

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22.01.2020
Pronouncing orders on : 27.01.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.35160, 35163, 35164 and 35165 of 2019
and W.M.P.Nos.35948, 35950, 35951 & 35952 of 2019

G.Margaret Malini ...Petitioner
in W.P.No.35160 of 2019

E.Grace alias M.Kalaiyarasi ...
Petitioner
in W.P.No.35163 of 2019

G.Sabitha ...Petitioner
in W.P.No.35164 of 2019

V.LathaPetitioner
in W.P.No.35165 of 2019

vs.

1. The Chief Executive Officer,
Cantonment Board,
(Under the control of the
Ministry of Defence,
Government of India)
St. Thomas Mount cum Pallavaram
Chennai - 600 016.

2. Dr.M.G.R. Cantonment Board High School,
Rep. by its Head Master,
St. Thomas Mount cum Pallavaram,
Chennai - 600 016.

3. State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Secretariat, Chennai.

Respondents
in W.P.No. 35160 of 2019

1. The Chief Executive Officer,
Cantonment Board,
(Under the control of the
Ministry of Defence,
Government of India)
St. Thomas Mount cum Pallavaram
Chennai - 600 016.
2. Arignar Anna Cantonment Board High School,
Rep. by its Head Master,
Pallavaram,
Chennai - 600 043.
3. State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Secretariat, Chennai.

Respondents
in W.P.Nos.35163, 35164 and 35165

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the 1st respondent to pay monthly salary (consolidated pay) to the petitioner on par with that which is being paid to a permanent and regular B.T. Assistants in the same cadre and having similar experience and responsibilities, during the period of contract.

For Petitioner : Ms.N.Kavitha Rameshwar
in all W.Ps

For Respondents : Mr.Chevanan Mohan for
in all W.Ps M/s.King and Partridge
for R1

: Mrs.V.Annalakshmi
Government Advocate
for R3

: No Appearance for R2

COMMON JUDGMENT

The issue involved in all the above writ petitions is common and therefore, this Court proceeds to take up the same together and deal with the same and pass a common judgment.

2.These writ petitions have been filed seeking for issuance of a writ of mandamus directing the 1st respondent to pay monthly salary (consolidated pay) to the petitioners on par with the salary paid to the permanent B.T. Assistants in the same cadre, who are performing the same nature of work.

have been engaged in the School run by the 1st respondent as B.T. Assistant for a continuous period of time. Two of the writ petitioners have been engaged from the year 2000 and the rest of the petitioners have been engaged from the year 2003 onwards. The petitioners are engaged under a contract which is entered into from time to time and these employees are governed by the terms and conditions of the contract. The present term for all the petitioners will come to an end in April 2020. Incidentally, the petitioners have also filed W.P.No.17471 to 17474 of 2017 against the respondents seeking for regularization on the ground that they have been engaged continuously for long number of years and these writ petitions are pending.

4.This Court specifically enquired the learned counsel for the petitioners as to whether the above said writ petitions must also be heard along with the present writ petitions. The learned counsel submitted that these writ petitions can be dealt with separately and it need not be clubbed with the above writ petitions which were filed seeking for regularization.

5.The grievance of the petitioners is that the petitioners are being paid a sum of Rs.18,560/- as monthly salary (consolidated pay), under the contract and whereas the B.T. Assistants who were regularly appointed and who are also performing the very same work and assigned the very same responsibilities, are being paid more than Rs.70,000/- towards basic pay. Therefore, the petitioners are seeking for parity in pay and they are claiming a right to be paid the same salary even though they are engaged on contractual basis.

6.The learned counsel for the petitioners submitted that even though the petitioners have been engaged on contract basis, they are entitled to be paid the same salary on par with the regularly employed B.T. Assistants who are also doing the same work. In order to substantiate her submission, learned counsel relied upon the judgment of the Hon'ble Supreme Court in State of Punjab and Others vs. Jagjit Singh and Others reported in (2017) 1 SCC 148. The learned counsel by relying upon this judgment submitted that the Hon'ble Supreme Court has made it very clear that even temporary employees or contractual employees will be entitled to draw the same pay that is extended to the regular employees who are holding the same post.

7.The learned counsel for the petitioner further submitted that the petitioners have been engaged continuously for several years and every time a consolidated pay is fixed under the contract and this pay is almost similar to the pay that is given to those who are doing the administrative work and it does not augur well to the status of the teachers who are required to be treated well in the school run by the respondents.

