

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on November 19, 2015

Judgment delivered on January 04, 2016

+ W.P.(C) 497/2013
STUTI RANJAN & ORS

..... Petitioner

Through: Mr. S.B. Upadhyay, Sr. Adv.
with Mr. Param Mishra, Mr.
Kaustav Pathak & Ms.
Anisha Upadhyay, Advs.

versus

GOVT OF NCT OF DELHI & ORS THROUGH: MISSION
DIRECTOR

..... Respondent

Through: Mr. Ikrant Sharma, Adv. for
R-1 to 5
Mr. R.V. Sinha, Adv. for R-6

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The present writ petition has been filed by twenty two (22) petitioners seeking the following reliefs:-

“ (i) direct the respondents to pay equal salaries, allowances and benefits at par with the regular Medical Officers and Gynaecologist of equivalent grade, employed by the respondents authorities doing same/similar nature of work, and/or;

(ii) may pass such other and further order(s) as this Court may deem fit and proper in the premises of the case.”

2. It is the case of the petitioners that the respondent No.6 had

launched a comprehensive health scheme in the name of National Rural Health Mission (NRHM), to provide effective health care to rural population throughout the country with special focus on eighteen States which have weak infrastructure. The Delhi State Health Mission, State Programme Management Unit under the NRHM issued an advertisement on May 15, 2008 in the local dailies/newspaper for the recruitment of personnel under NRHM including Medical Officers and Gynaecologist. The petitioners applied for the post of Medical Officers and Gynaecologist in different Districts in Delhi namely South District, South West District, North West District and West District. The NRHM scheme was being extended from time to time. On May 23, 2012, the same stands extended for further five years till March 31, 2017 co-terminus with the 12th Five Year Plan. The expenditure of the scheme is being shared by the Centre and States in the ratio of 75:25 with exceptions to some States where it is 90:10. The petitioners were appointed in different Districts on different dates.

3. Mr. S.B. Upadhyay, learned Senior Counsel for the petitioners would submit, that the petitioners till date are discharging identical and more onerous duties compared to regular Doctors of the Delhi Government and are entitled to get equal remuneration in pursuance of Article 14, 16 read with Article 39(d) of the Constitution of India and the

provisions of the Equal Remuneration Act, 1976. He states, that the petitioners are not entitled to any non practising allowance nor they are allowed to do any private practice. The petitioners have filed a chart showing comparison of qualifications, duties, duration of work, allowances of regular Medical Officers and Contractual Medical Officers. He would state, that the petitioners performing identical jobs with similar qualifications like the regular Medical Officers, they are entitled to the similar benefits of pay. He would rely upon the judgment of the Supreme Court in the case of ***Union of India vs. Dineshan K.K. (2008) 1 SCC 586.*** According to him, a somewhat similar issue was decided by this Court in the case of ***GNCTD vs. Dr. V.S. Chauhan 81 (1999) DLT 931 DB.*** According to him, the only reason given by the respondents to deny the benefit of equal pay for equal work is that the appointment of the petitioners are contractual. He would state, that such a plea is untenable, as the qualifications required for manning the posts and nature of duties, which according to him being identical, the prayer need to be granted. He would also state, a financial stringency cannot be a ground to deny the benefit, which the petitioners otherwise are entitled to in law. In that regard, he would rely upon the judgment of the Supreme Court in the case of ***All India Regional Rural Bank Officers Federation and other vs. Government of India and ors (2002) 3 SCC 554*** and also ***(2001) 4 SCC***

101 South Malabar Gramin Bank vs. Co-ordination Committee of South Malabar Gramin Bank Employees' Union and South Malabar Gramin Bank Officers' Federation & Ors. in support of his contention.

4. On the other hand, Mr. R.V. Sinha, learned counsel appearing for the respondent No.6 would state, that the petitioners, having been appointed under the NRHM scheme being operated by the Central Government through the States under the health mission on contract basis, are not entitled to the relief as prayed for. He would state, the terms of appointment are clear that, the same is contractual and the salary is a fixed one. He further states, any order in their favour would be contrary to the terms of appointment. He would place reliance on the judgment of the Supreme Court in the case reported as ***(2006) 9 SCC 321 State of Haryana and others vs. Charanjit Singh***. He would also state that the petitioners having not been recruited in accordance with the recruitment Rules by following due selection process nor any pleading or material has been placed on record to show as to how their recruitment, functioning or responsibilities are at par with regular appointed persons, that is when there is no complete and wholesome identity qua the regular appointed persons, the petitioners are not entitled to any relief. He states, the service conditions of the regular employees and the contractual officers like the petitioners are entirely different. Further, the regular employees

