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IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. 717/2015

Reserved on : 30th January, 2017

Date of decision: 28th March, 2017

GOVERNMENT OF NCT OF DELHI AND OTHERS.... Petitioners

Through Mr. Sanjoy Ghosh, Mr. Rhishabh Jetely
& Ms. Purtishta, Advocates.

versus

KAMAL KANT SHARMA AND OTHERS Respondents

Through Ms. Kamalakshi Singh Chauhan & Ms
Saundarya Singh, Advocates.

W.P.(C) 720/2015

GOVT. OF NCT OF DELHI & ANR. Petitioners

Through : Mr. Sanjoy Ghosh, Mr. Rhishabh Jetely
& Ms. Purtishta, Advocates.

versus

JOHNSON THOMAS Respondent

Through : Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 807/2015

GOVT. OF NCT OF DELHI & ORS Petitioners

Through : Mr. Sanjoy Ghosh, Mr. Rhishabh Jetely
& Ms. Purtishta, Advocates.

versus

ASHOK KUMAR & ORS Respondents

Through : Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 808/2015

GOVT. OF NCT OF DELHI & ORS. Petitioners

Through : Mr. Sanjoy Ghosh, Mr. Rhishabh Jetely
& Ms. Purtishta, Advocates.

versus

RAMESH CHAND YADAV & ORS. Respondents

Through : Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 810/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through : Mr. Sanjoy Ghosh, Mr. Rhishabh Jetely
& Ms. Purtishta, Advocates.
versus
NEERAJ KUMAR AGGARWAL & ORS Respondents
Through : Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 811/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through : Mr. Satyakam, Additional Standing
Counsel, Govt. of NCT of Delhi.
versus
JUBY AUGUSTIN & ORS Respondents
Through : Ms. Kamalakshi Singh Chauhan &
Ms Saundarya Singh, Advocates.

W.P.(C) 812/2015

GOVT. OF NCT OF DELHI & ORS. Petitioners
Through: Mr. Satyakam, Additional Standing
Counsel, Govt. of NCT of Delhi.
versus
ANIL KUMAR SHARMA & ORS. Respondents
Through: Ms Monica Kapoor, Advocate.

W.P.(C) 895/2015

GOVT. OF NCT OF DELHI & ANR Petitioners
Through : Mr. Satyakam, Additional Standing
Counsel, Govt. of NCT of Delhi.
versus
VALSAMMA JOHN Respondents
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 897/2015

GOVT. OF NCT OF DELHI & ANR Petitioners
Through : Mr. Satyakam, Additional Standing
Counsel, Govt. of NCT of Delhi.
versus

ANITA & ORS Respondents
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocate.

W.P.(C) 898/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through : Mr. Gautam Narayan, Additional
Standing Counsel with Ms Shruthi Parasa, Adv

versus

KAPIL KUMAR KATARIA & ORS Respondents
Through : Mr. Pawan K. Bahl with Mr. Harish
Kumar, Advocates.

W.P.(C) 902/2015

GOVT. OF NCT OF DELHI & ANR Petitioners
Through: Mr. Gautam Narayan, Additional
Standing Counsel with Ms Shruthi Parasa,
Advocate.

versus

ADITYA KUMAR & ORS Respondents
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocate.

W.P.(C) 924/2015

GOVT. OF NCT OF DELHI & ANR Petitioners
Through : Mr. Gautam Narayan, Additional
Standing Counsel with Ms Shruthi Parasa, Adv.

versus

VALSA T.C. & ORS Respondents
Through : Mr. Yash, Mr. Sampat and Mr. Towseeb
Ahmed, Advocates for Respondent No.2.

W.P.(C) 1118/2015

GOVT OF NCT OF DELHI & ORS. Petitioners
Through : Mr. Gautam Narayan, Additional
Standing Counsel with Ms Shruthi Parasa, Adv

versus

ERESH KUMAR TIWARI & ORS. Respondents
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocate.

W.P.(C) 1123/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through: Mr. Gautam Narayan, Additional
Standing Counsel with Ms Shruthi Parasa,
Advocate.

versus

GULAB RABANI & ORS Respondents
Through: Mr. Pawan K. Bahl with Mr. Harish
Kumar, Advocates.

