

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4300 OF 2021

1. Swabhimani Shikshak Va Shikshaketar
Sanghatana Maharashtra Rajya, Nashik,
Having its registered office at Plot No. 7,
Gut No. 25, Blok No. 1,
Om Shanti Nagar, Pimprala, Jalgaon,
Through its Secretary,
Hiralal Dattatraya Pawar,
Age; 52 years, Occ; Service,
R/o; Bhole Tanda, Tq. Parola Dist. Jalgaon.
2. Krushna Murlidhar Karankal
Age; 23 years, Occ; Service,
R/o; At Post Tawkheda, Tq. Shindkheda,
Dist. Dhule.
3. Pramod Rajendra Shinde,
Age; 32 years, Occ; Service,
R/o; At Post Jebapur, Tq. Sakri, Dist.
Jalgaon.
4. Chetan Prakash Patil,
Age; 30 years Occ; Service,
R/o; At post Nandre, Tq. And Dist. Dhule.
5. Ganesh Jagdish Patil,
Age; 27 years, Occ; Service,
R/o; at Post Gadad Tq. Nawapur,
Dist. Nandurbar.
6. Jitendrakumar Mitharam Patil,
Age; 39 years, Occ; Service,
R/o; Tambepura, Tq. Amalner Dist; Jalgaon.
7. Pravin Ramchandra Patil,
Age; 29 years, Occ; Service,
R/o; Post Anturili, Tq. Amalner, Dist.
Jalgaon.

8. Mahendra Gorakh Patil.
Age; 29 years, Occ; Service,
R/o; At Tardi Post Holi,
Tq. Parola Dist. Jalgaon.
9. Sau. Babytai Baban More,
Age; 39 years, Occ; Service,
R/o; At post Takali, Tq. Kopargaon,
Dist. Ahmednagar.
10. Harischandra Kisan Dighe,
Age; 21 years Occ; Service,
R/o; Khadked, Tq. Igatpuri,
Dist. Nashik.
11. Navnath Sukhdev Shinde,
Age; 35 years Occ; Service,
R/o; Khadgaon, Tq. Dindori,
Dist. Nashik.
12. Devidas Ramdas Zole,
Age; 32 years, Occ; Service,
R/o; At Post Kawad Dara,
Tq. Igatpuri, Dist. Nashik.
13. Kalu Somnath Chandgir,
Age; 25 years, Occ; Service,
R/o; Dahadewaadi, Tq. Trambakeshwar
Dist. Nashik,
14. Nivruti Devram Mengal,
Age; 42 years, Occ; Service,
R/o; Chapadgaon, Tq. Sinnar,
Dist. Nashik.
15. Vijay Yadav Bhoye,
Age; 37 years, Occ; Service,
R/o; Nirgude, Tq. Path,
Dist. Nashik.
16. Gajanan Shankar Sidam,
Age; 28 years, Occ; Service,
R/o; Jalka, Tq. Ralegaon,
Dist. Yawatmal.

17. Santosh Gangaram Hulkane,
Age; 36 years, Occ; Service,
R/o; Dhathaki, Tq. Umarkhed,
Dist. Yawatmal.
18. Vivek Balkrushna Borape,
Age; 27 years, Occ; Service,
R/o; Dhanali Tq. Bhadrawati,
Dist. Buldhana.
19. Nilesh Arjun Chavan,
Age; 29 years, Occ; Service,
R/o; Yelgaon, Tq. Dist. Buldhana.
20. Bhagwat Laxman Gaikwad,
Age; 40 years, Occ; Service,
R/o; Kinhinaik, Post; Dhotra Naik,
Tq. Chikhali Dist. Buldhana.
21. Ajitsing Tarasing Rathod,
Age; 32 years, Occ; Service,
R/o; Mandwa, Tq. Mehkar,
Dist. Buldhana.
22. Sursh Rangrao Chavan,
Age; 28 years, Occ; Service,
R/o; Kalakamtha, Tq. Malegaon,
Dist. Washim.
23. Yogesh Uttamrao Dhanorkar,
Age; 37 years, Occ; Service,
R/o; Dhamangaon, (Dev), Tq. Darvha,
Dist; Yawatmal.
24. Ganesh Laxmanrao Girnale,
Age; 27 years, Occ; Service,
R/o; Darvha, Tq. Darvha,
Dist; Yawatmal.
25. Sandipkumar Sahebrao Hake,
Age; 36 years, Occ; Service,
R/o; Wadod, Tq. Mahagaon,
Dist. Yawatmal.