of the Government are bound by elaborate conduct Rules, which are not applicable to the contractual human resources. It is his submission that the appointment of the petitioners is under the State Health Society, a registered Society under the Societies Registration Act. The place of duty of the petitioners is in the health facilities in the Districts. Their appointment is for 11 months subject to renewability. He states, that equating salary with the regular cadre would have a cascading affect with other health functionaries in all other States also following multifarious suit. This would not only have an extensive and substantial remunerative parity throughout the country but will also have the effect of complete elimination of the flexibility with the states for providing performance based incentives and difficult area/priority areas allowances (provided in difficult states). The remuneration for health functionaries contributes to about 20-25% of the total expenditure under NHM. If the proposal for parity of pay for NHM medical officers vis-a vis the regular government medical officers, is accepted then it would require substantial augmentation of the resource cost almost to the tune of Rs.2000 Cr. This increase in human resource cost would in turn reduce the availability of finances for other health intervention under NHM like free drug, diagnostic, ambulance services. He would rely upon the judgments in the case reported as ***(2008) 10 SCC Official Liquidator vs. Dayanand and***

others; (2009) 9 SCC 514 State of Punjab vs. Surjit Singh; (2011) 11 SCC 122 Steel Authority of India Limited and others vs. Dibyendu Bhattacharya in support of his contention.

5. Mr. Ikrant Sharma, learned counsel appearing for the respondent Nos.1 to 5 would submit that the NRHM scheme was launched by the Hon'ble Prime Minister on April 12, 2005 to provide accessible, affordable and quality health care to the rural population, especially the vulnerable groups. The key features in order to achieve the goal of the Mission include making the public health delivery system fully functional and accountable to the community, human resources management, community involvement, decentralization, rigorous monitoring & evaluation against standards, convergence of health and related programme from village level upwards. In order to effectively address the health concerns of the urban poor along with the rural population, the Ministry launched NHM with two sub-missions; (i) National Rural Health Mission (NRHM) and a new sub-mission National Urban Health Mission (NUHM), which was approved by Cabinet for continuation upto 2017. He would state, that to implement the objectives of the National Health Mission, State Health Mission at the State Level has been set up with State Health Society, Delhi as its executive arm. In the district the implementation is by the Integrated District Health Society with their

units and not through the office of Chief District Medical Officer, Directorate of Health Services, Govt. of NCT of Delhi as informed by the petitioners. The State Health Society is the executive arm of the State Health Mission and the Integrated District Health Societies are independent societies which have to function as the executive arm of the District Health Mission. However, in Delhi due to absence of Panchayati Raj institution District Health Mission could not be notified. He would state, that a similar issue came up for consideration of this Court; in W.P.(C) No.9369/2014 and W.P.(C) No. 9377/2014 for similar contractual engagements by the Integrated District Health Societies, which have been dismissed by this Court. He states, that the Society has not appointed any regular Medical Officer and Gynaecologist as they cannot employ regular staff. The appointment being contractual in nature with clear terms and conditions, the claim of the petitioners for parity is totally misconceived. According to him, the regular Medical Officers in the regular establishment follow a different procedure and the appointments are governed by the terms and conditions of engagement applicable to them. He requests for the dismissal of the writ petition.

6. Having heard the learned counsel for the parties, there is no dispute that the petitioners have been engaged by the Integrated District Health Society in different Districts of the Govt. of NCT of Delhi. This Society

is under the State Health Society, which is the executive arm of the State Health mission through which the scheme of NRHM is being implemented. The terms of appointment given to the petitioners are very clear, inasmuch as their appointment is for 11 months initially. Their emoluments are fixed. It is also not disputed, as on date the scheme is in vogue till March 31, 2017. There is a purpose for which the scheme has been launched to ensure an effective health care to rural population. I may only point out here, that the petitioners have stated that they are not seeking regularisation. It is also noted that a batch of Writ Petitions (Civil) with leading case being 9371/2014 Meenu and others vs. Integrated District Health Society and others was decided by this Court on January 28, 2015, wherein the prayer in the writ petitions seeking regularisation of their services were dismissed. In effect, the petitioners are seeking parity with regard to emoluments with regular Medical Officers/ Gynaecologists working in the regular establishment of Govt. of NCT of Delhi. It is their case, that they are working on posts with identical qualifications, duties and are entitled to a parity qua the regular Medical Officers/Gynaecologists. In other words, they have invoked the concept of equal pay for equal work as they heavily rely on Article 39(d) of the Constitution of India.

