of the Commissioner, Nagaland, Kohima, wherein it has been clearly stated that the petitioners are performing the same duties as that of the regular employees.

8. He further submits that this Court in the case of ***Shri Hevishe Sema vs The State of Nagaland and 3 Ors.*** in ***WP(C) No.153/2022*** has clearly held that the sweepers appointed temporarily is entitled to equal pay similar to that of a regularly appointed sweepers.

9. He further relies upon the Judgment and Order dated 13.12.2022 passed by the Division Bench of this Court, in the case of ***State of Nagaland and Another vs Heshito Sema*** in ***WA No.29/2022***, wherein, the Division Bench of this Court upon relying the office memorandum dated 17.03.2015 held that the respondent in that case is entitled to the minimum of the scale extended to regular employees holding the same post.

11. Per contra, Mr. V. Zhimomi, learned Junior Government Advocate for the respondent nos. 1 to 5, submits that the said writ petition is liable to be rejected at the outset for non joinder of the Finance Commissioner, to the Government of Nagaland, Finance Department, who is a necessary party.

12. He further submits that the petitioners are governed by the Nagaland Work Charged and Casual Employees Regulation Act, 2001 (herein referred to as Regulation Act, 2001) and are engaged without sanctioned post and therefore are not entitled for the paid under the latest ROP 2017.

13. He further submits that ROP 2017 framed by the Government of Nagaland under Article 309, clearly spelled out in rule 2(a) and 2(b) that these rules shall apply only to regular employee and that these rules shall not be applicable to categories of work charged contract contingencies and person re-employee to service after retirement.

14. In support of the aforesaid submissions, he further relies on the following authorities of the Apex Court:-

- i. State of Bihar and Others vs Bihar Secondary Teachers Struggle Committee, Munger and Others reported in (2019) 18 SCC 301.***
- ii. Union of India vs Indian Navy Civilian Design Officers Association and Anr. in Civil Appeal No.8329/2011 decided on 22.02.2023.***

15. He further submits that the Regulation Act, 2001 and the Office Memorandum dated 17.03.2015 are formulated by the State Government on scheme for regularization and absorption of work charge and casual employees and revision of pay/wages.

16. He further submits that under the aforesaid OM dated 17.03.2015, the petitioners are not entitled for regularization and pay in terms of ROP 2017. He further submits that the pay scale of work charge employees including the petitioners who are presently drawing a pay scale as per ROP 1993 and who are continuing as work charge employees, their pay scale has been revised under Office memorandum dated 17.03.2015. Accordingly, he submits that State respondents have not acted arbitrarily and discriminately in denying the respondents the latest ROP 2017.

17. I have given my prudent consideration to the arguments made by the learned counsel for both the contesting parties and perused the materials available on record including the citations

submitted at the bar.

18. The issue involved in the instant writ petition is as to whether the petitioners, who have been temporarily appointed as work charge employee to the post of Dobashi in Grade-II are entitled to the pay benefits as that of similar to the regularly appointed Dobashi against the sanctioned post, who are getting the pay benefits under the latest ROP.

19. It further appears that the petitioners who have been appointed as Dobashi, Grade-II as contingencies, casual, temporary or ex-cadre employees between 1996 to 2014 despite performing equal work as that of dobashi appointed regularly against the sanctioned post were not granted pay benefits as per the latest ROP rules.

20. It is apparent from the letter dated 14.08.2019, which is enclosed to the writ petition that the Joint Commissioner, Office of the Nagaland, Kohima, has admitted that the petitioners are performing the same work as that of regularly employed Dobashis and has requested the Home Commissioner, Nagaland, Kohima for grant of uniform scale of pay, i.e. ROP 1999 in respect of all the casual employees paid under ROP 1993 as that of the petitioners. In fact, the State respondents have also not disputed the fact that the petitioners are discharging the same nature of work as that of the regularly appointed Dobashis against the sanctioned post. However, the contention of the State authorities_is that the petitioners having not appointed

against the sanctioned post are not entitled to pay benefits under the latest ROP in terms of the stipulation contain in ROP rules 2017.

