

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10990 of 1998

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The Management of The National Textile Corporation (WBAB 20) Marketing
Division, S.P. Verma Road, Patna.

.... Petitioner/s

Versus

- 1.The Presiding Officer, Industrial Tribunal, Bailey Road, Patna.
2. National Textile Corporation, Karamchari Union.
3. National Textile Corporation, Employees' Association, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. K.W.GUPTA, Adv.
Mr. Satyendra Krishna Prasad, Adv.

For the Respondent/s Mr. D.N.Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 03-08-2015

Heard counsel for the petitioner, for the private
respondents and for the State.

In this case, the petitioner is challenging the award dated
27th August 1998 by which the Industrial Tribunal, Patna has allowed
the claim of employees posted at Sales Depot Patna, holding, they are
entitled to pay scale equal to the pay scale of counter part posted at
Calcutta Depot. With regard to Item no.2 of the reference, the
Tribunal answered against the workmen holding that the workmen
working in Sale Center (show room) at Patna are better placed, as
their pay structured is higher than the people at Calcutta Division,
Bhubaneswar Division and Assam Division. So the challenge is
limited to Item No.I as the Tribunal with respect to Item No.II gave

answer in favour of Management.

It appears from the record that for revival of sick Textile Industry in the year 1974 the Government of India enacted Sick Undertaking (Nationalization) Act 1974 which came into force with effect from 1st April 1974. The purpose of the Act was to acquire the sick industries which were being run by the private management for revival. After enforcement of the Act, all the sick textile undertakings stood vested in the National Textile Corporation later on subsidiary company in the name and style of Nation Textile Company (WABA) Ltd., was incorporated as Government Company under the Companies Act (for short, 'subsidiary company').

All the sick Textile Undertakings situated in the State of West Bengal, Assam, Bihar and Orissa stood vested in the Holding Company and later transferred to the subsidiary company for better Management. Altogether eighteen undertaking were transferred to subsidiary company and out of 18 undertaking, 14 undertaking were situated in the Wet Bengal and were being paid in Textile Award. There were three offices, namely, Regional Office, show rooms and central depot. The holding company has also other subsidiary companies having their registered offices at Kanpur, Hyderabad, Bombay etc. At the time when the sick textile undertakings were taken over, the marketing were conducted and regulated by the Holding Company but in December 1982 the marketing division was

transferred NTC (WBAB &O)The marketing Division of the Holding Company prior to December 1982 had a central godown known as Central Sales Distribution Centre at Patna. The employees of the Central Distribution Centre were getting a consolidated scale of pay.

In Marketing Division, Patna and also in the mills situated in Bihar, the employees whose condition of service were governed by the Holding Company, employees including supervisory and administrative staff are getting NTC scale as they are treated to be employees of the Holding Company whereas other employees and employees of subsidiary and their wages are governed by Bipartite and Tripartite settlement on Regional Basis.

The staff of Sales Distribution of Patna Division, including the sales force working in the Divisional Office and the workers of the Mills have entered into settlement with the subsidiary company for revision of their wages and other benefits etc. in 1983.

The disparity in the pay scale of employees of the Sales Distribution of Patna and Calcutta Division, is on account of the local settlement entered at the Divisional level. The employees of Sale Distribution Centre of Patna Division are the employees of the Patna Division under subsidiary company. The Holding Company being a separate Company having its own scales of pay and other benefits are applicable only to the employees of the Holding Company.

The case of the workman is, the principle of equal pay

for equal work applies, as the employees of Patna Sales Distribution Centre discharges same and similar duty should also be given the same pay which is paid to the employees of Calcutta Division Distribution Sales Depot.