W.P.(C) 1124/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through :Mr. Deeptakirti Verma, Ms Neha
Sharma & Ms Aparna Iyer, Advocates.

versus

JITENDER KUMAR VYAS & ANR Respondents
Through : Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 1125/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through: Mr. Deeptakirti Verma, Ms Neha
Sharma & Ms Aparna Iyer, Advocates.

versus

SHRI SUSHANT SHARMA & ORS Respondents
Through : Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 1643/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through: Mr. Deeptakirti Verma, Ms Neha
Sharma & Ms Aparna Iyer, Advocates.

versus

RAJ KUMAR & ORS Respondents
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 1700/2015

GOVT. OF NCT OF DELHI & ORS Petitioners

Through: Mr. Deeptakirti Verma, Ms Neha
Sharma & Ms Aparna Iyer, Advocates.

versus

MUKESH KUMAR & ORS Respondents

Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 1709/2015

GOVT. OF NCT OF DELHI & ANR Petitioners

Through: Mr. Naushad Ahmed Khan, Additional
Standing Counsel(Civil) with Mr.Manzar Anis,
Adv

versus

SUMAN DEVI & ORS Respondents

Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 1714/2015

GOVT. OF NCT OF DELHI & ORS Petitioners

Through: Ms Isha Khanna, Advocate with Mr.A.K.
Sharma Assistant-Aruna Asaf Ali Govt. Hospital

versus

DINESH KUMAR SHARMA & ORS Respondents

Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 1746/2015

GOVT. OF NCT OF DELHI & ANR Petitioners

Through : Ms Isha Khanna, Advocate with
Mr.A.K. Sharma Assistant-Aruna Asaf Ali Govt.
Hospital.

versus

ZAMEER AHMED Respondent

Through : Ms. Kamalakshi Singh Chauhan and
Ms Saundarya Singh, Advocates.

W.P.(C) 1747/2015

GOVT. OF NCT OF DELHI & ANR Petitioners

Through : Ms Isha Khanna, Advocate with

Mr.A.K. Sharma Assistant-Aruna Asaf Ali Govt.
Hospital.

Mr. Rahul Kumar (LDC) from, Lok Nayak
Hospital.

versus

JITENDER KUMAR TIWARY & ORS Respondents
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 1757/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through: Ms Isha Khanna, Advocate with Mr.A.K.
Sharma Assistant-Aruna Asaf Ali Govt. Hospital

versus

PAWAN KUMAR Respondent
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 1770/2015

GOVT. OF NCT OF DELHI & ORS Petitioners
Through: Mr. Gursharan Singh, Advocate.

versus

JITENDER KUMAR & ORS Respondents
Through : Mr. Pawan K. Bahl with Mr. Harish
Kumar, Advocates.

W.P.(C) 2114/2015

GOVT. OF NCT OF DELHI AND ORS. Petitioners
Through: Mr. Gursharan Singh, Advocate.

versus

SINDHU AND ORS. Respondents
Through: Mr. Pawan K. Bahl with Mr. Harish
Kumar, Advocates.

W.P.(C) 3180/2015

GOVT. OF NCT OF DELHI AND ORS. Petitioners
Through : Mr. Gursharan Singh, Advocate.

versus

PANKAJ KUMAR TRIVEDI AND ORS. Respondents
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 3183/2015

GOVT. OF NCT OF DELHI AND ORS. Petitioners

Through: Mr. Gursharan Singh, Advocate.

versus

DEEPTI RAWAT AND ORS. Respondents

Through: Mr. Sachin Chauhan, Advocate.

W.P.(C) 3186/2015

GOVT OF NCT OF DELHI AND ORS. Petitioners

Through: Mr. Rahul Kumar (LDC) Lok Nayak Hospital.

versus

VINEET DABAS AND ORS. Respondents

Through: None.

W.P.(C) 3187/2015

GOVT. OF NCT OF DELHI AND ORS. Petitioners

Through: None.

versus

GARIMA AGARWAL AND ORS. Respondents

Through: Mr. Sachin Chauhan, Advocate

W.P.(C) 3201/2015

GOVT. OF NCT OF DELHI AND ORS. Petitioners

Through: None.

versus

AMIT GUPTA AND ORS. Respondents

Through: None.