21. Pertinent that the issue as whether the daily wage employees, ad hock employees appointed on casual basis, contractual employees and likewise are entitled to the minimum of the regular pay scale on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned post has been determined by the Apex Court in the following cases:-

(i) ***State of Punjab vs Jagjit Singh (supra).***

(ii) ***Sabha Shankar Dube vs Divisional Forest Officer and Others (supra).***

22. In the case of ***State of Punjab vs Jagjit Singh (supra)***, the employees were appointed on temporary basis against post. Paragraph 42, 58 and 60 of the aforesaid Judgment and Order is reproduced hereunder for ready reference:-

“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 case¹⁶, UT Chandigarh, Admn. v. Manju Mathur ²⁷, SAIL case²⁸ and National Aluminium Co. Ltd. case³³).

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 case⁷ and D.S. Nakara case⁸).

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 case⁷). 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 d of All India Customs and Central Excise Stenographers case⁹, Mewa Ram Kanojia case¹¹, Grih Kalyan Kendra Workers' Union case¹² and S.C. Chandra case¹⁹).

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" (Randhir Singh case⁷, State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.¹⁵ and Hukum Chand Gupta case³⁰) 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 case⁹ and SBI case¹⁴). 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. Chaurasia¹⁰ and Grih Kalyan Kendra Workers' Union case¹²).

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 case¹⁶).

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. Chaurasia¹⁰).

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 case¹¹ and State of W.B. v. Tarun K. Roy¹⁷). 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 Dey¹³ and Hukum Chand Gupta case³⁰).

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 case³⁹). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see Official Liquidator v. Dayanand²¹).

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 case¹⁴).

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.¹⁵).

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 Mathur²⁷).

42.15. There can be a valid classification in the matter of pay scales between employees even holding posts with the same nomenclature Le between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see Hukum Chand Gupta case³⁰), 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 ³⁰).

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 case¹⁹ and National Aluminium Co. Lid. case ³³)

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.

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" summarised 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 temporary employees concerned 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 summarised 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 employee 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."

23. In the case of ***Sabha Shankar Dube vs Divisional Forest Officer and Others (supra)***, the appellants therein were employed as daily rated workers in Group-D post in the Forest Department for works in projects as and when the

necessity arises. Paragraph 9, 10, 11 and 12 of the aforesaid Judgment and Order is reproduced hereunder for ready reference:-

“9. The daily-wagers relied upon a judgment of this Court in Putti Lal⁷ and submitted that the same relief may be extended to them. It is relevant to note that the judgment in Putti Lal⁷ relates to a dispute similar to that involved in this case. Daily-rated wage earners in the Forest Department in the State of Uttar Pradesh approached the High Court for regularisation of their services. The Division Bench of the High Court of Allahabad directed the State Government to constitute the Committee as directed in order to frame the scheme for regularisation. The judgment of the High Court that the daily-rated wage workers shall be paid at the minimum of the pay scales was affirmed by This Court on the principle of equal pay for equal work. The Division Bench of the High Court while deciding State of U.P. v. Chhiddi³ referred to the judgment in Putti Lal⁷ but placed reliance on a later judgment of this Court in Tilak Raj⁵. The Division Bench of the High Court also cited Surjit Singh⁶ to hold that the daily-wagers cannot seek the benefit of the judgment of Putti Lal case⁷ in view of the subsequent decisions of this Court wherein, according to the High Court, it was held that daily-wage employees were not entitled to the minimum of the pay scales.

10. On a comprehensive consideration of the entire law on the subject of parity of pay scales on the principle of equal pay for equal work, this Court in Jagjit Singh⁸ held as follows: (SCC p. 223, para 58)

"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 than compared to others similarly situated 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."

11. *The issue that was considered by this Court in Jagjit Singh⁸ is whether temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in Tilak Raj⁵ and Surjit Singh⁶, this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.*

12. *In view of the judgment in Jagjit Singh⁸, we are unable to uphold the View of the High Court that the appellants herein are not entitled to be paid the minimum of the pay scales. We are not called upon to adjudicate on the rights of the appellants relating to the regularisation of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal⁷ relating to persons who are similarly situated to the appellants and later affirmed in Jagjit Singh⁸ that temporary employees are entitled to minimum of the pay scales as long as they continue in service.”*

24. Apparent that in ***Sabha Shankar Dube (supra)***, the Apex Court granted the daily rated wage workers who were appointed against the non-sanctioned post the minimum of the regular pay scale as that of regularly employed employees performing the same work on the principle of equal pay for equal work. Therefore, the contention of Mr. V. Zhimomi, learned Junior Government Advocate for the State respondent that the petitioners who were appointed as contingency, casual, temporary or ex-cadre against non sanctioned post is not entitled for grant of the same benefit of pay as that of the regularly employed employees against sanctioned post is not sustainable.