7. The concept of equal pay for equal work was first considered by the

Supreme Court in the case reported as *AIR 1962 SC 1139 Kishori Mohan Lal Bakshi vs. Union of India*, wherein it was held that the principle is not capable of being enforced in a Court of Law. Later in the case of *Randhir Singh vs. Union of India AIR 1982 1 SC 618*, it was held that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. The ratio in *Randhir Singh case (supra)* has been followed in catena of judgments, wherein it was held that daily wage employee who is performing duties similar to regular employees, is entitled to the same pay. However, later, the Supreme Court in series of judgments has held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc.

8. In *State of Haryana vs. Jasmer Singh (1996) 11 SCC 77*, the Supreme Court held that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations or

even in the same organisation. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevant to efficiency in services which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale.

9. In *State of Haryana and Anr. Vs. Tilak Raj and Ors (2003) 6 SCC 123*, the Supreme Court held that to claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on par with the other group vis-à-vis an alleged discrimination. It was also held that the "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. In *Harbans Lal vs. State of H.P., 1989 (4) SCC 459*, the Supreme Court held that the claim of carpenters employed by an incorporated company for parity in wages payable to their counterparts in government service is unsustainable. Similarly, in *Mew Ram Kanojia vs All India Institute of Medical*

Sciences and Arts (1989) 2 SCC 235, wherein the Supreme Court dealt with an issue of pay parity between Speech Therapist and Audiologist and held that merely because Speech Therapist who perform similar duties and functions in other Institutions are paid higher pay scale is no good ground to accept the petitioner's claim for equal pay. There may be difference in educational qualifications, quality and volume of work required to be performed by the Hearing Therapists in other Institutions. A person claiming parity must sufficiently produce material before the Court to adjudicate upon such a complicated issue of factual determination. Moreover, if the employer is not the same, the principle of 'Equal Pay for Equal work' would not be applicable. In *Union of India vs. P.K. Roy AIR 1968 850*, the Supreme Court laid down four factors to be determinative of the issue of equivalence of the post:-

- (i) the nature and duties of a post;
- (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;
- (iii) the minimum qualifications, if any, prescribed for recruitment to the post;
- (iv) the salary of the post.

10. In *Jawaharlal Nehru Technological University vs. T. Sumalatha*

(2003) 10 SCC 405, the Supreme Court held that the respondents who were employed under a scheme known as National Technical Manpower Information System (NTMIS) sponsored by the then Ministry of Education and Culture cannot claim parity with regular Government employees in the matter of pay scales. In ***Canteen Mazdoor Sabha vs. Metallurgical & Engg. Consultants (India) Ltd*** (2007) 7 SCC 710, the Supreme Court held that simply because some employees of a contractor of the alleged head employer are performing the task or duties similar to the employees of the head employer, it will not entitle such employees to claim parity. In ***State of Haryana Vs. Charanjit Singh***, 2006 (9) SCC 321, the Supreme Court in para 19 has held as under:

“19. 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 avenues

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 cases, 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 merit with due regard to seniority a higher 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 responsibility. Functions may be the same but the responsibilities 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 regards. 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”.

11. Having noted the position of law and the facts, as mentioned above, the petitioners have been engaged by the Integrated District Health Society in different Districts of the Govt. of NCT of Delhi. This Society is under the State Health Society which is the executive arm of the State Health Mission which is implementing the National Rural Health Mission of the Govt. of India for providing effective medical benefits to the rural population. They are not appointed against sanctioned posts as in the regular establishment in a defined service. The fixed salary being paid is from the amount contributed by the Central and the State Governments against the scheme, in that sense, they are not being paid from the same source as the regular employees. Therefore, the mere fact, they are doing work similar to regular employees of Government of NCT of Delhi, would not be sufficient to invoke ‘equal pay for equal work’. The employer of the petitioners is the Society which is formed in every District unlike the employer of the regular Doctors, the Govt. of NCT of Delhi. There is also no dispute that the regular Doctors are appointed through a selection process laid down in the recruitment Rules whereas the appointment of the petitioners is pursuant to an advertisement, which

lays down the format of the application, submission of the application, the manner of selection and the options given to the candidates to choose an Integrated District Health Society. In other words, the procedure as contemplated in the recruitment Rules is not followed for making appointment of the petitioners. Further, no material is placed on record by the petitioners except a comparative chart showing qualifications, the duration of duties and the place of working, which would not be sufficient to determine that the nature of work, the value judgment, the responsibilities, reliability, experience, confidentiality, functional need, are identical.