8.The respondents have filed a counter affidavit in this case and they have taken a specific stand that a Cantonment is governed by a special enactment and all the staff of the Cantonment Board are recruited and regulated under the Cantonment Fund Survey Rules, 1937. It is further stated that there are totally six Schools that are run by the Cantonment Board and in the present case, we are concerned with only two schools namely Dr.MGR Cantonment High School, St. Thomas Mount and Aringar Anna Cantonment High School at Pallavaram. The further stand that has been taken in the counter is that there are totally twenty seven sanctioned posts in all the schools put together, out of which, eight sanctioned posts are for B.T. Assistants and presently the posts of five B.T. Assistants are lying vacant. The further stand that has been taken in the counter affidavit is that, the grant-in-aid is provided by the State Government only for the approved regularly employed teachers and the consolidated pay that is made to the teachers engaged on contractual basis, is managed by the funds of the Cantonment Board. The respondents have taken a stand that the issue regarding regularization is pending before this Court and therefore, the petitioners cannot claim as a matter of right for a pay on par with the regular B.T. Assistants in the respondent school. The respondents have thus sought for the dismissal of the writ petitions.

9.The learned counsel appearing on behalf of the respondents apart from reiterating the facts stated in the counter, submitted that the petitioners are governed by the contract and they cannot ask for any pay beyond what was agreed by them under the contract. The learned counsel further submitted that the petitioners who are governed by the contract will not be entitled to claim any rights, interests or further benefits apart from what was provided under the contract. The learned counsel further submitted that the judgment relied upon by the learned counsel for the petitioners will not be applicable to the facts of the present case, since, the petitioners are bound by the contract.

10.The learned counsel in order to substantiate his submission, relied upon the judgment of the Division Bench of this Court in the case of The Manager (Administration and Personnel) Footwear Design and Development, Institute Ministry of Commerce and Industry Government of India A-10/A, Sector-24, Noida Uttar Pradesh & another vs. Dr.Kaushik Ghosh reported in 2020 1 LW 97.

11.This Court has carefully considered the submissions made on either side and also the materials available on record.

of the present case. The petitioners have been engaged from the year 2000 and 2003 respectively as B.T. Assistant teachers and their services are renewed from time to time and their terms and conditions are fixed under a contract. This Court does not want to go into the issue as to whether the petitioners are entitled for regularization or whether the petitioners can be accommodated in the existing posts, since that issue does not arise for consideration in these writ petitions and it was made very clear by the learned counsel for the petitioners that the same will be agitated in the pending writ petitions.

13.A reading of the contract shows that during the contract period, the petitioners are entitled for a consolidated honorarium of Rs.18,560/- per month. The petitioners have signed the contract by specifically stating that they are signing the contract without prejudice to their rights in the pending writ petitions.

14.The real grievance of the petitioners is that the B.T. Assistants who are doing the same work and who are working on a regular basis, are being paid a monthly salary of more than Rs.70,000/- and that the petitioners are also entitled for the same salary.

15.In order to substantiate the said claim, strong reliance is placed on the judgment of the Hon'ble Supreme Court in State of Punjab and Others vs. Jagjit Singh and Others, referred supra. It is therefore important to take note of this judgment and see if the petitioners are entitled for a relief sought for in these writ petitions. The relevant portions in the judgment are extracted hereunder:

The Consideration

42. All the judgments noticed in paragraphs 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:-

(i) 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 the Orissa University of Agriculture & Technology case¹⁰, Union Territory Administration, Chandigarh v. Manju Mathur¹⁵, the Steel Authority of India Limited case¹⁶, and the National Aluminum Company Limited case¹⁸).

(ii) The mere fact that the subject post occupied by the claimant, is in a different department vis-a-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 Government (see the Randhir Singh case¹, and the D.S. Nakara case²).

(iii) The principle of equal pay for equal work, applies to cases of unequal scales of pay, based on no classification or irrational classification (see the Randhir Singh case¹). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see the Federation of All India Customs and Central Excise Stenographers (Recognized) case³, the Mewa Ram Kanojia case⁵, the Grih Kalyan Kendra Workers Union case⁶ and the S.C. Chandra case¹²).

(iv) 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 the Randhir Singh case¹, State of Haryana v. Haryana Civil Secretariat Personal Staff Association⁹, and

the Hukum Chand Gupta case¹⁷). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

(v) 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 the Federation of All India Customs and Central Excise Stenographers (Recognized) case³ and the State Bank of India case⁸). 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. Chaurasia⁴, and the Grih Kalyan Kendra Workers Union case⁶).

(vi) 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 the Orissa University of Agriculture & Technology case¹⁰).

(vii) 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. Chaurasia⁴).

(viii) If the qualifications for recruitment to the subject post vis-a- 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 the Mewa Ram Kanojia case⁵, and Government of W.B. v. Tarun K. Roy¹¹). In such a cause,

the principle of equal pay for equal work, cannot be invoked.

(ix) 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 Dey⁷, and the Hukum Chand Gupta case¹⁷).

(x) 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 the Harbans Lal case²³). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - Official Liquidator v. Dayanand¹³).