26. Raju Madhukar Daine,
Age; 32 years, Occ; Service,
R/o; Chincholi -2, Tq. Digras,
Dist. Yawatmal.
27. Waghu Wasudev Sarvar,
Age; 26 years, Occ; Service,
R/o; Gadchandor, Tq. Korapnana
Dist. Chandrapur.
28. Laxmand Nanaji Uike,
Age; 39 years, Occ; Service,
R/o; Mandwa, Tq. Korapana,
Dist. Chandrapur.
29. Bhimrao Anandrao Kotnaake,
Age; 28 years, Occ; Service,
R/o; Bhari, Tq. Jivti,
Dist. Chandrapur.
30. Sawan Khushal Narnaware,
Age; 33 years, Occ; Service,
R/o; Kishtapur, Tq. Aheri,
Dist. Gadchiroli.
31. Bhaskar Madhukar Choudhary,
Age; 43 years, Occ; Service,
R/o; Chandala, Post Bodali,
Tq. and Dist. Gadchiroli,
32. Amol Madhukar Kshirsagar,
Age; 32 years, Occ; Service,
R/o; Adyal, Tq. Chamorshi,
Dist. Gadchiroli.
33. Sudhakar Patwoji Kasture,
Age; 29 years, Occ; Service,
R/o; At Post Modu Modgu,
Tq. Ahiri, Dist. Gadchiroli.
34. Shalikrao Jhimlu Pada,
Age; 30 years, Occ; Service,
R/o; Japatlai, Tq. Dhanora,
Dist. Gadchiroli.

35. Kiran Vijay Chavan ,
Age; 31 years, Occ; Service,
R/o; Chimnazari,
Tq. & Dist. Nagpur.
36. Sachin Vinayakraoi Daine,
Age; 36 years, Occ; Service,
R/o; Waigav (Nipani),
Tq. & Dist. Wardha.
37. Bindesh Bhiwaji Uike,
Age; 26 years, Occ; Service,
R/o; Udaasa, Tq. Umred,
Dist. Nagpur.
38. Subham Dnyaneshwar Bhoir,
Age; 22 years, Occ; Service,
R/o; Mangrul, Tq. Bhivapur,
Dist. Nagpur.
39. Giridhaari Surendra Raut,
Age; years, Occ. Service,
R/o; Pawnarkhari, Tq. Tumsar,
Dist. Bhandara,
40. Sandip Kawalu Thakare,
Ag; 35 years, Occ; Service,
R/o; Marki (Budruk), Tq. Zari-Jamni,
Dist. Yawatmal.
41. Sunil Gulabrao Mukalkar,
Age; 38 years, Occ; Service,
R/o; Akoli (Budruk), Tq. Kelapur,
Dist. Yawatmal.
42. Vitthal Kondiba Tiparse,
Age; 40 years, Occ; Service,
R/o; Umri Road, Tq. Ralegaon,
Dist. Yawatmal.
43. Avinash Kishan Tolase,
Age; 25 years, Occ; Service,
R/o; Kalamb, Tq. Kalamb,
Dist. Yawatmal.