12. I agree with the submission of Mr. Sinha that if the claim of the petitioners is to be accepted, the very purpose for which the scheme has been evolved would be defeated. If the remuneration of the health functionaries constitutes 20 to 25% of the total expenditure of NHM, with claim being allowed, it would raise manifold, which would surely have a repercussion on the very purpose of providing free drug, diagnostic and ambulance service to the population at large. No doubt, this scheme is being funded by the Central Government and the State Governments but in a given case, it may happen that a project or a scheme is funded by an outside agency in private sector/WHO. If the concept of equal pay for equal work is to be accepted in the case of a scheme sponsored by the

Government, then the same analogy must be followed in all the schemes funded by private enterprise/WHO. A project or a scheme is evolved to achieve a particular purpose related to research/services as in this case providing effective health care to the rural population and not to generate/create employment. The Supreme Court in similar circumstance, has denied the benefit of pay scale to scheme employees in ***Jawaharlal Technological University (supra)***. The facts were, respondents were appointed as Investigators on a consolidated pay in the Nodal Centres set up in appellant University under a scheme known as National Technical Manpower Information System by the then Ministry of Education & Culture, Govt. of India. Their appointment was for 89 days and the services were extended from time to time on similar terms. The consolidated pay was revised twice. It was noted by the Supreme Court that communication dated November 9, 1983 from the Union Ministry of Education that a scheme known as National Technical Manpower Information System was evolved by the Govt. of India. Its objective was to provide upto date meaningful manpower information on a continuing basis to enable the authorities concerned to anticipate areas of growth in the field of science and technology and consequently plan for technical man power development on proper lines. Under that scheme NTMIS had a lead centre in the institute of Applied Man Power Research attached to

the Ministry of Education and seventeen Nodal Centres in the selected higher institutes of engineering and technology. The lead centre was to coordinate with the functions of various nodal centres to oversee the proper functioning of those centres. The appellant University was one of the institutions selected for the establishment of a nodal centre. The nodal centres were mainly concern with the collection of data and the preliminary processing of data was to make it suitable for further processing in a computer. It was noted that the nodal centre was sanctioned initially for a period of one year and nine months. However, it was continued. It was not disputed that the nodal centre was financed by the Ministry of Education, which released grants from time to time. The allocation of funds for various items of expenditure including staff salaries is specifically mentioned in the order releasing recurring grant. The consolidated pay was enhanced by the Govt. of India on two occasions while releasing the grants. A GO no.212 was issued by the Govt. of Andhra Pradesh. It appear, in a different case, the Andhra Pradesh High Court, in a writ petition filed by the employees of the University, who are appointed on consolidated pay and working in the self supporting scheme of the University, granted regularisation with regular pay scales. Inspired by the said judgment, the respondents filed a writ petition seeking a writ or direction to regularise their services and accord them regular pay

scales. The High Court allowed the writ petition and gave direction to the University to regularise the services of the writ petitioners, if they have completed three years of service, they are qualified and the posts are advertised by the University. The State Government was also directed to take a final decision on the proposal of the University to create additional posts within specified time limit. A review petition was filed by the University contending that the Division Bench decision on which the learned Single Judge of the High Court relied upon, pertains to the University employees working on temporary or ad-hoc basis whereas the writ petitioners in the case are entirely governed by the scheme formulated by the Govt. of India. It was noted by the Supreme Court in the review petition that the learned Single Judge focused his attention on the GO No.212 dated April 22, 1994 and held that the said GO, which was applicable to the University employees as well, the services of the writ petitioner Nos. 1 to 3 and 5 i.e the respondents before the Supreme Court, who completed five years of service on the crucial date mentioned in the GO, were liable to be regularised. As regards the fourth writ petitioner, who did not complete three years of service as on November 25, 1993, the learned Single Judge directed the University to sent a proposal to the State Government for creation of additional post and the Government should take a decision within one month from the date of receipt of the proposal.