(xi) 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 the State Bank of India case⁸).

(xii) 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 Association⁹).

(xiii) 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 West Bengal v. West Bengal Minimum Wages Inspectors Association¹⁴).

(xiv) 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 - Union Territory Administration, Chandigarh v. Manju Mathur¹⁵).

(xv) 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 the Hukum Chand Gupta case¹⁷), when the duties are qualitatively dissimilar.

(xvi) 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 the Hukum Chand Gupta case¹⁷).

(xvii) Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of equal pay for equal work, even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities,

which are independent of one another, the principle of equal pay for equal work would not apply (see the S.C. Chandra case¹², and the National Aluminum Company Limited case¹⁸).

43. We shall now venture to summarize the conclusions recorded by this Court, with reference to a claim of pay parity, raised by temporary employees (differently designated as work-charge, daily-wage, casual, ad- hoc, contractual, and the like), in the following two paragraphs.

44. We shall first outline the conclusions drawn in cases where a claim for pay parity, raised at the hands of the concerned temporary employees, was accepted by this Court, by applying the principle of equal pay for equal work, with reference to regular employees:-

(i) In the Dharendra Chamoli case¹⁹ this Court examined a claim for pay parity raised by temporary employees, for wages equal to those being disbursed to regular employees. The prayer was accepted. The action of not paying the same wage, despite the work being the same, was considered as violative of Article 14 of the Constitution. It was held, that the action amounted to exploitation in a welfare state committed to a socialist pattern of society.

(ii) In the Surinder Singh case²⁰ this Court held, that the right of equal wages claimed by temporary employees emerged, inter alia, from Article 39 of the Constitution. The principle of equal pay for equal work was again applied, where the subject employee had been appointed on temporary basis, and the reference employee was borne on the permanent establishment. The temporary employee was held entitled to wages drawn by an employee on the regular establishment. In this judgment, this Court also took note of the fact, that the above proposition was affirmed by a Constitution Bench of this Court, in the D.S. Nakara case².

(iii) In the Bhagwan Dass case²¹ this Court recorded, that in a claim for equal wages, the duration for which an employee would remain (- or had remained) engaged, would not make any difference. So also, the manner of selection and appointment would make no difference. And therefore, whether the selection was made on the basis of open competition or was limited to a cluster of villages, was considered

inconsequential, insofar as the applicability of the principle is concerned. And likewise, whether the appointment was for a fixed limited duration (six months, or one year), or for an unlimited duration, was also considered inconsequential, insofar as the applicability of the principle of equal pay for equal work is concerned. It was held, that the claim for equal wages would be sustainable, where an employee is required to discharge similar duties and responsibilities as regular employees, and the concerned employee possesses the qualifications prescribed for the post. In the above case, this Court rejected the contention advanced on behalf of the Government, that the plea of equal wages by the employees in question, was not sustainable because the concerned employees were engaged in a temporary scheme, and against posts which were sanctioned on a year to year basis.

(iv) In the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch case²² this Court held, that under principle flowing from Article 38(2) of the Constitution, Government could not deny a temporary employee, at least the minimum wage being paid to an employee in the corresponding regular cadre, alongwith dearness allowance and additional dearness allowance, as well as, all the other benefits which were being extended to casual workers. It was also held, that the classification of workers (as unskilled, semi-skilled and skilled), doing the same work, into different categories, for payment of wages at different rates, was not tenable. It was also held, that such an act of an employer, would amount to exploitation. And further that, the same would be arbitrary and discriminatory, and therefore, violative of Articles 14 and 16 of the Constitution.

(v) In State of Punjab v. Devinder Singh²⁶ this Court held, that daily- wagers were entitled to be placed in the minimum of the pay-scale of regular employees, working against the same post. The above direction was issued after accepting, that the concerned employees, were doing the same work as regular incumbents holding the same post, by applying the principle of equal pay for equal work.

(vi) In the Secretary, State of Karnataka case²⁸, a Constitution Bench of this Court, set

aside the judgment of the High Court, and directed that daily-wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization. But, the concept was held as applicable, and was indeed applied, to the issue of pay parity if the work component was the same. The judgment rendered by the High Court, was modified by this Court, and the concerned daily-wage employees were directed to be paid wages, equal to the salary at the lowest grade of the concerned cadre.

(vii) In *State of Haryana v. Charanjit Singh*³⁰, a three-Judge bench of this Court held, that the decisions rendered by this Court in *State of Haryana v. Jasmer Singh*²⁵, *State of Haryana v. Tilak Raj*²⁷, the *Orissa University of Agriculture & Technology case*¹⁰, and *Government of W.B. v. Tarun K. Roy*¹¹, laid down the correct law. Thereupon, this Court declared, that if the concerned daily-wage employees could establish, that they were performing equal work of equal quality, and all other relevant factors were fulfilled, a direction by a Court to pay such employees equal wages (from the date of filing the writ petition), would be justified.