W.P.(C) 3228/2015

GOVT OF NCT OF DELHI AND ORS. Petitioners

Through: Mr. Arjun Mitra & Ms. Jaskaran Kaur, Advocates.

versus

RAGHVENDRA SINGH AND ORS. Respondents

Through: Mr. Sachin Chauhan, Advocate

W.P.(C) 6110/2015

GOVT. OF NCT OF DELHI AND ORS Petitioners
Through: Mr.Arjun Mitra & Ms.Jaskaran Kaur, Adv
versus
RAM RATTAN Respondent
Through : Ms. Kamalakshi Singh Chauhan &
Ms.Saundarya Singh, Advocates.

W.P.(C) 6141/2015

GOVT. OF NCT OF DELHI AND ANR Petitioners
Through: Mr.Arjun Mitra & Ms.Jaskaran Kaur,
Advocates.

versus

PRINCY WINSON LOUIS AND ORS Respondents
Through: Mr. Pawan K. Bahl with Mr. Harish
Kumar, Advocates.

W.P.(C) 6150/2015

GOVT. OF NCT OF DELHI AND ORS Petitioners
Through: None.

versus

SURESH VARGHESE AND ORS Respondents
Through: Ms. Kamalakshi Singh Chauhan
& Ms Saundarya Singh, Advocates.

W.P.(C) 6272/2015

GOVT OF NCT OF DELHI AND ORS Petitioners
Through: None.

versus

SORAN SINGH AND ORS Respondents
Through: Mr. Pawan K. Bahl with Mr. Harish
Kumar, Advocates.

W.P.(C) 6273/2015

GOVT OF NCT OF DELHI AND ORS Petitioners
Through: Mr. Peeyoosh Kalra with Ms Heena
Narula, Advocates

versus

KARAMVEER AND ORS Respondents
Through: Mr. Pawan K. Bahl with Mr. Harish
Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.:

The issue involved in these present writ petitions pertains to the computation of basic pay at the minimum of the pay scale in the case of contractual employees. In view of the similarity of controversy, the aforesaid writ petitions are being disposed of by this common order and judgment.

2. The respondents in these writ petitions are contractual employees and are entitled to minimum of the basic pay, which is payable to a regular employee. To this extent, there is no *lis* or dispute between the petitioner-Government of NCT of Delhi and the respondents. Indeed, this issue has attained finality in view of the pronouncement of the Supreme Court in *State of Punjab and Others versus Jagjit Singh and Others*, (2017) 1 SCC 148. The question was earlier decided by the decisions of the Delhi High Court in *Victoria Massey versus Government of NCT of Delhi*, W.P. (C) No. 8764/2008, decided on 22nd May, 2009, *Rajesh Kumar Sharma and Others versus Government of NCT of Delhi and Others*, W.P.(C) No. 3769/2013, decided on 4th July, 2013, *NCT of Delhi and Others versus Pramod Kumar and Others*, W.P. (C) No. 3676/2011, decided on 1st March, 2013, *Deen Dayal Upadhyaya Hospital represented by its Medical Superintendent and Others versus Mahesh Bhardwaj and Others*, W.P. (C) No. 4863/2012, decided on 15th February, 2013, *Dr. Baba Sahib Ambedkar Hospital represented by its Medical Superintendent and Others versus Swastika Bhakat and Others*, W.P. (C) No. 424/2013 with

connected petition, decided on 24th May, 2013 and **Chief Secretary, Govt. of NCT of Delhi and Another versus Satish Kumar and Others**, W.P. (C) No. 2915/2013 with connected petition, decided on 1st November, 2013.

3. The different heads of allowances, which are payable to the contractual employees have not been questioned or challenged.

4. The dispute pertains to the computation of basic pay in terms of the Central Civil Services (Revised Pay) Rules, 2008 (Rules, for short), which were enacted pursuant to the recommendations of the Sixth Pay Commission. The dispute involves interpretation of the formula prescribed in the Rules for fixation of the basic pay. The contention of the respondents, which has been accepted by the Tribunal, is that the basic pay of the contractual employees would be computed as per formula for fixation of pay of the new direct recruits. Ergo, a new direct recruit, for the purpose of computing his basic pay, is entitled to the entry pay as fixed by the Rules. Entry pay applicable to the new direct recruits is not the total of the minimum of the pay band plus Grade Pay, albeit the total of the amount specified in Section II of Part A of the first schedule. As per Section II, Sister Nurses are entitled to Grade Pay of Rs.4600 plus pay in the pay band of Rs.12540 i.e. Rs.17,140/-. However, as per the petitioners, the respondents, who are working as Sister Nurses, are entitled to Grade Pay of Rs.4600 and pay in the pay band of Rs.9300/- i.e. Rs.13,900/-