Ultimately industrial dispute was raised and the Government of Bihar has referred the case for adjudication. Before the Tribunal, two unions, namely, National Textile Corporation, *Karamchari* Union and The National Textile Corporation, Employees' Association, Patna have filed their respective written statements but by and large, their written statement is on the same line. In the written statement, the Union has stated that there are three divisional offices situated at Patna, Calcutta and Bhubaneswar and four godowns, namely, Central Distribution Sale Depot at Patna, Calcutta, Bhubaneswar and Guahati. On 27th December 1982 by Administrative order of NTC, New Delhi dated 27th December 1982 the services of the employees of Calcutta, Patna, Bhubaneswar and Guahati were transferred to NTC (WBABO) Ltd. Calcutta, it has been claimed before 27th December 1982 all the employees posted in those depots were getting equal salary and other perks and there was no difference in terms of pay among the employees employed at Patna, Calcutta, Bhubaneswar and Guahati. There is no difference in the work of employees of Patna Depot or Calcutta Depot. The employees posted at Godown and Divisional



office at Calcutta are getting N.T.C. Pay Scale, whereas the Sales employees posted at Patna godown and Divisional office are getting Mill Grade. On that basis workmen have claimed that the employees posted in the godown should get same scale of their counter parts posted at Calcutta on the principle of equal pay for equal work. The Management has filed its written statement and has taken a plea, the retail shop/show room employees of West Bengal are paid scale grade and other benefit as per settlement dated 30/11/1979 that incidentally the scale of pay of retail shop employees as introduced by virtue of settlement dated 30th November 1979 are same and similar as that of Textile award in West Bengal. It has been claimed by the Management that in Bihar the scale of pay of the Mill workers, retail sale employees are governed by virtue of bipartite and tripartite settlement. In December 1982, the Holding Company transferred the Marketing Division to the subsidiary company. Prior to December 1982, there was central godown known as Central Distribution Centre where staffs (employees) were getting consolidated scale of pay and their pay had nothing to do with the NTC scale. However, after transfer their total pay packet was protected. It has further been mentioned, the staff of sales distribution of Patna Division including the employees attached to sales, working in the Divisional Office and the workers of the Mills have entered into settlement in 1983 with

the subsidiary company.

It has further been mentioned that the infrastructure of Sales (retail) Division of Calcutta office is quite different from that of Patna, Guahati and Bhubaneswar Division. The divisional office and respective godown of Calcutta Division of erstwhile Marketing Division were controlled by the Holding Company. After merger it continued to be governed by their separate settlement, i.e. bipartite or tripartite. It has further been mentioned that the principle of equal pay for equal work cannot be applied in vacuum but it can only be applied if all incidence such as qualification, responsibility etc. are identical and only on that ground the employees can claim equal pay. Employees of Patna Sales Distribution Center (Godown) and Employees of Calcutta Sales Division Center are not inter transferable. In the written statement it has been raised that the company is running in loss in crores and it will not be able to bear additional burden by way of revision of pay scale. It has further been claimed, settlement in between management and workmen is in operation and as such, the reference itself is bad.

It appears that the Tribunal has discussed the oral as well as documentary evidence and found that certain persons who are employees at godown are getting NTC scale at par with the employees at Calcutta Office, finally held that employees of Sales Distribution of Patna Division would get same pay scale as that of

any scale of staff of Calcutta Division Distribution Sales Depot.

Counsel for the petitioner has submitted that those persons who were working in the holding of company were brought to subsidiary company, the Tribunal misconstrued the evidence, workmen and Management and Ext-D (Annexure-9 to the writ petition) wrongly arrived to the conclusion that the employees of Patna Depot as well as of Calcutta discharge identical work, wrongly gave its explanation of loss which will not be factor to deny the same scale of pay.

Counsel for the petitioner submitted that the Tribunal has misdirected himself and wrongly arrived to the conclusion of identical nature of work against the weight of evidence. It was the onus upon the workman to show that the nature of duty performed at Patna as well as at Calcutta is not different in which the workman has utterly failed to bring on record substantial materials indicating aforesaid conclusion. It has further been argued that the materials are not sufficient for arriving to a conclusion that the persons employed at Patna Depot are discharging identical nature of job entitled to same pay scale of counter part at Calcutta.