(viii) In *State of U.P. v. Putti Lal*³¹, based on decisions in several cases (wherein the principle of equal pay for equal work had been invoked), it was held, that a daily-wager discharging similar duties, as those engaged on regular basis, would be entitled to draw his wages at the minimum of the pay-scale (drawn by his counterpart, appointed on regular basis), but would not be entitled to any other allowances or increments.

(ix) In the *Uttar Pradesh Land Development Corporation case*³³ this Court noticed, that the respondents were employed on contract basis, on a consolidated salary. But, because they were actually appointed to perform the work of the post of Assistant Engineer, this Court directed the employer to pay the respondents wages, in the minimum of the pay-scales ascribed for the post of Assistant Engineer.

45. We shall now attempt an analysis of the judgments, wherein this Court declined to grant the benefit of equal pay for equal work to temporary employees, in a claim for pay parity with regular employees:-

(i) In the Harbans Lal case²³, daily-rate employees were denied the claimed benefit, under the principle of equal pay for equal work, because they could not establish, that the duties and responsibilities of the post(s) held by them, were similar/equivalent to those of the reference posts, under the State Government.

(ii) In the Grih Kalyan Kendra Workers Union case⁶, ad-hoc employees engaged in the Kendras, were denied pay parity with regular employees working under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India, because of the finding returned in the report submitted by a former Chief Justice of India, that duties and responsibilities discharged by employees holding the reference posts, were not comparable with the posts held by members of the petitioner union.

(iii) In State of Haryana v. Tilak Raj²⁷, this Court took a slightly different course, while determining a claim for pay parity, raised by daily- wagers (- the respondents). It was concluded, that daily-wagers held no post, and as such, could not be equated with regular employees who held regular posts. But herein also, no material was placed on record, to establish that the nature of duties performed by the daily-wagers, was comparable with those discharged by regular employees. Be that as it may, it was directed, that the State should prescribe minimum wages for such workers, and they should be paid accordingly.

(iv) In State of Punjab v. Surjit Singh³², this Court held, that for the applicability of the principle of equal pay for equal work, the respondents who were daily-wagers, had to establish through strict pleadings and proof, that they were discharging similar duties and responsibilities, as were assigned to regular employees. Since they had not done so, the matter was remanded back to the High Court, for a re- determination on the above position. It is therefore obvious, that this Court had

accepted, that where duties, responsibilities and functions were shown to be similar, the principle of equal pay for equal work would be applicable, even to temporary employees (otherwise the order of remand, would be meaningless, and an exercise in futility).

(vi) It is, therefore apparent, that in all matters where this Court did not extend the benefit of equal pay for equal work to temporary employees, it was because the employees could not establish, that they were rendering similar duties and responsibilities, as were being discharged by regular employees, holding corresponding posts.

46. We have consciously not referred to the judgment rendered by this Court in *State of Haryana v. Jasmer Singh*²⁵ (by a two-Judge division bench), in the preceding two paragraphs. We are of the considered view, that the above judgment, needs to be examined and explained independently. Learned counsel representing the State government, had placed emphatic reliance on this judgment. Our analysis is recorded hereinafter:-

(i) In the above case, the respondents who were daily-wagers were claiming the same salary as was being paid to regular employees. A series of reasons were recorded, to deny them pay parity under the principle of equal pay for equal work. This Court expressed the view, that daily-wagers could not be treated at par with persons employed on regular basis, because they were not required to possess qualifications prescribed for appointment on regular basis. Daily-wagers, it was felt, were not selected in the same manner as regular employees, inasmuch as, a regular appointee had to compete in a process of open selection, and would be appointed, only if he fell within the zone of merit. It was also felt, that daily-wagers were not required to fulfill the prescribed requirement of age, at the time of their recruitment. And also because, regular employees were subject to disciplinary proceedings, whereas, daily-wagers were not. Daily-wagers, it was held, could also not be equated with regular employees, because regular employees were liable to be transferred anywhere within their cadre. This Court therefore held, that those employed on daily-wages, could not be equated with regular employees, and as such, were not entitled to

pay parity, under the principle of equal pay for equal work.