5. We are in agreement with the view expressed by the Tribunal. Lest there be any confusion, we would like to reproduce the lucid findings recorded by the Tribunal:-

“ 20. When we refer to the minimum of the pay scale, it would never mean the minimum of the basic pay. When the pay is fixed in a particular pay scale at the minimum, in the

guidelines issued by the concerned Government Department from time to time, a methodology is suggested in this regard. In Chapter 169 of the Report of 5th Central Pay Commission, the method suggested was as under:-

“Illustrations

Illustration No.1 {see para 169.2 (i)}

1. Existing scale of pay: Rs.750-12-870-14-940
2. Proposed scale of pay: Rs.2,440-40-3,200
3. Existing basic pay : Rs. 870
4. D.A. at index average 1510:Rs. 1,288
5. First installment of I.R. :Rs. 100
6. Second installment of I.R.: Rs. 100
7. Existing emoluments : Rs. 2,358
8. Add 20% of existing basic pay : Rs. 174
- Total : Rs.2,532

Pay to be fixed in the revised scale: Rs.2,560”

21. Like-wise, after the recommendations of the 6th Central Pay Commission the formula evolved for fixation of new recruit provided that initially the fixed qualifying service prescribed in Department of Personnel & Training’s Office Memorandum No.AB-14017/2/97-Est.(RR) dated 25.8.1998 (as may be amended by the Government in future) for movement from the first grade in the running band to the grade in which recruitment is being made will be computed and thereafter one increment for every year of fixed qualifying service prescribed in the aforesaid OM of DOPT shall be provided on the sum total of the minimum of the running pay band and the lowest grade pay in that pay band. The relevant excerpt of the guidelines issued in this regard reads as under:-

“2.2.22 (iv) In case of new recruits, fixation in the running pay band of the group (viz. ‘A’, ‘B’, ‘C’) to which the post belongs will be done in the following manner:-

a. Initially the fixed qualifying service prescribed in DOPT's OM dated 25/8/1998 (as may be amended by the Government in future) for movement from the first grade in the running band to the grade in which recruitment is being made will be computed.

b. Thereafter, one increment for every year of fixed qualifying service prescribed in the aforesaid OM of DOPT shall be provided on the sum total of the minimum of the running pay band and the lowest grade pay in that pay band."

22. In view of the aforementioned methodology suggested, the incumbent of the post in a particular pay band was to be given certain number of increments with reference to the fixed qualifying service suggested for fixation of pay in the higher grade in the same pay band. The Schedule indicating the fixed qualifying service reads thus:-

S.NO.	FROM	TO	FIXED QUALIFYING SERVICE
1.	2550-3220	2610-3540	2 years
2.	2610-3540	2650-4000	2 years
3.	2650-4000	2750-4400	2 years
4.	2650-4000	3050-4590	4 years
5.	2750-4400	3050-4590	3 years
6.	3050-4590	3200-4900	3 years
7.	3200-4900	4000-6000	5 years
8.	3050-4590	4000-6000	8 years
9.	4000-6000	4500-7000	5 years
10.	4000-6000	5500-9000	10 years
11.	4500-7000	5000-8000	3 years
12.	4500-7000	5500-9000	6 years
13.	4500-7000	6500-10500	8 years
14.	5000-8000	5500-9000	3 years
15.	5000-8000	6500-10500	6 years
16.	5500-9000	6500-6900	2 years
17.	5500-9000	6500-10500	3 years
18.	5500-9000	7500-12000	7 years
19.	5500-9000	8000-13500	8 years