In support of his submission, counsel for the petitioner has relied on the judgments reported in :

2005 Lab. I.C. 4322 (State of Haryana v. Charanjit Singh)

2006 Lab.I.C 437 (Vijay Singh v. State of U.P.)

2014(2) PLJR 17 (Raj Muni Rai v. State of Bihar)

2008 Lab.I.C 241 (Union of India v. Mahajabeen Akhtar).

2007(8) Supreme To-Day 128 (State of Punjab and another v. Surinder Singh and another)

1972 Lab. I.C. 1012 (Unichem Laboratories v. Workmen).

Counsel for the workmen has submitted that nature of duty performed by the workmen at Patna as well as at Calcutta is identical which has been accepted by the Management through management witness, namely Ashit Chakrabarti, Management witness no. 2 where he has stated that the nature of job of employees of depots at Calcutta and Patna is same and similar except the volume of work is further corroborated from minutes of the meeting (Annexure-9) where it has been recorded that the Managing Director himself has accepted that there is disparity in pay scale which requires proper rectification.

This Court has to decide whether the workmen (employees) working at Patna Depot are discharging same and similar duty are entitled to the same pay scale to the employees posted at Calcutta depot and this Court has further to decide on revision of the pay there will be enhancement of financial burden

upon the Management, will the company be able to carry the burden in view of the fact it is running in loss in crores of rupees.

Another point this Court has to decide whether earlier settlement has been terminated, if not, without notice of termination of settlement, the Government of Bihar has correctly referred the dispute in result, is the dispute referred to is an industrial dispute under the Industrial Disputes Act. The next point this Court has to see is whether the award can be passed giving retrospectivity from the date of reference.

Having heard the counsel for the parties in the present case, the issue is limited of equal pay for equal work for the employees in Sale Distribution, Patna Division vis-a-vis the employees working in Calcutta Sales Distribution Depot claiming that the employees appointed at both the places are discharging same and identical nature of work and, as such, there should be identical pay scale. The Sales Distribution of Patna Division is counter part to the Calcutta Sales Distribution Depot.

After 1982 the marketing division of NTC (Holding Company) comprising West Bengal, Bihar, Assam and Orissa were transferred to subsidiary Company, namely, National Textile Corporation (WBAB & O) Limited and the employees working in Calcutta Sales Distribution Depot are getting the scale of NTC whereas the employees at Patna Depot are getting far lesser

amount.

The issue of equal pay for equal work has been deliberated by the Hon'ble Supreme Court and by this Court on different occasions, primarily in principle it has been held that for deciding the issue of equal pay for equal work, many factors have to be taken into consideration, such as, source of appointment, nature of appointment, responsibility and qualification, if there is any difference in any of ingredients aforesaid then equality in pay scale cannot be claimed.

In 2008 Lab.I.C 241 (Union of India v. Mahajabeen Akhtar) the Hon'ble Supreme Court has taken a view that large number of factors to be taken into consideration such as, educational qualifications, nature of duty, nature of responsibility, nature of method of recruitment etc. will be relevant consideration for determining equivalence in the matter of fixation of scale of pay. The question of violation of Article 14 of the Constitution of India by the State would come into play only when the persons are similarly placed. Equality clause contained in Article 14 of Constitution of India in, other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable intelligible differentia. The doctrine of equal pay for equal work has been envisaged in Article 39(d) of the Constitution of India read with Article 14 thereof,

cannot be applied in situation of dissimilarity. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher qualification has all along been treated by Courts to be a valid basis for classification of two categories of employees.” It is relevant to quote Para-19 to 24 of the judgment which are as follows:

“Para-19 : The question came to be considered in a large number of decisions of this Court wherein it unhesitantly came to the conclusion that a large number of factors, namely educational qualifications, nature of duty, nature of responsibility, nature of method of recruitment etc. will be relevant for determining equivalence in the matter of fixation of scale of pay.

Para-20 : In *Government of West Bengal v. Traun K.Roy & Ors.* [(2004)1 SCC 3471] this Court held as under:

“Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equality clause contained in Article 14 in other words, will have no application where the persons are not similarly situated or when there is a valid

classification based on a reasonable differentia.”

Para-21 : In U.P. State Sugar Corporation Ltd. & Anr. V. Sant Raj Singh & Ors. [(2006)9 SCC 82] this Court opined:

The doctrine of equal pay for equal work as adumbrated under Article 39(d) of the Constitution of India read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher qualification has all along been treated by this Court to be a valid basis for classification of two categories of employees”.