44. Dayaram Shankarlal Bethe,
Age; 32 years, Occ; Service,
R/o; Ashram Shala Lawada,
Tq. Dhaarmi, Dist. Amrawari.
45. Ashish Tarachand Rathod,
Age; 25 years, Occ. Service,
R/o; Kolambi, Tq. & Dist. Yawatmal.
46. Ritesh Madhukar Zalake,
Age; 35 years, Occ; Service,
R/o; Shivani, Tq. Manora,
Dist. Washim.
47. Kailash Purushottam Gholnaare,
Age; 26 years, Occ; Service,
R/o; Moha, Tq. & Dist. Yawatmal.
48. Akshay Sureshrao Khairkar,
Age; 22 years, Occ; Service,
R/o; Dahendri, Tq. Chikhaldara,
Dist. Amrawati.
49. Pankaj Haridas Shekar,
Age; 27 years, Occ; Service,
R/o; Pimpalgaon Khuta,
Tq. Chalpuri, Dist. Amrawati.
50. Ajay Pitambar Raut,
Age; 28 years, Occ; Service,
R/o; Kelzar, Tq. Mul, Dist. Chandrapur.
51. Deepak Ishwar Mankar,
Age; 26 years, Occ; Service,
R/o; at Post Ambholi,
Tq. Chimur, Dist. Chandrapur.
52. Ramesh Janoji Bhanarkar,
Age; 50 years, Occ; Service,
R/o; At Pot Kanta, Tq. Naagbhid,
Dist. Chandrapur,
53. Nagesh Sudhakar Admulwar,
Age; 27 years, Occ; Service,

R/o; Gilbili Tq. Ballarpur,
Dist. Chandrapur.

54. Nitesh Namdev Rahate,
Age; 27 years, Occ; Service,
R/o; Sugthana, Tq. Warora,
Dist. Chandrapur.
55. Balaji Baliram Modak,
Age; 34 years, Occ; Service,
C/o; Dhanaj, Tq. Umarkhed,
Dist. Yawatmal.
56. Sunil Shekura Rao Rathod,
Age; 31 years, Occ; Service,
R/o; Manik Doha, Tq. Pusad, Dist.
Yawatmal.
57. Pandurang Govinda Mirase,
Age; 37 years, Occ; Service,
R/o; Vilegaon, Tq. Manora,
Dist. Washim.
58. Vijay Vitthal Kachwe,
Age; 49 years, Occ; Service,
R/o; At Post Tarali, Tq. Parola,
Dist. Jalgaon,
As Vice President of Swabhimani Shikshak
Shikshketar Sanghatana (MS) Nashik.
59. Sambhaji Siratram Patil,
Age; 57 years, Occ; Service,
R/o; Plot No. 7, Gut No. 25, Block No. 1,
Om Shanti Nagar Pimpal,
Tq. and Dist. Jalgaon.
As Jalgaon District President of
Swabhimani Shikshak Shikshketar
Sanghatana (MS) Nashik.

...PETITIONERS

V E R S U S

1. The State of Maharashtra,
Through Secretary,

Tribal Development Department,
Mantralaya Mumbai -32.

2. The Secretary,
Finance Department, Mantralaya,
Mumbai- 32.
3. The Commissioner,
Tribal Development Department,
Maharashtra State, Nashik.
4. The Additional Tribal Commissioner,
Nashik Division, Nashik.
5. The Additional Tribal Commissioner,
Nagpur Division, Nagpur.
6. The Additional Tribal Commissioner,
Amrawati Division, Amrawati.

...RESPONDENTS

.....
Advocate for the petitioners : Mr. A.D. Pawar
AGP for the Respondent Nos.1 to 6-State : Mr. A.S. Shinde
.....

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED DATE : 08.09.2022
PRONOUNCEMENT DATE : 20.09.2022**

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

A. ISSUE INVOLVED

1. Entitlement of regular pay scale to Watchmen/Security Guards appointed in aided Ashram Schools run by the private managements at par with those working in Government Ashram

Schools, is the issue involved in the present petition.

B. FACTUAL MATRIX

2. By the Government Resolution dated 23.01.2014, it was resolved to establish a Special Education Unit for better management of Government Ashram Schools and aided Ashram Schools under the Tribal Development Department of the State. It was further resolved to create 849 posts for establishment of such Special Education Unit. In addition to such 849 newly created posts, it was also resolved to create 556 posts of Watchmen/Security Guards for 556 aided private Ashram Schools. It was decided to fill up such posts of Watchmen/Security Guards on consolidated monthly honorarium of Rs. 3200/-. By subsequent Government Resolution dated 18.06.2016, such honorarium was enhanced to Rs. 5,000/-.