25. Pertinent also that the similar contention of the State Government was made before this Court earlier in the case of ***Shri Hevishe Sema vs The State of Nagaland and 3 Ors.*** in ***WP(C) No.153/2022***, wherein this Court rejected the said plea of the respondents.

26. Paragraph 22 and 23 of the aforesaid Judgment and Order of this Court is reproduced hereunder for ready reference:-

“22. It also appears that the Division Bench of this Court in "The State of Nagaland and Ors. -Vs- Smti Hesheni Sumi (supra)" has, on the principles of law laid down by Hon'ble Apex Court, upheld the judgment of the Single Bench of this Court in WP(C) No. 228/2019 whereby the petitioner in that case who was serving as a sweeper on contingency basis was held to be entitled to equal pay similar to that which was received by regular sweepers. When the law regarding equal pay for equal work has been laid down by Hon'ble Apex Court, depriving the present petitioner and when the present petitioner has shown that he has been performing the duties of sweeper which are similar to the duties performed by a regular sweeper and the said claim has not been denied or contradicted by the respondent authorities, it would be unconstitutional and arbitrary to deny him equal pay similar to that of regularly appointed sweeper only on the ground that ROP 2017 is applicable only to a regular employee. Though, the present petitioner has been paid the salary on scale of pay which is in terms of ROP 1993, however, the regular sweepers who are performing similar work to that of the present petitioner are being paid the salary in terms of 2017. The plea taken by the respondent authorities for depriving the present petitioner from scale of pay similar to the regularly appointed sweeper only on the plea that ROP 2017 is not applicable to temporary employees would be illegal and unconstitutional in the light of principles of law laid down by the Hon'ble Apex Court. As regards the principle of equal pay for equal work the Hon'ble Apex Court has unambiguously held in the aforementioned judgment that the said principle has been extended to temporary employees (differently described as worked-charged, daily wage, casual, ad hoc, contractual and like) and in view of the above principle, the

grounds mentioned by the respondent No. 2 in the impugned letter dated 6th May, 2022 for depriving the present petitioner the benefit of scale of pay in terms of ROP 2017 is not acceptable. As held by Hon'ble Apex Court, such a deprivation would constitute an act of exploitative enslavement emerging out of a domineering position and such an action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

23. For the above mentioned reasons, this Court is of the considered opinion that the present petitioner is entitled to get the same scale of pay which is being given to the regular sweepers and who are discharging same duties like that of the petitioner. The respondents Nos. 1, 2, 3 and 4 are, therefore, directed to pay to the present petitioner a scale of pay similar to that of a regularly appointed sweeper i.e., as per ROP 2017 w.e.f. the date of filing of representation dated 28.10.2021 within a period of 3(three) months from the date of this judgment."

27. Reference is also made to the case of ***Heshito Sema vs The State of Nagaland and Anr in WP(C)/92/2019***, wherein, the similarly situated persons like that of the petitioners sought direction from the respondent authorities to pay the scale of pay in terms of ROP 2010 and ROP 2017, who were appointed as work charge employees against non-sanctioned post. It further appears that in the said case, this Court by Judgment and Order dated 24.06.2022 held that the doctrine of equal pay for equal work is applicable and accordingly directed the State Government to pay the petitioners the same scale of pay which is being given to the regular employees who has been discharging the same duties with that of the petitioners. Paragraph 14 and 15 of the aforesaid Judgment and Order dated 24.06.2022 is also reproduced hereunder for ready reference:-

"14. Since the petitioner has been discharging the same duty with that of his

colleagues, whose services have been regularized and drawing much less salary than his colleagues, his right to 'equal pay for equal work' as enunciated by the Hon'ble Supreme Court in the case of Randhir Singh (supra) and Jagjit Singh (supra) appears to have been violated here in this case. The doctrine of "Equal Pay for Equal Work," as has been held in the aforesaid cases, can be applied here in this case also as unequal scale of pay, based on no classification irrational classification is being given to the employees for doing identical work, under the same employer. The above legal as well as factual position have not been disputed by the learned Govt. Advocate.