(ii) First and foremost, it is necessary to emphasise, that in the course of its consideration in State of Haryana v. Jasmer Singh²⁵, this Courts attention had not been invited to the judgment in the Bhagwan Dass case²¹, wherein on some of the factors noticed above, a contrary view was expressed. In the said case, this Court had held, that in a claim for equal wages, the manner of selection for appointment would not make any difference. It will be relevant to notice, that for the posts under reference in the Bhagwan Dass case²¹, the selection of those appointed on regular basis, had to be made through the Subordinate Selection Board, by way of open selection. Whereas, the selection of the petitioners as daily- wagers, was limited to candidates belonging to a cluster of villages, and was not through any specialized selection body/agency. Despite thereof, it was held, that the benefit under the principle of equal pay for equal work, could not be denied to the petitioners. The aforesaid conclusion was drawn on the ground, that as long as the petitioners were performing similar duties, as those engaged on regular basis (on corresponding posts) from the standpoint of the doctrine of equal pay for equal work, there could be no distinction on the subject of payment of wages.

(iii) Having noticed the conclusion drawn in State of Haryana v. Jasmer Singh²⁵, it would be relevant to emphasise, that in the cited judgments (noticed in paragraph 26 onwards, upto paragraph 41), the employees concerned, could not have been granted the benefit of the principle of equal pay for equal work (in such of the cases, where it was so granted), because temporary employees (daily-wage employees, in the said case) are never ever selected through a process of open selection, by a specialized selection body/agency. We would therefore be obliged to follow the large number of cases where pay parity was granted, rather than, the instant singular judgment recording a divergent view.

(iv) Temporary employees (irrespective of their nomenclature) are also never governed by any rules of disciplinary action. As a matter of fact, a daily-wager is engaged only for a day,

and his services can be dispensed with at the end of the day for which he is engaged. Rules of disciplinary action, are therefore to the advantage of regular employees, and the absence of their applicability, is to the disadvantage of temporary employees, even though the judgment in State of Haryana v. Jasmer Singh²⁵, seems to project otherwise.

(v) Even the issue of transferability of regular employees referred to in State of Haryana v. Jasmer Singh²⁵, in our view, has not been examined closely. Inasmuch as, temporary employees can be directed to work anywhere, within or outside their cadre, and they have no choice but to accept. This is again, a further disadvantage suffered by temporary employees, yet the judgment projects as if it is to their advantage.

(vi) It is also necessary to appreciate, that in all temporary appointments (- work-charge, daily-wage, casual, ad-hoc, contractual, and the like), the distinguishing features referred to in State of Haryana v. Jasmer Singh²⁵, are inevitable, yet in all the judgments referred to above (rendered before and after, the judgment in the State of Haryana v. Jasmer Singh²⁵), the proposition recorded in the instant judgment, was never endorsed.

(vii) It is not the case of the appellants, that the respondent-employees do not possess the minimum qualifications required to be possessed for regular appointment. And therefore, this proposition would not be applicable to the facts of the cases in hand.

(viii) Another reason for us in passing by, the judgment in State of Haryana v. Jasmer Singh²⁵ is, that the bench deciding the matter had in mind, that daily-wagers in the State of Haryana, were entitled to regularization on completion of 3/5 years of service, and therefore, all the concerned employees, would in any case be entitled to wages in the regular pay-scale, after a little while. This factual position was noticed in the judgment itself.

(ix) It is not necessary for us to refer the matter for adjudication to a larger bench, because the judgment in State of Haryana v. Jasmer Singh²⁵, is irreconcilable and inconsistent with a large number of judgments,

some of which are by larger benches, where the benefit of the principle in question was extended to temporary employees (including daily-wagers).

(x) For all the above reasons, we are of the view that the claim of the appellants cannot be considered, on the basis of the judgment in State of Haryana v. Jasmer Singh²⁵.

47. We shall now endeavour to examine the impugned judgments.

48. First and foremost, it is essential for us to deal with the judgment dated 11.11.2011 rendered by the full bench of the High Court (in Avtar Singh v. State of Punjab & Ors., CWP no. 14796 of 2003). A perusal of the above judgment reveals, that the High Court conspicuously focused its attention to the decision of the Constitution Bench in the Secretary, State of Karnataka case²⁸. While dealing with the above judgment, the full bench expressed the view, that though at the first impression, the judgment appeared to expound that payment of minimum wages drawn by regular employees, had also to be extended to persons employed on temporary basis, but a careful reading of the same would show that, that was not so. Learned counsel, representing the State of Punjab, reiterated the above position. In order to understand the tenor of the aforesaid assertion, reference was made to paragraphs 44 and 48, of the judgment of the Constitution Bench, which are extracted hereunder:-

44. The concept of equal pay for equal work is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete

justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment.

..It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

xxx xxx xxx

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily

wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

We have given our thoughtful consideration to the observations recorded by this Court, as were relied upon by the full bench (- as also, by the learned counsel representing the State of Punjab). It is not possible for us to concur with the inference drawn by the full bench, for the reasons recorded hereunder:-

(i) We are of the considered view, that in paragraph 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity, and regularization in service. It was held, that on the issue of pay parity, the concept of equality would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of equality could not be invoked for absorbing temporary employees in Government service, or for making temporary employees regular/permanent. All the observations made in the above extracted paragraphs, relate to the subject of regularization/permanence, and not, to the principle of equal pay for equal work. As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good, by making such a direction.

(ii) Insofar as paragraph 48 extracted above is concerned, all that needs to be stated is, that they were merely submissions of learned counsel, and not conclusions drawn by this Court. Therefore, nothing further needs to be stated, with reference to paragraph 48.

(iii) We are therefore of the view, that the High Court seriously erred in interpreting the judgment rendered by this Court in the Secretary, State of Karnataka case²⁸, by placing reliance on paragraphs 44 and 48 extracted above, for drawing its inferences

with reference to the subject of pay parity. On the above subject/issue, this Courts conclusions were recorded in paragraph 55 (extracted in paragraph 36, hereinabove), which have already been dealt with by us in an earlier part of this judgment.

49. It would also be relevant to mention, that to substantiate its inference drawn from the judgment rendered by this Court in the Secretary, State of Karnataka case²⁸, the full bench of the High Court, placed reliance on State of Punjab v. Surjit Singh³², and while doing so, reference was made to the following observations recorded in paragraphs 27 to 30 (of the said judgment). Learned counsel for the State of Punjab has reiterated the above position. Paragraphs 27 to 30 aforementioned are being extracted hereunder:-

27. While laying down the law that regularization under the constitutional scheme is wholly impermissible, the Court in State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, had issued certain directions relating to the employees in the services of the Commercial Taxes Department, as noticed hereinbefore. The employees of the Commercial Taxes Department were in service for more than ten years. They were appointed in 1985-1986. They were sought to be regularized in terms of a scheme. Recommendations were made by the Director, Commercial Taxes for their absorption. It was only when such recommendations were not acceded to, the Administrative Tribunal was approached. It rejected their claim. The High Court, however, allowed their prayer which was in question before this Court.

28. This Court stated: (Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1, pp. 19-20, para 8)

8. ...It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by

more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka, (1990) 2 SCC 396, and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts."

29. It is in the aforementioned factual backdrop, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India, directed: (Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1, p. 43, para 55)

55. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving

the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

30. We, therefore, do not see that any law has been laid down in para 55 of the judgment in Umadevi case. Directions were issued in view of the limited controversy. As indicated, the States grievances were limited.

Yet again, we are of the view, that the full bench erred in referring to the above observations, to draw its conclusions. Our reasons are summarized hereinbelow:-

(i) It is apparent, that this Court in State of Punjab v. Surjit Singh³², did hold, that the determination rendered in paragraph 55 of the judgment in the Secretary, State of Karnataka case²⁸, was in exercise of the power vested in this Court, under Article 142 of the Constitution of India. But the above observation does not lead, to the conclusion or the inference, that the principle of equal pay for equal work is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded, that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee, discharging the same duties. It needs to be noticed, that on the subject of pay parity, the findings recorded by this Court in the Secretary, State of Karnataka case²⁸, were limited to the conclusions recorded in paragraph 55 thereof (which we have dealt with above, while dealing with the case law, on the principle of equal pay for equal work).

(ii) Even in the case under reference - State of Punjab v. Surjit Singh³², this Court accepted the principle of equal pay for equal work, as applicable to temporary employees, by requiring the State to examine the claim of the respondents for pay parity, by appointing an expert committee. The expert committee was required to determine, whether the respondents satisfied the conditions stipulated in

different judgments of this Court including State of Punjab v. Charanjit Singh³⁰, wherein this Court had acceded to the proposition, that daily-wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage payable to regular employees. And had therefore, remanded the matter back to the High Court for a fresh adjudication. Paragraph 38 of the judgment in State of Punjab v. Surjit Singh³², wherein the remand was directed, is being extracted below:-

38. We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by appointing an expert committee as to whether the principles of law laid down herein viz. as to whether the respondents satisfy the factors for invocation of the decision in State of Haryana v. Charanjit Singh, (2006) 9 SCC 321 in its entirety including the question of appointment in terms of the recruitment rules have been followed.

(iii) For all the above reasons, we are of the view, that the claim of the temporary employees, for minimum wages, at par with regularly engaged Government employees, cannot be declined, on the basis of the judgment in State of Punjab v. Surjit Singh³².

50. The impugned judgment rendered by the full bench, also relied upon the judgment in Satya Prakash v. State of Bihar^[35], which also attempted to interpret the judgment in the Secretary, State of Karnataka case²⁸. Learned counsel for the State of Punjab also referred to the same, to canvass the case of the State government. Relevant observations relied upon, are reproduced below:-

7. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. The appellants were only engaged on daily wages in the Bihar Intermediate Education Council.