20.6500-6900	6500-10500	2 years
21.6500-10500	7450-11500	2 years
22.6500-10500	7500-12000	3 years
23.6500-10500	8000-13500	5 years
24.6500-10500	10000-15200	8 years
25.7450-11500	7500-12000	2 years
26.7450-11500	8000-13500	3 years
27.7450-11500	10000-15200	7 years
28.7500-12000	8000-13500	2 years
29.7500-12000	10000-15200	6 years
30.8000-13000	10000-15200	5 years
31.9000 (FIXED)	9000-9550	Nil
32.9000-9550	10325-10975	Nil
33.10000-15200	12000-16500	5 years
34.10000-15200	12000-18000	5 years
35.10000-15200	14300-18300	10 years
36.12000-16500	14300-18300	5 years
37.12000-18000	16400-20000	6 years
38.12000-18000	16400-20900	6 years
39.12000-18000	14300-22400	5 years
40.14300-18300	18400-22400	3 years
41.14300-18300	16400-20000	2 years
42.16400-20000	18400-22400	2 years
43.18400-22400	22400-24500	3 years
44.22400-24500	22400-26000	Nil
45.22400-26000	24050-26000	Nil
46.22400-26000	26000 (FIXED)	2 years
47.24050-26000	26000 (FIXED)	2 years
48.22400-24500	26000 (FIXED)	2 years
49.26000 (FIXED)	30000 (FIXED)	3 years

23. Of course, the said methodology talks of grant of increment while fixing the pay of the new recruit but the same cannot be confused with the increment under FR 26 and FR 24, which has been denied to the contractual employees in terms of the aforementioned Order of the Hon'ble High Court of Delhi. The increments / increase in pay called as first installment of IR and second installment of IR while fixing the pay pursuant to the recommendations of 5th Central Pay Commission are not the

increments given for service rendered by an employee but are given as part of the formula prescribed for pay fixation. Even the amount of increased pay or the increments given while fixing the pay of the new recruit is not the same as given to an incumbent on completion of one year of service. When the increment is granted for the purpose of fixation of pay of a new recruitment with reference to the fixed qualifying service, the amount of 3% of the pay band is granted for every year of qualifying service. In this regard, it would be useful to reproduce FR 24 and FR 26:

“F.R.24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the Central Government or by any authority to whom the Central Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.

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F.R.26. The following provisions prescribe the conditions on which service counts for the increments in a time-scale:-

(a) All duty in a post on a time-scale counts for increments in that time-scale;

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment.

(b) (i) Service in another post, other than a post carrying less pay referred to in Clause (a) of Rule 15, whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate shall count for

increments in the time-scale applicable to the post on which the Government servant holds a lien, as well as in the time-scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended.

(ii) All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India.”

24. In view of the aforementioned, we are of the considered view that the ramification of the directions issued by this Tribunal in Victoria Massey’s case (supra) and Hon’ble High Court in the aforementioned cases is that though the contractual employees are not entitled to pay parity as also to increment in terms of FR 24 and FR 26 but the formula evolved for fixing their consolidated pay would be such that they should at least get an amount, which is given to a new entrant of post on his/her initial appointment. Even when the contractual employees would be paid the remunerations equal to the pay of the new regular incumbent of the post held by them on contract basis, such pay would not be treated as ‘equal pay for equal work’ but would be treated as consolidated pay for the post held by them. In the case of regular employee, his pay would increase after one year, but the contractual employee would not be entitled to the benefit of increment or the revision of pay.”

6. As recorded above, we are of the opinion that the Tribunal is right in its findings. The reason is that when a new recruit joins, he is entitled to fixation of his basic pay at the minimum of the pay scales specified in the particular pay band. This may include number of increments with reference to fixed qualifying service, as has been noticed and mentioned in the afore-quoted portion. Section II of Part A of the first schedule to the

Rules, stipulates that the entry pay in the revised pay structure for direct recruits in the Grade Pay of Rs.4600 shall be pay of Rs.12540/- in the pay-band of Rs.9300-34800/-. This has to be the basis to compute the minimum pay payable on regular appointment.

7. W.P. (C) No. 8058/2015, *Union of India & Ors. Vs. Malbika Deb Gupta* and connected matters decided by a Division Bench of this Court [of which one of us (**Sanjiv Khanna,J.**) was a member] had referred to and interpreted Rule 7A and Note 2A of the Revised Pay Rules, 2008 to hold that a regularly promoted officer cannot be given lower pay than the pay drawn by a direct recruit at the same post. The pay scales of a promotee and direct recruit on the same post should be identical and this would be in consonance with the principle "equal pay for equal work". This decision rejected the contention that the promotee officer would be entitled to the revised scale, which would be less than the entry level pay scale payable to a direct recruit for the same post.