15. In view of the above, this writ petition stands disposed of at this admission stage itself, by directing the State respondents to pay the petitioner the same scale of pay, which is being given to the regular employees, who have been discharging same duties with that of the petitioner, with effect from the date of his submission of representation on 09.04.2018 within a period of 2 (two) months from the date of receipt of a certified copy of this judgment and order. The petitioner, is accordingly, directed to obtain a certified copy of this order and to place the same before the respondent authorities. And so far, the prayer for regularization is concerned, his service shall be regularized in terms of the O.M. dated 17.03.2015. However, it is being clarified that if before completion of 30 years, by the petitioner, any post arises in the Department, then he has to be regularized without waiting for his completion of 30 years of service. In the given facts and circumstances it is provided that the parties have to bear their own cost(s)."

28. It further appears that against the said Judgment and Order dated 24.06.2022 of the Single Bench, the State respondents have preferred an appeal being WA/29/2022 before this Court, wherein, this Court by Judgment and Order dated 13.12.2022 was pleased to modify the Judgment and Order dated 24.06.2022 by directing the appellants/State respondents to pay the minimum of the pay scale (at the lowest rate in the regular pay scale) extended to regular employees holding the

same post.

29. Paragraph 13, 14, 15 and 16 of the aforesaid Judgment and Order dated 13.12.2022 is also reproduced hereunder for ready reference:-

“13. The OM dated 17.03.2015 at Clause 1(i) prescribes for regularization of those Work-charged and Casual employees who are enjoying scale pay and who have completed 30 (thirty) years or more continuous service as on 01.01.2015 by conversion of their post into regular ones personal to them and subject to fulfillment of certain conditions. Further, this Court has also considered Clause 1(ii) of the same OM where it provides that those Work-charged and Casual employees who are enjoying scale pay and who have completed or will complete 30 (thirty) years of continuous service after 01.01.2015 their cases for regularization will be taken up subsequently in two batches as on 1 July and 1 January every year and the procedures and terms and conditions will be the same as laid down in the order. On a perusal of the OM dated 17.03.2015 particularly Clause 1(ii), we are of the considered opinion that the case of the respondent/writ petitioner falls under Clause 1(ii) and the scheme provided under the OM of 2004. It is also to be noted that the respondent is enjoying scale pay as per the ROP of 1993.

14. In the case of State of Punjab and Others vs. Jagjit Singh and Others reported in (2017) 1 SCC 148 hon'ble Supreme Court has held as under:-

"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 concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time

to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

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

15. In terms of the discussion made herein above, we therefore, have no hesitation to come to the conclusion that the case of the petitioner is covered by the OM dated 17.03.2015, particularly Clause 1(ii) and the OM of 2004. We also have no hesitation to come to the conclusion that the respondent is entitled to the minimum of the pay scale extended to regular employees holding the same post.

16. Accordingly, the judgment dated 24.06.2022, passed in WP(C) No. 92/2019 is modified by directing the appellants to pay the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post. In so far as the regularization of the case of the respondent is concerned and particularly taking into consideration the statements made by the appellants in their affidavit-in-opposition filed in WP(C) No. 92/2019 particularly para 6 therein, where a specific stand has been taken that the Work-charged employees are given regularization of their services as and when vacancy arises in their Department even without completing 30 (thirty) years of service as prescribed in the OM dated 17.03.2015, the appellants are directed to regularize the service of the petitioner as and when vacancy arises after his seniors are regularized without waiting for his completion of 30 (thirty) years of service."

30. Pertinent that in the present case also, the petitioners were enjoying the scale pay as per ROP 1993.

31. It further appears that thereafter the pay scale of all the employees including the petitioners who were drawing scale pay

as per ROP 1993 and who are continuing as work charge employees has been revised with effect from 01.01.2015 in terms of the Office Memorandum dated 17.03.2015.

32. Thus, the instant case is squarely covered by the date of the Division Bench of this Court in WA No.29/2022.

33. It further appears that the petitioners are performing similar work as that of the regularly appointed dobashis.

34. In view of the aforesaid Judgment and Order of the Division Bench of this Court, as well as the Judgment and Order of the Single Bench of this Court and the Apex Court, I am of the considered opinion that this writ petition can be disposed of by directing the respondent authorities to pay the minimum of the pay scale (at the lowest rate in the regular pay scale) extended to the regular employee holding the same post with effect from the date of filing the writ petition, i.e. 19.03.2022.

35. Ordered accordingly.

36. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant