



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2021

CORAM :

**The Hon'ble Mr.JUSTICE M.M.SUNDRESH
AND**

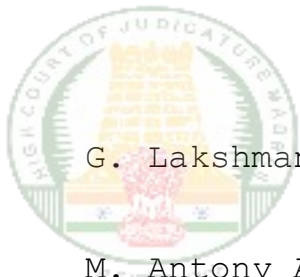
The Hon'ble Mrs.JUSTICE S.ANANTHI

W.A.(MD) Nos. 576, 578, 580 to 582, 593,
595 to 597, 599 to 601, 603 and 605 of 2020
and CMP(MD) Nos. 3838, 3840, 3842 to 3844, 3882,
3884 to 3886, 3889 to 3891, 3893 & 3896 of 2020

1. The State rep. By the Additional Chief Secretary
Commercial & Registration (A1) Department,
Secretariat, Chennai - 9.
2. The Commissioner,
Sales Tax Department,
Ezhilagam, Chempauk,
Chennai - 5.
3. The Joint Commissioner of Commercial Tax,
Reserve Line Road,
Palayamkottai, Tirunelveli - 2.
..Appellants/Respondents in all the Writ Appeals.

Vs

K. Mariappan	.. Respondent/Petitioner in WA(MD)No.576 of 2020
B. Senthilnathan	.. Respondent/Petitioner(WP(MD)20575/2019) in WA(MD)No.578 of 2020
P. Krishnan	.. Respondent/Petitioner(WP(MD)20580/2019) in WA(MD)No.580 of 2020
V. Rugmony	.. Respondent/Petitioner(WP(MD)20579/2019) in WA(MD)No.581 of 2020
K. Alagiya Nambi	.. Respondent/Petitioner(WP(MD)20577/2019) in WA(MD)No.582 of 2020
N. Balamurugan	.. Respondent/Petitioner(WP(MD)20586/2019) in WA(MD)No.593 of 2020



G. Lakshmanan

.. Respondent/Petitioner (WP (MD) 20591/2019)
in WA (MD) No.595 of 2020

M. Antony Ammal

.. Respondent/Petitioner (WP (MD) 20589/2019)
in WA (MD) No.596 of 2020

P. Veerachamy

.. Respondent/Petitioner (WP (MD) 20584/2019)
in WA (MD) No.597 of 2020

C. Ramamoorthy

.. Respondent/Petitioner (WP (MD) 20583/2019)
in WA (MD) No.599 of 2020

S. Subbaiah

.. Respondent/Petitioner (WP (MD) 20582/2019)
in WA (MD) No.600 of 2020

P. Mahesh

.. Respondent/Petitioner (WP (MD) 20581/2019)
in WA (MD) No.601 of 2020

V. Seenivasan

.. Respondent/Petitioner (WP (MD) 20587/2019)
in WA (MD) No.603 of 2020

V. Gnana Gurusamy

.. Respondent/Petitioner (WP (MD) 20590/2019)
in WA (MD) No.605 of 2020

COMMON PRAYER : Petitions filed under Clause 15 of Letters Patent Act, to set aside the impugned Common order, dated 05.11.2019 in W.P.(MD) Nos. 20569, 20575, 20580, 20579, 20577, 20586, 20591, 20589, 20584, 20583, 20582, 20581, 20587, 20590 of 2019, on the file of this Hon'ble Court and allow the present Writ Appeals.

COMMON PRAYER IN W.P.(MD) Nos. 20569, 20575, 20580, 20579, 20577, 20586, 20591, 20589, 20584, 20583, 20582, 20581, 20587, 20590 of 2019:

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court Calling for the records pertaining to G.O.Ms.(2d) No.68 (Commercial Tax and Registration (A1) Dept) dated 14.10.2016 of the 1st respondent and quash the same and consequently direct the respondents to give the scale of pay as 4800-10000-1300 GP as that of the similarly placed persons as par with GO Ms.No. 50 School Education Department dated 08.03.2019 based on the order in W.P(MD) No. 1584 of 2018, from the date of the petitioners appointment (23.11.2016) in the Special Scale of Pay with all consequential monetary benefits.



In all the Writ Appeals :

WEB COPY

For Appellants/Respondents : Mr. Sricharan Rengarajan
Additional Advocate General
assisted by
Mrs.J. Padmavathi Devi,
Special Government Pleader
For Respondents/Writ Petitioners Mr.R. Lakshmanan

COMMON ORDER

[Order of the Court was made by **S. ANANTHI, J.**]

These Writ appeals have been preferred by the appellants/respondents aggrieved over the order passed by the learned single Judge of this Court, dated, 05.11.2019 in Batch of Writ petitions. Challenging the same, the present appeal has been filed.

2. The learned counsel appearing for the respondents/petitioners submitted that the learned Single Judge of this Court has correctly allowed the writ petitions. He further submitted that the persons, who are performing the same work, are paid salary in time scale of pay as Rs.4800 + 10000 + 1300 Grade Pay. The petitioners gave representations in the month of August 2019 to the respondents for granting the same scale of pay as paid to others and the same are still pending without passing any orders.