3. The petitioner No. 1 is a Union of teaching and non-teaching staff working in Ashram Schools of the Tribal Development Department. Petitioner Nos. 2 to 59 are working as Watchmen/Security Guards in various aided Ashram Schools run by the private managements. They have filed present petition claiming the same pay scales, which are granted to the post of Watchmen/Security Guards in Government Ashram Schools. It is contended that by way of Government Resolution dated 14.09.2004, it has been directed that the educational qualifications applicable to the teaching and non-teaching staff in the Government Ashram Schools is made applicable to those

engaged in aided private Ashram Schools. The petitioners also rely upon Government Resolution dated 20.08.2019, by which the revised staffing pattern has been implemented for Government Ashram Schools and aided Private Ashram Schools, under which one post of Watchman has been sanctioned for each Ashram School with a further direction that the eligibility criteria for filling up the posts of Watchmen would be the same as prescribed for the Government Ashram Schools. The petitioners also rely upon the Government Resolution dated 13.12.2019, by which the nomenclature of post of Watchman is changed to that of Multi Tasking Staff and a pay band of 15000-47600 has been prescribed for the same. The petitioners contend that despite issuance of Government Resolution dated 13.12.2019, the same is not implemented and the petitioners continue to be paid monthly consolidated honorarium of Rs. 5,000/-.

4. The petition is resisted by the State Government by filing affidavit-in-reply. Reliance is placed on the Government Resolution dated 11.05.2022 issued during the pendency of the present petition, by which the Government Resolutions dated 18.07.2019 and 20.08.2019 have been stayed. It is contended that the Government Resolution dated 20.08.2019 was conditional i.e. subject to approval to be given by the appropriate authority. It is further contended that the post being temporary and on honorarium, the same cannot be replaced in regular pay scale and that, therefore, monthly consolidated honorarium of Rs. 5,000/- is rightly being paid as per the Government

Resolution dated 18.06.2016.

C. **SUBMISSIONS**

5. Appearing for the petitioners Mr. Pawar, the learned counsel would invoke the principle of 'equal pay for equal work' for claiming the pay scales payable to the Watchmen/Security Guards engaged in the Government Ashram Schools. He would submit that the Petitioners perform same duties and responsibilities as that of the Watchmen/Security Guards engaged in the Government Ashram Schools. That the eligibility criteria for both posts is the same. He would submit that the Government Resolution dated 11.05.2022 has been issued to defeat the legitimate claim of the petitioners. He questioned the timing of issuance of the GR and submitted that the same is a retaliatory reaction to this Court proposing to saddle costs of Rs. 50,000/- by its order dated 28.04.2022 for not filing affidavit-in-reply.

6. Mr. Pawar relies upon the following judgments in support of his contentions :

1.State of Harayana Vs. Rajpal Sharma 1996 (5) SCC 273

2.Chandigarh Administration Vs Rajni Vali 2000 (2) SCC 42.

3.State of Punjab and others V/s Jagjit Singh and Others 2017 (1) SCC 148.

4.Sabha Shankar Dube V/s Divisional Forest Officer and others 2019 (12) SCC 297.

7. Mr. Shinde, the learned Assistant Government Pleader appearing for the State Government would contend that the terms and

conditions of the appointments were clearly made known to the petitioners and they have accepted the appointments on consolidated monthly honorarium. The petitioners cannot turn around and claim regular pay scales. He submits that the posts are temporary and therefore the regular pay scales cannot be granted to the post of Watchmen/Security Guards in private aided Ashram Schools. He would further submit that the Government Resolution dated 20.08.2019 is in conflict with the earlier Government Resolutions dated 23.01.2014 and 18.06.2016, which were ignored while issuing Government Resolution dated 20.08.2019. He, therefore, submits that the State Government has rightly stayed operation of the Government Resolution dated 20.08.2019. So far as, the Government Resolution dated 13.12.2019 is concerned, he submits that the object behind issuance of the Government Resolution was not merely to make changes in the nomenclature of the posts and not to prescribe particular pay scale/pay band. Mr. Shinde would rely upon the following decisions in support of his contentions:-

1.Orissa University of Agricultural and Technology Vs. Manoj K. Mohanty 2003 DGLS (SC) 417.

2.Utkal University and Another Vs. Jyotirmayee Nayak and Others 2003 DGLS (SC) 1185.

3.Harbans Lal Vs. State of H.P. 1989 DGLS (SC) 363.