8. This pay fixation at the initial stage of appointment of the direct recruitment is not to be confused and is distinct from the annual increments, which an employee is entitled to as specified in the pay bands. Increments are different and should not be mixed with the initial fixation of pay of the direct recruit. A direct recruit on appointment is entitled to entry level pay and not any increment as such. Accordingly, the Tribunal has rightly observed and held that the contractual employees would be entitled to the minimum of pay, i.e. the first initial pay which a direct recruit would get on his appointment on the same post to which contractual employees have been appointed. The aforesaid ratio, in our opinion, would be in conformity with the ratio expressed by the Supreme Court in

State of Punjab and Others (supra), the relevant portion of which reads as under:-

"42. All the judgments noticed in paras 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of “equal pay for equal work”. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them were against the same post for which a higher pay scale was being allowed in other government departments. Or alternatively, their duties and responsibilities were the same as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of “equal pay for equal work” was invoked and considered, it would be just and appropriate to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of “equal pay for equal work”. Our consideration, has led us to the following deductions:

42.1. The “onus of proof” of parity in the duties and responsibilities of the subject post with the reference post under the principle of “equal pay for equal work” lies on the person who claims it. He who approaches the court has to establish that the subject post occupied by him requires him to discharge equal work of equal value, as the reference post (see *Orissa University of Agriculture & Technology case*[*Orissa University of Agriculture & Technology v. Manoj K. Mohanty*, (2003) 5 SCC 188 : 2003 SCC (L&S) 645] , *UT Chandigarh, Admn. v. Manju Mathur* [*U.T. Chandigarh, Admn. v. Manju Mathur*, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348] , *SAIL case* [*SAIL v. Dibyendu Bhattacharya*, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] and *National Aluminium Co. Ltd. case* [*National Aluminium Co. Ltd. v. Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353]).

42.2. The mere fact that the subject post occupied by the claimant is in a “different department” vis-à-vis the reference post does

not have any bearing on the determination of a claim under the principle of “equal pay for equal work”. Persons discharging identical duties cannot be treated differently in the matter of their pay, merely because they belong to different departments of the Government (see *Randhir Singh case* [*Randhir Singh v. Union of India*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] and *D.S. Nakara case* [*D.S. Nakara v. Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145]).

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 case* [*Randhir Singh v. Union of India*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119]). For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see *Federation of All India Customs and Central Excise Stenographers case* [*Federation of All India Customs and Central Excise Stenographers v. Union of India*, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] , *Mewa Ram Kanojia case* [*Mewa Ram Kanojia v. All India Institute of Medical Sciences*, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] , *Grih Kalyan Kendra Workers' Union case* [*Grih Kalyan Kendra Workers' Union v. Union of India*, (1991) 1 SCC 619 : 1991 SCC (L&S) 621] and *S.C. Chandra case* [*S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943]).

42.4. Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay and cannot claim the benefit of the principle of “equal pay for equal work” (see *Randhir Singh case* [*Randhir Singh v. Union of India*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] , *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* [*State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72 : 2002 SCC (L&S) 822] and *Hukum Chand Gupta case* [*Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]). Therefore, the principle would not be automatically invoked merely because the subject and reference posts have the same nomenclature.

42.5. In determining equality of functions and responsibilities under the principle of “equal pay for equal work”, it is necessary to keep in mind that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see *Federation of All India Customs and Central Excise Stenographers case* [*Federation of All India Customs and Central Excise Stenographers v. Union of India*, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] and *SBI case* [*SBI v. M.R. Ganesh Babu*, (2002) 4 SCC 556 : 2002 SCC (L&S) 568]). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of “equal pay for equal work” (see *State of U.P. v. J.P. Chaurasia* [*State of U.P. v. J.P. Chaurasia*, (1989) 1 SCC 121 : 1989 SCC (L&S) 71] and *Grih Kalyan Kendra Workers' Union case* [*Grih Kalyan Kendra Workers' Union v. Union of India*, (1991) 1 SCC 619 : 1991 SCC (L&S) 621]).

42.6. For placement in a regular pay scale, the claimant has to be a regular appointee. The claimant should have been selected on the basis of a regular process of recruitment. An employee appointed on a temporary basis cannot claim to be placed in the regular pay scale (see *Orissa University of Agriculture & Technology case* [*Orissa University of Agriculture & Technology v. Manoj K. Mohanty*, (2003) 5 SCC 188 : 2003 SCC (L&S) 645]).