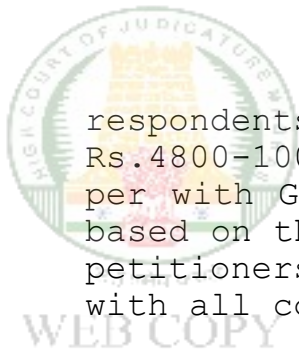
3. Heard the learned Additional Advocate General appearing for the appellants and the learned counsel appearing for the respondents.

4. The petitioners herein are respondents in writ petitions have filed these Writ appeals to set aside the common order, dated 05.11.2019 in W.P.(MD) Nos. 20569, 20575, 20577, 20579 to 20584, 20856, 20587, 20589, 20590 and 20591 of 2019.

5. The issue to be decided is common in all the Writ appeals arising out of the Common order, dated 05.11.2019. Therefore, all the writ appeals are heard together and disposed by way of this Common order.

6. These petitioners in Writ petitions have filed the Writ petitions under Article 226 of the Consitution of India to call for the records pertaining to G.O.Ms(2d) No.68 (Commercial Tax and Registration (A1) Department) dated 14.10.2016 of the first respondent and quash the same and consequently direct the

<https://hcservices.eprints.gov.in/hcservices/>



respondents to give the scale of pay as Rs.4800-10000-1300 GP., as that of the similarly placed persons as per with GO Ms. No.50 School Education Department, dated 08.03.2019 based on the order in W.P(MD) No. 1584 of 2018, from the date of the petitioners appointment (23.11.2016) in the Special Scale of Pay with all consequential monetary benefits within a stipulated time.

7. The petitioners were appointed on various dates in the year 1998 as Scavengers on daily wage basis in Commercial and Registration/1st respondent's department. After repeated representations, the Government passed impugned G.O.Ms.(2d)No. 68, Commercial Tax and Registration (A1) Department, dated 14.10.2016, whereby the petitioners and others were brought on special time scale of pay of Rs.1300-3000+300 Grade Pay. The petitioners are receiving the special time scale of pay till date. According to the learned counsel for the petitioners, the persons, who are performing the same work, are paid salary in time scale of pay as Rs.4800 + 10000 + 1300 Grade Pay. The petitioners gave representations in the month of August 2019 to grant the same scale of pay as paid to others.

8. The writ petitions were allowed by the Single Judge of this Court, dated 05.11.2019 in W.P.(MD) No. 20569, 20575, 20577, 20579 to 20584, 20856, 20587, 20589, 20590 and 20591 of 2019 on the following grounds:

.....

"7. From the materials on record, it is seen that the petitioners were originally appointed as Scavengers on daily wage basis and subsequently, by impugned G.O.Ms.(2d) No.68, Commercial Tax and Registration (A1) Department, dated 14.10.2016, they were brought on special time scale of pay of Rs.1300-3000+300 Grade Pay. The respondents have not given any reason for not granting regular time scale of pay already given to the persons, performing the similar work. G.O.Ms.No. 47, School Education Department, dated 02.03.2012, issued in respect of employees of Education Department, who were brought on the same special time scale of pay of Rs.1300-3000+300 GP was challenged by the Association by filing writ petition in W.P(MD)No.17663 of 2014. This Court by order, dated 25.01.2018 considering the judgment of the Hon'ble Apex Court reported in (2017) 1 SCC 148 State of Punjab and others Vs. Jagjit Singh and Others allowed the said writ petition filed by the persons carrying on the same work. Challenging the validity of the said order, writ appeal in W.A.(MD)No.1584 of 2018 was



WEB COPY

filed by the respondent therein, which was dismissed and the said judgment was implemented by the Education Department by issuing Government Order. In such circumstances, the petitioners are also entitled to time scale of pay 4800+10000+1300 GP W.P(MD)No.20569 of 2019 etc., batch from the date of their appointment on G.O.Ms.(2d) No.68, dated 14.10.2016, as paid to the employees, who are performing the same work.

8. For the above reasons, the writ petitions are allowed. The petitioners are entitled to the benefits of pay revision and placement in the higher pay scale notionally from the date of their appointment with monetary benefits from the date of passing of this order. The respondents are directed to issue appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed".

9. In support of their case, the Writ petitioners have filed various proceedings in various department and seeking for parity in pay and they are claiming equal pay to equal work. Admittedly, they were appointed as scavengers on the basis of daily wage.

"'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



WEB COPY

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,



WEB COPY

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 on a temporary basis, cannot claim to be placed in the regular pay-scale (see the Orissa University of Agriculture & Technology case¹⁰).



WEB COPY

(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



WEB COPY

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



WEB COPY

differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, 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 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 *Dhirendra 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, Article 39 of the Constitution. The



WEB COPY

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 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



WEB COPY

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 Singh*²⁶ 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*²⁸, 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 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* case¹⁰, 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* case³³ 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 Raj*²⁷, this Court took a slightly different course,



WEB COPY

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 Singh*³², 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:-



WEB COPY

(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 Singh*²⁵, this Court's 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



WEB COPY

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 Singh*²⁵, 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- wagger 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 Singh*²⁵, seems to project otherwise.