4.State of Madhya Pradesh Vs. R.D. Sharma and Another 2022 DGLS (SC) 94.

5.State of Haryana Vs. Haryana Civil

Secretariat Personal Staff Association 2002 DGLS (SC) 609.

6. Panjab State Electricity Board and Another Vs. Thana Singh and Other 2019 DGLS (SC) 27.

7.P.S. Gopinathan Vs. State of Kerala & Co.2008 DGLS (SC) 719.

8.State of Uttar Pradesh through its Secretary and Others Vs. Meraj Ahemad 2017 DGLS (SC) 880.

D. REASONS AND ANALYSIS

8. In the above backdrop, we are tasked upon to decide the issue of entitlement of regular pay scale to Watchmen/Security Guards appointed in aided Ashram Schools run by the private managements at par with those working in Government Ashram Schools. At the outset, we are mindful of the settled legal position that prescription of pay scale is a matter of policy decision. The limitations imposed on writ jurisdiction of this Court in entering into the realm of policy decisions need no reiteration. It is trite that this Court cannot issue directions to apply/implement particular pay scale for a particular post, the same being in exclusive domain of the executive. Equally true is that this Court cannot embark upon the exercise of equating the duties or responsibilities for deciding applicability of a particular pay scale, the same being the job of experts. Keeping in mind the above limitations, we proceed to answer the issue raised in the Petition.

9. The petitioners have been appointed/engaged consequent to the sanction of 556 posts of Watchmen/Security Guards for 556 aided Ashram Schools run by private managements. The Government Resolution dated 23.01.2014 creates two separate categories in respect of total 1961 newly sanctioned posts. The first category is in respect of 849 posts sanctioned for Special Education Unit, for which there is no specific provision for payment of honorarium. It therefore appears that regular payscales are payable in respect of those 849 posts. However, in respect of 556 posts of Woman Superintendents and 556 posts of Watchmen/Security Guards, a specific provision is made for payment of monthly consolidated honorarium of Rs. 3200/-. Thus, there is no iota of doubt that sanction of said 556 posts of Watchmen/Security Guards was with a specific caveat that the same can be filled only on the basis of condition of payment of consolidated monthly honorarium of Rs. 3200/-. Such monthly consolidated honorarium was subsequently enhanced to Rs. 5,000/- by Government Resolution dated 18.06.2016, which not only provides that the engagement would not be on regular basis but also imposes condition of submission of undertaking/affidavit from personnel appointed on the post not to claim regularization. The Government Resolution further provides that the engagement of Watchmen/Security Guards would only be for a period of 11 months, after which the same can be continued with technical break. Mr. Shinde, therefore, would be justified in contending that creation of posts was conditional and the same is governed by the provisions of Government Resolutions dated

23.01.2014 and 18.06.2016.

10. However, we are not concerned with the issue of regularization of services of the petitioners. There is no prayer in the present petition seeking regularization of their services. The prayers in the present petition are restricted only to grant of same pay scale to the petitioners which is granted to the post of Watchman/Security Guard employed in Government run Ashram Schools. Therefore, the issue of the posts being temporary in nature needs to be considered for limited aspect of extension of pay scale to the holders of the posts.

D-1. JUDGMENTS ON ISSUE OF EQUAL PAY FOR EQUAL WORK TO TEMPORARY EMPLOYEES

11. The issue of extension of principle of 'equal pay for equal work' to temporary employees attracted the attention of the Apex Court in **State of Punjab Vs. Jagjit Singh** (supra). After considering the previous decisions, the Apex Court held as under:

"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.

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.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post. "

12. The law expounded **Jagjit Singh** (supra) was reiterated by the Apex Court in **Sabha Shankar Dube** (Supra) in which it is held as under:

"10. The issue that was considered by this Court in **Jagjit Singh** (supra) is whether temporary employees (daily wage employees, ad hoc appointees, employees appointed on casual basis,

contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in Tilak Raj (supra) and Surjit Singh (supra) this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.