42.7. Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay scales. Such as — “selection grade”, in the same post. But this difference must emerge out of a legitimate foundation, such as — merit, or seniority, or some other relevant criteria (see *State of U.P. v. J.P. Chaurasia* [*State of U.P. v. J.P. Chaurasia*, (1989) 1 SCC 121 : 1989 SCC (L&S) 71]).

42.8. If the qualifications for recruitment to the subject post vis-à-vis the reference post are different, it may be difficult to

conclude that the duties and responsibilities of the posts are qualitatively similar or comparable (see *Mewa Ram Kanojia case* [*Mewa Ram Kanojia v. All India Institute of Medical Sciences*, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] and *State of W.B. v. Tarun K. Roy* [*State of W.B. v. Tarun K. Roy*, (2004) 1 SCC 347 : 2004 SCC (L&S) 225]). In such a case the principle of “equal pay for equal work” cannot be invoked.

42.9. The reference post with which parity is claimed under the principle of “equal pay for equal work” has to be at the same hierarchy in the service as the subject post. Pay scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see *Union of India v. Pradip Kumar Dey* [*Union of India v. Pradip Kumar Dey*, (2000) 8 SCC 580 : 2001 SCC (L&S) 56] and *Hukum Chand Gupta case* [*Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).

42.10. A comparison between the subject post and the reference post under the principle of “equal pay for equal work” cannot be made where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see *Harbans Lal case* [*Harbans Lal v. State of H.P.*, (1989) 4 SCC 459 : 1990 SCC (L&S) 71]). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see *Official Liquidator v. Dayanand* [*Official Liquidator v. Dayanand*, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943]).

42.11. Different pay scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of “equal pay for equal work” would not be applicable. And also when the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see *SBI case* [*SBI v. M.R. Ganesh Babu*, (2002) 4 SCC 556 : 2002 SCC

(L&S) 568]).

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.* [*State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72 : 2002 SCC (L&S) 822]).

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.* [*State of W.B. v. W.B. Minimum Wages Inspectors Assn.*, (2010) 5 SCC 225 : (2010) 2 SCC (L&S) 1]).

42.14. For parity in pay scales under the principle of “equal pay for equal work”, equation in the nature of duties is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see *U.T. Chandigarh, Admn. v. Manju Mathur* [*U.T. Chandigarh, Admn. v. Manju Mathur*, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348]).

42.15. There can be a valid classification in the matter of pay scales between employees even holding posts with the same nomenclature i.e. between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see *Hukum Chand Gupta case* [*Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]), 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* [*Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).

42.17. Where there is no comparison between one set of employees of one organisation, and another set of employees of a different organisation, there can be no question of equation of pay scales under the principle of “equal pay for equal work”, even if two organisations have a common employer. Likewise, if the management and control of two organisations is with different entities which are independent of one another, the principle of “equal pay for equal work” would not apply (see *S.C. Chandra case* [*S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] and *National Aluminium Co. Ltd. case* [*National Aluminium Co. Ltd. v. Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353])."

9. In *Jagjit Singh and Others* (supra), the Supreme Court emphasised that right to equality implies that even the contractual employees should be paid the minimum of the amount, which a regular employee would get on the post in question. This would ensure ‘equal pay for equal work’ and that the contractual employees are not paid less than what is granted to a newly recruited regular employee. The aforesaid dictum, therefore, mandates that the contractual employee should not be paid monthly emoluments, which are less than what a newly recruited regular employee would get. If the newly recruited regular employee is entitled to entry pay in the pay band plus the Grade Pay, then the amount so quantified should also be taken as the minimum pay payable to the contractual employee doing the same work. This would ensure complete parity of pay scale of a contractual employee viz. the pay, which is payable to a regular appointed direct recruit.

10. The distinction between regular and contractual employees is drawn with regard to the annual increments which are payable to a direct recruit or promotee over and above his initial pay, for the same are not taken into consideration and are not to be granted to contractual employees. This position will hold good, even after we have dismissed the present writ petition.

11. In view of the aforesaid reasoning, we do not find any merit in the present writ petitions and the same are dismissed. In the facts of the case, there would be no order as to costs.



(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

MARCH 28th, 2017
VKR/ssn