(v) Even the issue of transferability of regular employees referred to in *State of Haryana v. Jasmer Singh*²⁵, 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



WEB COPY

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).

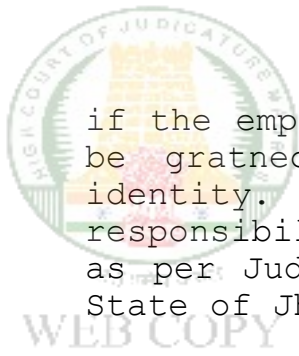
(x) For all the above reasons, we are of the view that the claim of the appellants cannot be considered, on the basis of the judgment in State of Haryana v. Jasmer Singh²⁵.

10. The daily wages could not be treated at par with persons employed on regular basis because they were not required to possess minimum qualification prescribed for appointment of regular basis.

11. According to the petitioners, as per proceedings, dated 29.01.2020 they are entrusted with Night watchman work with Office Assistant. Therefore, they are claiming that they are doing work equal to office assistant. But, the qualification, responsibilities of referene posts are different from the subject posts.

12. The principle of equal pay for equal work can only apply if there is complete and whole sale identity between two groups. Even,

<https://hcservices.ecourts.gov.in/hcservices/>



if the employees in the two groups doing identical work they cannot be granted equal pay, if there is no complete and wholesale identity. Pay scale can be different, if nature of jobs, responsibilities, experience, method of recruitment are different as per Judgement reported in 2007 (8) SCC 279 in S.C. Chandru Vs. State of Jharkhand.

13. Fixation of pay scale is a delicate mechanism which requires various consideration including financial capacity, responsibility, educational qualification, mode of appointment, etc.

14. Further, subject, posts persons have to prove that they are doing all works what the reference posts persons doing and also they are having same responsibilities. Except, a letter dated, 29.01.2020 no other evidence to show that they are performing equal work. The respondents have not established that the duties and responsibilities of the posts held by them are similar, equivalent to those of the reference posts.

15. In, **State of Haryana Vs. Tilak Raj and others, reported in 2003(6) SCC 123**, the Apex Court clearly laid down the law in the following terms:

....
"11. A scale of pay is attached to a definite post and in case of a daily-wager, he holds no post. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of 'equal pay for equal work' is an abstract one."

16. Therefore, the respondents are not entitled for what they claimed since they are not produced any documents to prove that they are doing equal work.

17. The Judgment reported in **2017, SCC, 148, State of Punjab and others Vs. Jeggit Singh and others**, clearly hold that equal work to be established by the subject posts with reference posts. In the case on hand no pleadings. In the case on hand, no pleadings and no

<https://hccservices.courts.gov.in/hccservices/>



respondents/petitioners.

18. The respondents/petitioners have placed a Judgment, dated 29.01.2019 in W.A.(MD) No.1584 of 2018 passed by the Division Bench of this Court in the case of the **Principal Secretary School Education Department Vs. School Education Department, Scavengers Welfare Association**, in which, fixation of the scale of pay of Rs.4800-10000-1300 Grade Pay- to the scavengers is allowed. But, the case on hand is not related to the department. Based on the aforesaid Writ appeal order, dated 29.01.2019 some other Writ petitions were allowed and the same were placed before this Court on the side of the respondents.

19. Each and every case should be decided on its own merits. In the case on hand, the Writ petitioners have not proved the main creteria that is they are doing equal work. Only the employer has rights to decide the salary. However, the Government can consider the representations of the writ petitioners, considering the present cost of living. Though, the learned Single Judge of this Court gone through the Judgment of Apex Court and pass an Order in favour of the Writ petitioners, the ratio and principles are not applicable to this case.

20. We, therefore are of the opinion that this Court has sufficient reason to interefere with the order of this Court, dated 05.11.2019 in W.P.(MD) Nos.20569, 20575, 20577, 20579 to 20584, 20856, 20587, 20589, 20590 and 20591 of 2019.

21. In the result, all the Writ Appeals are allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

ksa

Note : *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*



To

1. The Additional Chief Secretary
Commercial & Registration (A1) Department,
Secretariat, Chennai - 9.

2. The Commissioner,
Sales Tax Department,
Ezhilagam, Chepauk,
Chennai - 5.

3. The Joint Commissioner of Commercial Tax,
Reserve Line Road,
Palayamkottai, Tirunelveli - 2

1CC'S TO THE SPL GOVT PLEADER SR 12529

15CC'S TO MR.R. LAKSHMANAN, ADVOCATE SR Nos.
12342, 12343, 12344, 12345, 12346, 12347, 12348, 12349, 12350, 12353
12354, 12355, 12356, 12357.

TR
06/05/2021
20P/20C

Common order made in
WA(MD) Nos. 576,578,580 to 582,
593, 595 to 597, 599 to 601,
603 & 605 of 2020
18.03.2021