8. In State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent

continuance of temporary, contractual, casual, daily-wage or ad hoc employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.

9. Paragraph 53 of Umadevi (3) judgment, deals with irregular appointments (not illegal appointments). The Constitution Bench specifically referred to the judgments in State of Mysore vs. S.V. Narayanappa, AIR 1967 SC 1071, and R.N. Nanjundappa vs. T. Thimmiah, (1972) 1 SCC 409, in para 15 of Umadevi (3) judgment as well. Let us refer to paras 15 and 16 of Umadevi (3) judgment in this context.

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15. In our view, the appellants herein would fall under the category of persons mentioned in paras 8 and 55 of the judgment and not in para 53 of judgment of Umadevi (3).

Yet again, all that needs to be stated is, that the observations relied upon by the full bench of the High Court, dealt with the issue of regularization, and not with the concept of equal pay for equal work. Paragraph 7 extracted above, leaves no room for any doubt, that the issue being considered in the Satya Prakash case³⁵, pertained to regularization of the appellants in service. Our view, that the issue being dealt with pertained to regularization gains further ground from the fact (recorded in paragraph 1 of the above judgment), that the appellants in the Satya Prakash case³⁵ had approached this Court, to claim the benefit of paragraph 53 of the judgment in the Secretary, State of Karnataka case²⁸. Paragraph 53 aforementioned, is reproduced below:-

53 . One aspect needs to be clarified . There may be cases where irregular appointments (not illegal appointments) as explained in State of

Maysore v. S.V. Narayanappa, AIR 1967 SC 1071, R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409, and B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

A perusal of paragraph 53 extracted above, leaves no room for any doubt, that the issue canvassed was of regularization, and not pay parity. We are therefore of the view, that reliance on paragraph 53, for determining the question of pay parity (claimed by the concerned employees), resulted in the High Court drawing an incorrect inference.

51. The full bench of the High Court, while adjudicating upon the above controversy had concluded, that temporary employees were not entitled to the minimum of the regular pay-scale, merely for the reason, that the activities carried on by daily-wagers and regular employees were similar. The full bench however, made two exceptions. Temporary employees, who fell in either of the two exceptions, were held entitled to wages at the minimum of the pay-scale drawn by regular employees. The exceptions recorded by the full bench

of the High Court in the impugned judgment are extracted hereunder:-

(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.

A perusal of the above conclusion drawn in the impugned judgment (passed by the full bench), reveals that the full bench carved an exception for employees who were not appointed against regular sanctioned posts, if their services had remained continuous (with notional breaks, as well), for a period of 10 years. This category of temporary employees, was extended the benefit of wages at the minimum of the regular pay-scale. In the Secretary, State of Karnataka case²⁸, similarly, employees who had rendered 10 years service, were granted an exception (refer to paragraph 53 of the judgment, extracted in the preceding paragraph). The above position adopted by the High Court reveals, that the High Court intermingled the legal position determined by this Court on the subject of regularization of employees, while adjudicating upon the proposition of pay parity, emerging under the principle of equal pay for equal work. In our view, it is this mix-up, which has resulted in the High

Court recording its afore-extracted conclusions.

(ii) The High Court extended different wages to temporary employees, by categorizing them on the basis of their length of service. This is clearly in the teeth of judgment in the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch case22. In the above judgment, this Court held, that classification of employees based on their length of service (- those who had not completed 720 days of service, in a period of 3 years; those who had completed more than 720 days of service - with effect from 1.4.1977; and those who had completed 1200 days of service), for payment of different levels of wages (even though they were admittedly discharging the same duties), was not tenable. The classification was held to be violative of Articles 14 and 16 of the Constitution.

(iii) Based on the consideration recorded hereinabove, the determination in the impugned judgment rendered by the full bench of the High Court, whereby it classified temporary employees for differential treatment on the subject of wages, is clearly unsustainable, and is liable to be set aside.

52. In view of all our above conclusions, the decision rendered by the full bench of the High Court in Avtar Singh v. State of Punjab & Ors. (CWP no. 14796 of 2003), dated 11.11.2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the division bench of the High Court in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009) is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010), with the modification, that the concerned employees would be entitled to the minimum of the pay-scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.

53. We shall now deal with the claim of temporary employees before this Court.

54. There is no room for any doubt, that the principle of equal pay for equal work has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court.

The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of equal pay for equal work has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of equal pay for equal work constitutes a clear and unambiguous right and is vested in every employee whether engaged on regular or temporary basis.