The High Court further observed that after the post is sanctioned, the University shall advertise and fill up the vacancy by appointing petitioner No.4, if he is otherwise qualified. The Supreme Court considering the aforesaid background, has in para 5 of the judgment held that the High Court fell in error in applying GO no.212 dated April 22, 1994 to the case of the writ petitioners. That apart, the Supreme Court has in para 8, held as under:-

“8. The next question is whether the Central Government i.e., Respondents 7 & 8, should be directed to take steps to create posts with appropriate pay-scales in the Nodal center for the purpose of absorbing respondents 1 to 5 on regular basis, by reason of their longstanding service. It is pointed out by the learned counsel for the respondent-employees that the Nodal center, though conceived as a temporary scheme, has come to stay for nearly two decades by now and its relevance is not lost in the present day context and the possibility of its disbandment is remote. The learned counsel therefore contends that there is every justification for absorbing the concerned respondents on regular basis in recognition of their long satisfactory service. The learned counsel further contends that the adhoc arrangement to employ them on consolidated pay should not go on forever. The contention of the learned counsel cannot be sustained for more than one reason and we find no valid grounds to grant the relief of regularization. There is nothing on record to show that the concerned employees were appointed after following due procedure for selection. Apparently, they were picked and chosen by the University authorities to cater to the exigencies of work in the Nodal center. Secondly, having regard to the background in which respondents 1 to 4 were drafted to perform the job assigned to them, it is difficult to concede to them the status of regular Government servants. As seen earlier, the scheme envisaged the

employment of senior Engineering students during vacation periods and for payment of remuneration for the work done by them. As the students were not prepared to take up the work of investigation as stated in the counter-affidavit filed in the High Court, the University authorities thought of inducting respondents 1 to 4 to perform the job which was expected to be done by the Post-Graduate students on part-time basis. The appointment of respondents 1 to 4 was thought of only by way of substituting them for the Engineering students who, in the normal course, would have taken up the work pursuant to the scheme. The plea to regularize their services is misconceived having regard to the background and circumstances in which respondents 1 to 4 came to be appointed. As regards the 5th respondent, the position is still worse. No post of Attender has been sanctioned under the scheme. However, as seen from the counter-affidavit filed in the High Court, her salary was being met out of the funds allocated for office expenditure.”

13. It may be stated here that in para 9, the Supreme Court had directed the Govt. of India to revise the consolidated pay as was being paid to the respondents therein. Suffice to state, the Supreme Court had not granted the prayer of regularisation and pay scales to the respondent by noting that their appointment was under a scheme and they were not appointed after following due procedure for selection and their appointment was in exigencies of work in the nodal centre and such persons cannot be given the status of regular Government Servants. The said judgment would cover the issue, which has been raised in the case in hand, inasmuch as the petitioners cannot equate themselves with the regular Government employees.

14. I note for benefit, that this issue of pay scale was gone into by this Court in W.P.(C) No.9371/2014 decided on January 28, 2015 wherein this Court in para 18 (1) (ii) has held as under:-

“18. (i) That takes us to the second argument urged on behalf of the petitioners that petitioners must get the same scale of pay as granted to those employees who are doing identical work with the petitioners with the only distinction being that such other employees are on deputation with the respondent no.1 from the Government of NCT of Delhi and the petitioners are denied equality of monetary emoluments given to such other deputationists only because petitioners are contractual employees of the respondent no.1.

(ii) In this regard, contractual employees, in my opinion, in view of ratio of the judgment of the Supreme Court in the case of Umadevi & Ors. (supra), can only claim contractual rights because they with open eyes sought and got employment only on contractual basis. There is no reason why the dividing line between contractual employees and permanent employees of the respondent no.3/Government of NCT of Delhi should be wiped clean. The effect of allowing the prayer as made by the petitioners alleging ‘equal pay for equal work’ will be that temporary employees will be equated with the regular government employees, and which in the opinion of W.P.(C) No. 9371/2014 & conn. matters Page 23 of 24 this Court cannot be done much less at this stage. Why I am using the expression ‘at this stage’ is because may be at an appropriate point of time when the work of the respondent no.1 after many years would be held to be of perennial nature, and thereafter if the respondent no.1 is directed in accordance with law to consider creation of permanent posts as the work is perennial in nature, then, this issue can be examined at that particular stage, and definitely not today. Also, if the prayer of the petitioners is allowed to grant the same pay scale and monetary emoluments which are granted to the other category of employees who are

government servants, the effect would be that what cannot be done directly would be done indirectly i.e if the petitioners cannot be given benefit of permanent posts by allowing this prayer the petitioners will be entitled to get benefit of the permanent posts by their getting the pay scales and monetary emoluments of permanent posts of the respondent no.3. In the facts of this particular case, therefore, this Court cannot apply the doctrine of 'equal pay for equal work' in favour of the petitioners."