Para-22 : Same principle was reiterated by a Three Judge Bench of this Court in the State of Haryana & Ors. V. Charanjit Singh & Ors [(2006)9 321).

Para-23: We are not oblivious of some decisions of this Court wherein salary on the basis of revised pay scale has been directed to be paid on the premise that no change in the duties and functions of employees similarly situated had taken



place although the concerned employees were working in the different public sector undertakings (See The Employees of Temporary and Footwear Corporation of India ltd. & Anr. V. union of India & Ors. (1991 Supp.(2) SCC 565) or where scale of pay is to be fixed for the judicial officers posted in the State cadre vis-à-vis union Territory Cadre [Alvaro Noronda Ferriera & Anr. V. union of India & ors (1999)4 SCC 408] but such a question does not arise herein, as different scale of pay was recommended by an expert body having regard to the nature of duties and functions. It is not a case here discrimination is sought to be made on the basis of territory or posting in public sector undertaking.

Para-24: On the facts obtaining in this case, therefore, we are of the opinion that the doctrine of equal pay for equal work has no application. The matter may have been different, had the scales of pay have been determined on the basis of educational qualification, nature of duties and other relevant factors. We are also not oblivious of the fact that ordinarily the scales of pay of employees



working in different departments should be treated to be at par and the same scale of pay shall be recommended. Respondent did not opt for the services to be placed on deputation. She opted to stay in the Government service as a surplus. She was placed in list as Librarian in National Gallery of Modern Art. She was designated as Assistant Librarian and Information Assistant. Her pay scale was determined at Rs.6,500/- which was the revised scale of pay. Her case has admittedly not been considered by the Fifth Pay Revision Commission. If a scale of pay in a higher category has been refixed keeping in view the educational qualifications and other relevant factors by an expert body, no exception thereto can be taken. Concededly it was for the Union of India to assign good reasons for placing her in a different scale of pay. It has been done. 'We have noticed hereinbefore that not only the essential educational qualifications are different but the nature of duties is also different. Article 39(d) as also Article 14 of the Constitution of India must be applied, inter alia, on the premise that equality clause should be

invoked in respect of the people who are similarly situated in all respects.”

The Hon’ble Supreme Court in 2005 Lab. I.C. 4322 (State of Haryana v. Charanjit Singh) has held that doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a Court of law But equal pay must be for equal work of equal value. The principle of ‘equal pay for equal work’ has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. It is relevant to quote Para 17 and 18 of the judgment which are as follows:

Para-17 “ Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa university of Agriculture & Technology and Tarun K. Roy, lay down the correct law. Undoubtedly, the doctrine of “equal pay for equal work’ is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of “equal pay for equal work” has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or



characteristics of persons recruited and grouped together, as against those who were left out. Of course the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional venues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain case, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or



craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of “equal pay for equal work” requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and reasonableness. Functions may be the same but the reasonabilities made a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally, a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof. If the High Court, is on basis of material placed before it, convinced that there was equal work of equal



quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.”

Para-18 As stated above in all these cases the high Court has followed a Full Bench decision of that Court. The Full Bench has also observed that the essential ingredient is similarity. This would be correct. However, at one stage the full Bench observes that even if some dispute is raised, that would be wrong law. In each case the Court must satisfy itself that the burden of proving that the work and conditions are equal as discharged by the aggrieved employee.”

In the course of time, the Hon’ble Supreme Court has given a certain change in the policy of “equal pay for equal work”. Earlier view was that if two persons are discharging the same functions, they will be entitled to same pay scale but subsequently, this policy has changed. Now the view of the Hon’ble Supreme Court is that there should be complete and total identity between the two persons similarly situated so as to grant equal pay for equal work. This principle has been adumbrated in 2007(8) Supreme To-

Day 128 (State of Punjab and another v. Surinder Singh and another) where the Hon'ble Supreme Court in Para-6 of the judgment has said as follows:

Para-6 The principle of equal pay for equal work has gone a sea change. Earlier the view of this court was that if two persons are discharging the same functions, they will be entitled to same wages. Subsequently, this view has been changed and now the view of this Court is that there should be complete and total identity between the two persons similarly situated so as to grant equal pay for equal work. Recently this Court has held that identity between two persons has to be complete and total. In case of a regular appointee, he has undergone a selection process and his services are regular. Even if a daily wage employee is discharging the same functions as a regular employee the authorities are not bound to grant equal pay to such a person who is appointed on daily wage basis, i.e. is appointed for a short term and has not faced the selection process. Thus the principle of equal pay for equal work has to be granted only if there is a total and complete identity between the two persons. In this view, we are supported by a decision of

this Court in the case of S.C. Chandra & Ors. V. State of Jharkhand & Ors (2007) 9 SCR 130: JT (2007) 10 SC 272, which has referred to earlier decisions of this Court”.