57. Having traversed the legal parameters with reference to the application of the principle of equal pay for equal work, in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of equal pay for equal work summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work,

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

16. The Hon'ble Supreme Court had considered all the earlier judgments on the issue and has categorically held that when it comes to the principle of "Equal pay for Equal work", the same should be extended even to temporary employees, casual employees, daily wage employees and also contractual employees. For arriving at this conclusion, the Hon'ble Supreme Court took note of the earlier Constitution Bench judgment. The Supreme Court took note of the fact that, in many cases, the employees are compelled to work for a lesser wage and they do not do it voluntarily and it is done out of compulsion. The Hon'ble Supreme Court held that if those employees are also not paid on par with the regular employees, such an action besides being demeaning, also strikes at the very foundation of human dignity. It is very important to note that the Hon'ble Supreme Court covered even the contractual employees in this judgment and held that they are also entitled for equal pay for equal work.

17. In the present case, the petitioners have been engaged for a long number of years on contract basis and their pay (by whatever nomenclature it is called) is fixed under the contract. Obviously, the respondents are in a dominant position and therefore, the petitioners will have no option except to surrender themselves to the consolidated pay fixed by the respondents. That cannot be put against the petitioners and they cannot be bound by the contract while applying the principle of "Equal pay for Equal work". This preposition of law has been made very clear in the judgment referred supra. In the said judgment, the Hon'ble Supreme Court has made it clear that the parameters of the principle enunciated in the judgment is binding on all the Courts in India under Article 141 of the Constitution of India. Therefore, this Court has to necessarily fall in line with the above judgment.

18. Before concluding the discussion, this Court also wants to deal with the judgment that has been cited by the learned counsel for the respondents. The Division Bench of this Court was dealing with the case, where the concerned employees were contractual employees, whose services were terminated based on the terms and conditions of the contract. The Division Bench of this Court, after relying upon the earlier judgments of the Hon'ble Supreme Court, has categorically held that the continuity of the service of the concerned employees is governed by the contract and therefore, they will not be entitled for any extension of service or reinstatement into service beyond the contract period.

19. In the considered view of this Court, the Division Bench judgment cited by the learned counsel for the respondents will not apply to the facts of the present case.

20. The Hon'ble Supreme Court in *State of Punjab and Others vs. Jagjit Singh and Others*, referred supra has exactly dealt with this issue and held that there is distinction between the pay parity and regularization in service. When it comes to service conditions, a temporary employee or contractual employee can never claim any right on par with a regularly appointed employee. However, when it comes to pay parity which involves the principle of "Equal pay for Equal work", a daily wager, temporary employee, adhoc employee, contractual employee and the like will have to be treated on par with the regular employee. The above judgment of the Division Bench does not deal with the issue of pay parity or the principle of "Equal pay for Equal work". Therefore, the said judgment will not apply to the facts of the present case.

21. In view of the above discussion, this Court is of the considered opinion that the petitioners are entitled for pay parity with the regularly appointed B.T. Assistant Teachers. The petitioners will be entitled for the minimum of the pay scale that is received by the regularly employed B.T. Assistants (basic pay) and the petitioners will not be entitled for the other allowances attached to the said post. This finding is given by this Court after satisfying itself that the petitioners are performing the same work and are assigned with the same responsibilities as that of the regularly appointed B.T. Assistants who are working in the school run by the Cantonment Board.

22. In the result, all the writ petitions are allowed and the respondents are directed to pay the monthly salary on par with the basic pay of the regularly employed B.T. Assistants every month to the petitioners. The petitioners are entitled to be paid the arrears of the difference in the salary from June 2019 till January 2020 within a period of six weeks from the date of receipt of copy of this order. The respondents are further directed to pay the monthly salary to the petitioners from February 2020 on par with the basic pay of the regularly

employed B.T. Assistants till the end of the contractual period. This Court is not inclined to extend the benefits beyond the contractual period, since, the right of the petitioners to continue in the school is already a subject matter of challenge in W.P.No.17471 to 17474 of 2017 and the petitioners will have to independently workout their remedy in those writ petitions. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssr
To

1. The Chief Executive Officer,
Cantonment Board,
(Under the control of the
Ministry of Defence,
Government of India)
St. Thomas Mount cum Pallavaram
Chennai - 600 016.
2. The Secretary,
Department of School Education,
Secretariat, Chennai.
3. The Head Master,
Dr.M.G.R. Cantonment Board High School,
St. Thomas Mount cum Pallavaram, Chennai - 600 016.
4. The Head Master,
Arignar Anna Cantonment Board High School,
Pallavaram, Chennai - 600 043.

+4cc to Mr.Kavitha Rameshwar , Advocate SR.No. 5533

+4cc to M/s.King and Partridge, Advocate SR.No.

5462,5463,5464,5465

+1 cc to Government Pleader Sr.No. 6173

W.P.Nos.35160, 35163, 35164
& 35165 of 2019

and

W.M.P.Nos.35948, 35950, 35951
& 35952 of 2019

A.SK(24/02/2020)