15. Insofar as the judgments relied upon by Mr. Upadhyay in the case of ***All India Regional Rural Bank Officers Federation and others (supra)***, by relying upon para 4 of the judgment. In the said case, the Supreme Court was primarily concerned with the non compliance of the order passed by the Supreme Court to hold that the financial incapacity of the Government cannot be pleaded a ground for non implementation of the directions of the Court earlier given, more particularly, in the matter of determination of the pay scales of the employees of the regional rural banks and maintenance of parity with their counterparts serving under the sponsored commercial banks. The said plea was not accepted as the Award had attained finality. The said case can be distinguished on facts.

16. Insofar as the judgment of ***GNCTD vs. Dr. V.S. Chauhan (supra)*** is concerned, this Court was considering a writ petition challenging the order of Central Administrative Tribunal by the Government of NCT of Delhi wherein the Tribunal had directed the Govt. of NCT of Delhi to pay the respondent Doctors, the same pay scales and other benefits like

Provident Fund, Medical Attendance etc as payable to the regular Junior Medical Officers performing similar duties. The case of the respondent Doctors was that they possessed the required qualification and the training for discharging duties as Junior Medical Officers. Their nature of duties were similar to the regularly appointed Doctors. They are liable to serve in any of the dispensaries or hospitals of the Government of National Capital Territory of Delhi and may be moved from one place to the other. The respondent Doctors had also relied upon the terms of their appointment letter, the extensions given time to time, the advertisement issued to demonstrate the transferability of the job and highlighting the other terms as well as the applicability of the Rules and Regulations.

17. On the other hand, the Government of NCT of Delhi's case was that the Doctors in various hospitals and dispensaries of Govt. of NCT of Delhi are made through UPSC under the Central Government Health Scheme Rules. The Ministry of Health and Family Planning is the controlling authority and since the said process is a long drawn process and as the health care services would suffer, the appointments were made on contract basis. The Doctors are bound by the terms of the contract of appointment, which were for limited period and the Tribunal could not have rewritten the terms of the contract. This Court held that the reasoning given by the Govt. of NCT of Delhi, not to pay the same

emoluments to the respondent Doctors as they paid to the regular Doctors was primarily for the reason that their appointment was contractual, which according to the Court was no justification and made the doctrine of equal pay for equal work applicable.

18. Having noted the facts from the judgment, the same are distinguishable with the case in hand, inasmuch as the respondent Doctors in the said case were appointed by the Govt. of NCT of Delhi for working in hospitals and dispensaries against the vacancies, which were to be filled by the regular Doctors. It is only for the reason that the normal selection process under the Rules i.e through UPSC was not gone through/takes time their appointment was made contractual and they were being paid consolidated pay. There is a finding of fact that the respondent Doctors were appointed against the vacancies/sanctioned post and were discharging duties of regular Doctors governed by similar terms and conditions as were applicable to the regular Doctors like transferability etc. Unlike the said case, in the case in hand, the petitioners are appointed against a particular scheme whose life is for a particular period i.e till March 31, 2017. The work which the petitioners are doing primarily related to the object for which the scheme was started. It is immaterial that regular Doctors are also posted in the same hospitals/dispensaries where the petitioners are posted. The genesis of

their appointment is the scheme but for the scheme, they would not have been appointed. The Rules and Regulations and other service conditions governing the appointment of the regular Doctors cannot be made applicable to the petitioners. Insofar as the judgment in ***Union of India Vs. Dineshan K.K.(supra)*** is concerned, Mr. Upadhyay who placed reliance in paras 12 and 13 of the judgment, but in para 16, the Supreme Court has held as under:

“16. Yet again in a recent decision in State of Haryana & Ors. Vs. Charanjit Singh & Ors. , a Bench of three learned Judges, while affirming the view taken by this Court in the cases of State of Haryana & Ors. Vs. Jasmer Singh & Ors., Tilak Raj (supra), Orissa University of Agriculture & Technology & Anr. Vs. Manoj K. Mohanty and Government of W.B. Vs. Tarun Roy & Ors. has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the Court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and

that there is equal work and equal quality and all other relevant factors are fulfilled”.

In view of the above, it is clear that the issue of grant of a pay scale/consolidated pay must be left to the executive and the Courts must be slow in giving directions, which may defeat the very purpose for which the scheme is evolved, that too, on a All India basis. Even the case of *State of Haryana Vs. Charanjit Singh (supra)* would not help the petitioners. I have already reproduced para 19 of the judgement above.

19. In view of the discussion above, I do not see any merit in the petition. The same is dismissed.

(V.KAMESWAR RAO)
JUDGE

JANUARY 04, 2016/ak