This Court in 2014(2) PLJR 17 (Raj Muni Rai v. State of Bihar) also held that equal pay for equal work was raised and the Court after discussing the materials on record has taken a view that the nature of work and duties becomes one and prime considerations for applying the principle of ‘equal pay for equal’. Similarity of work alone can also not be the only ground for grant of equal pay. In AIR 1994 SC 2411 (State of U.P. vs. Prem Lata Mishra) the Hon’ble Court has said that it also requires that the other factors should also be calibrated for arriving to the conclusion of identity of work. It is relevant to quote Para 18 and 19 of the Judgment:

Para-18 “..As a prerequisite for upholding the claim, the claimants must not only establish that the nature of work is identical but also that there was no reasonable basis to treat them separately. Mere similarity in the nature of the work of two groups, is not sufficient”.

In (200)8 SCC 580 (Union of India & ors v. Pradip Kumar Dey) the Hon’ble Supreme Court has



also gone to clarify that not only the nature of work but also there being no reasonable basis to treat them separately has to be further gone into while examining the claim for 'equal pay for equal work' in the light of the pattern of hierarchy requiring reorientation and restructuring of other parts above and below involving other establishment and thereby likely to prejudice chain reaction."

In 2006 Lab.I.C. 437 (Vijay Singh & another v. State of U.P. & another) the Hon'ble Apex Court has taken same and similar view that if the responsibilities that carries with the post are different, then the same would make a difference. The differentiation in the pay scale of person holding the same post and performing similar work on the basis of the degree of responsibilities would be a valid differentiation. Difference of pay scale in the same cadre based on educational qualification can be made a valid classification. However, while comparing and evaluating the work done by different persons either in the same department or in different department a reasonable classification can be made on intelligibility criterion which has a rational nexus with the object of differentiation. In such a case the differentiation would not amount to discrimination, but where two classes of employees perform identical duties with the same measure of responsibility

and have the same qualification for the appointment on the said post, in that event, they would be entitled to equal pay and denial of equal pay discrimination would be violative of Article 14, 16 and 39(a) of the Constitution. It will be relevant to quote Para-14 and 15 of the said judgment which are as follows:

Para-14 In M.P.Rahul Agriculture Extension Officers' Association v. State of M.P. 2004(4) SCC646 (AIR 2004 SC 2020), two different pay scales were provided in the same cadre on the basis of educational qualification even though the nature of work was the same and the posts were also interchangeable. The said classification was challenged which was rejected by the High Court. The Supreme Court while dismissing the appeal held that despite the act that the employees had been performing similar duties and functions and even though their posts were interchangeable, nonetheless, a valid classification was made on the basis of their educational qualification and therefore, the doctrine for equal pay for equal work was not applicable. The Supreme Court further held that Article 14 of the Constitution does not forbid a reasonable classification and that Article 14 forbids a class legislation but



permits reasonable classification subject to the conditions that it was based on an intelligible differentia and that the differentia must have a reasonable relation to the object sought to be achieved. The Supreme Court held that the classification done by the State Government was not discriminatory in nature inasmuch, as there was a reasonable classification based on the educational qualifications.

Para-15 In view of the aforesaid, it is clear that the principle of equal pay for equal work would depend upon the nature of work done and that the same cannot be judged by the mere volume of work. If the responsibilities that carries with the post are different, then the same would make a difference. The differentiation the pay scale of person holding the same post and performing similar work on the basis of the degree of responsibilities would be a valid differentiation. Difference of pay scale in the same cadre based on educational qualification can be made a valid classification. However, while comparing and evaluating the work done by different persons either in the same department or in different department a reasonable classification can be made on intelligibility



criterion which has a rational nexus with the object of differentiation. In such a case the differentiation would not amount to discrimination, but where two classes of employees perform identical duties with the same measure of responsibility and have the same qualification for the appointment on the said post, in that event, they would be entitled to equal pay and denial of equal pay would be violative of Article 14 and 16 of the Constitution.”

It is well known principle of law that the person who is claiming parity in the pay scale has to equate and prove identity of work and other similar factors making comparison with the work with which the employee is claiming equal pay for equal work. The onus is discharged when sufficient material showing the identity of work and responsibility is brought before the Court then the reverse onus shift upon the Management to show that there is no identity of work, entry into service with different mode and method, educational qualification and degree of responsibility is different and classification is based on intelligible differentia, is no existence of other similar identical purpose, as mentioned above.

In 2008 Lab. IC 3844 (State of Bihar & Ors. V. Bihar Veterinary Association & Ors.) this Court has held that in order to get similar pay, there should be complete identity between the two.

Granting of pay scale is purely executive function, hence, the Court should not interfere with the same, except in a proper case. It is not in dispute the management of NTC is a “State” within the meaning of Article 12 of the Constitution of India and as such, in governance in Part III and Part IV of Constitution of India is applicable.

This Court is conscious of limitation in interfering with the award of the Tribunal and Labour Court as the Hon’ble Supreme Court determinates the scope of judicial review in the case of Syed Yakoob .v. Radha Krishnan (AIR 1964 SC 477) in Para-7 of the judgment which is as follows:

Para-7: “The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question



without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in



mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque*, 1955-1 SCR 1104: ((S) AIR 1955 SC 233): *Nagendra Nath v. Commr. of Hills Division*, 1958 SCR 1240: (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168”.

The aforesaid proposition has been followed in the case of *Anoop Sharma .v. Public Health Division, Haryana* [(2010)5 SCC 497].

In view of the discussion mentioned above, it is to be examined whether in the present case the Management petitioner is justified in claiming of interference in the award passed by the

industrial Tribunal, Patna whereby and whereunder it has directed for giving equal pay for equal work to the employees posted under the Management at Patna Division.

In the written statement NTC Employees Association (as it appears from the record) has claimed that before 1982 the pay scale of the staff Sales Distribution (Depot) Division of the Calcutta as well as at Patna were identical later on after transfer of Marketing Division of five States a distinction in their respective pay scale was made. The employees posted at Calcutta Depot are getting higher pay scale when they are discharging same and identical work.

In support of this contention, two witnesses have been examined. W.W.2, Bal Mukund Yadav has given descriptive statement showing identity of work and has claimed that the staff at Patna Depot are discharging the same duty, as the counter part of Calcutta Depot. Though the Management has filed written statement claiming difference of work between the Calcutta and Patna Depots where it has been claimed that the volume of work is on the higher side in Calcutta than at Patna, as has been claimed that in Calcutta Division, number of show-rooms are on the higher side than at Patna but the evidence of M.W.2 Ashit Chakrawarti, though in the examination in-chief has claimed difference of nature of work but in his cross examination, in Para-9 has stated that the work load may

differ but the nature of work of employees of particular grade and nature is the same, to that extent the Management witness has accepted the nature of work of corresponding grade and category is the same.

The management when takes this plea, is required to bring documentary material to substantiate the stand, but relevant materials have not been brought, as the management has taken plea, onus is upon them to bring supportive material but have not brought material on record to show variation of degree of responsibility, educational qualification, manner or source entry of the employees at Calcutta are different than that of the employees of Patna Depot. The workmen deposing before the Tribunal having discharging same been accepted by the Management witnesses in Para-9, in that circumstance, onus shifts upon the Management to show what is the difference in identity of work, nature of responsibility and the educational qualification. But the Management nowhere in its written statement or through witness has brought any material to show that there was no identity of work and other factors are not similar as stated above. The balance further tilts in favour of workmen union from the recital of minutes of meeting which is Annexure-9 (Ext-D) where in the proceeding the Chairman cum-Managing Director accepted the disparity exists. It will be relevant to quote from Annexure-9, which is as follows:

“Approval of disparity by extending NTC scale of pay to the Godown/Divisional Office, Employees of Patna, Bhubneshwar & Guwahati Division in line with Calcutta.

Chairman-cum M.D. explained that it is unfortunate that such disparity exists. He however, agreed in principle for removal of the disparities but there are certain formalities to be followed. It is necessary to have the clearance of the component authority i.e. Holding Company for this purpose. He however, indicated that the question of extension of the Central D.A. scale to specific employees, if cleared by the Holding Company, can be done only by way of Agreement with the concerned union indicating the names of employees to whom this will be applicable. He has assured that he will take up this issue as early as possible with the concerned authorities.”

This recital shows that there is disparity in the pay scale, though nature of work at Calcutta Depot vis-à-vis Patna Depot does not have any marked distinction. But at the same time it is well known while considering and comparing the identity of work there cannot be mechanical and mathematical exactitude in



weighing the nature of duty performed by the two classes of employees. In such view of the matter, this Court should not interfere with the finding without there being perversity in the award while exercising power under Article 227 of the Constitution of India empowers superior Court to interfere only when the Tribunal or the court has failed to consider the relevant materials were required to be taken, irrelevant facts have been taken into consideration, the findings are against the weight of evidence, so much so the findings arrived by the Tribunal are perverse as no prudent person will arrive to such a finding.

In the present case one more facts comes to the mind of Court, some employees posted in Patna are getting NTC pay scale and one S.N.Jha was posted at Calcutta Depot has been transferred to Patna Depot is getting NTC pay scale equal to employees of the Calcutta Depot.

In the recent judgment of Hon'ble Supreme Court the question of entitlement of N.T.C. scale came for consideration.

2003 Supreme 7348 (NTC v. NTC Show Room E Association, the Hon'ble Supreme Court has refused to interfere with the award when it is found that the employees posted in the show rooms in the State of Karnataka was transferred from the show rooms to the Head Office i.e. Corporate Office.

In the present case also appears, one S.N.Jha, posted

at Calcutta Depot was transferred to Patna who is getting the NTC scale so much so certain employees are getting NTC pay scale as that of Calcutta Depot.

Another point that has been raised by the Management is the Patna Depot is incurring heavy loss, in that circumstance, it will not be feasible and practical to pay the pay scale as that of the staff of Calcutta Depot.

It is admitted fact that the Depot at Calcutta, Guahati, Bihar and Orissa constitute one class, staff posted at aforesaid places are employees of subsidiary company which prepares consolidated profit and loss account. If other employees are getting even after loss, it does not stand to reason why these employees should be left out from the benefit of NTC pay scale staffs of Calcutta constituted different class without any reasonable and intelligible basis leads to an arbitrariness violates Article 14 of the Constitution of India and the reason assigned by the Tribunal cannot be said to be perverse requiring interference by this Court.

Another point that has been raised by the Management is that fixation of wages and D.A is well established that it has to be done in regard to financial capacity of the company. The employees of subsidiary company constitute one region and one class. There cannot be discrimination and it cannot be said that they do not belong to the same region as the Government of India



has incorporated to Subsidiary Company for making division demarcating whole of India in different regions and the Bihar Division and Calcutta Division, Guahati and Orissa Region, form Eastern Region and all of them merged with subsidiary company and as such, there is one identity falls in the same region cannot be said to be of different regions.

So far financial capacity is concerned, as stated above, when other employees discharging identical nature of work having identical responsibility are getting the pay scale, there is no reason for depriving the employees of the pay scale of the employees Patna Division the name financial difficulty in view of the fact that even certain staff gets NTC scale of pay. The issue deriving of settlement, without termination, there cannot be industrial dispute within the definition of Section 2(k) of Industrial Disputes Act, as it appears, this point was not raised before the Industrial Tribunal so much so the reference has been made on raising of Industrial Dispute by the Union, which itself leads to inference of termination of settlement in this manner, this issue goes against the petitioners.

In such view of the matter this Court does not find any merit in the present petition. Accordingly, this petition is dismissed.

Jay/-

(Shivaji Pandey, J)

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