11. In view of the judgment in Jagjit Singh (supra), we are unable to uphold the view of the High Court that the Appellants-herein are not entitled to be paid the minimum of the pay scales. We are not called upon to adjudicate on the rights of the Appellants relating to the regularization of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal (supra) relating to persons who are similarly situated to the Appellants and later affirmed in Jagjit Singh (supra) that temporary employees are entitled to minimum of the pay scales as long as they continue in service."

13. We may also refer to **Suman Forwarding Agency Pvt Ltd. Vs Chief Patron/Vice President/General Secretary, Central Warehousing Corporation Majdoor Union**, 2019 SCC OnLine Del 10318 in which Delhi High Court has passed series of orders directing the Central Government to implement the directions in **Jagjit Singh** (supra) in respect of all casual labourers and contract workers engaged by the Central Government and PSUs. In Order dated 16th September 2019, the Delhi High Court has reproduced various Office Memoranda issued by the Central Government Ministries. Since various OM are culled out in that order, we deem it appropriate to reproduce the order at the cost of making this judgment lengthy. The Order reads thus:

“3. Vide order dated 28th March, 2019, Central Government was directed to file a status report on affidavit as to whether all Government Departments/PSUs/Corporations under the Central Government including CWC are complying with the law declared by the Supreme Court in Jagjit Singh, (supra). Para 25 of the order dated 28th March, 2019 is reproduced hereunder:

“25. The Central Government is directed to file the status report on affidavit as to whether all Government Departments/PSUs/Corporations under the Central Government including CWC are complying with the law declared by the Supreme Court in Jagjit Singh (supra) by paying the wages in terms of the directions of the Supreme Court to the temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like). If all the Government Departments/PSUs/Corporations are not complying with the directions of the Supreme Court in Jagjit Singh (supra), the Government shall forthwith issue O.M. to all the Government Departments/PSUs/Corporations to comply with the aforesaid directions and place the same before this Court on the next date of hearing.”

(Emphasis supplied)

4. On 01st August, 2019, the status report was filed by the Central Government in which it was stated that the matter relating to equal pay for equal work for the workmen employed by the contractor is regulated by Rule 25(2)(v) of the Contract Labour (Regulation and Abolition) Central Rules, 1971. Relevant portion of the status report is reproduced hereunder:

“3. It is submitted that the DoPT has vide OM dated 29.07.2019 informed that DoPT has already issued an OM dated 07.06.1988 in respect of wages of casual labourers engaged by Ministries/Departments which is in consonance with the judgment of the Hon'ble Supreme Court in State of Punjab v. Jagjit Singh - (2017) 1 SCC 148. Para IV of the OM dated 07.06.1988 states as under:—

“Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day”

A copy of the OM dated 29.07.2019 along with OM dated 07.06.1988 is annexed herewith and marked as ANNEXURE-A.

4. With regard to the implementation of the OM dated 07.06.1988 in the PSUs/Corporations under the Central Government, Department of Public Enterprises is required to be approached and consulted which will require some time.

5. The Central Government has produced OM No. 49014/1/2017-Estt.(C)pt dated 04th September, 2019 issued to all the Ministries and Departments of Government of India reiterating OM No. 49014/2/86 Estt.(C) dated 07th June, 1988. Relevant portion of the office memorandum is reproduced hereunder:—

“No. 49014/1/2017-Estt.(C)Pf. Government of India Ministry of Personnel, PG & Pensions Department of Personnel & Training North Block, New Delhi Dated: 4th September, 2019

OFFICE MEMORANDUM

Subject: ‘Equal pay for Equal Work’ for Casual workers: Compliance with earlier instructions and Hon'ble Court's Judgements thereon

The undersigned is directed to refer to this Department's O.M. No. 49014/2/86-Estt.(C) dated 07.06.1988 wherein it was, inter alia, stated that:

- Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

- In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948.

- Persons on daily wages (casual workers) should not be recruited for work of regular nature.

2. The above instructions have been issued keeping in view the judgements of the Hon'ble Supreme Court. It is reiterated that it is the responsibility of all Ministries/Departments to follow the above instructions in letter and spirit."

(Emphasis supplied)

6. The Central Government has also placed on record OM No. W-02/0038/2019-DPE (WC)-GL-XVIII/19 dated 13th September, 2019 issued by Ministry of Heavy Industries & Public Enterprises Department of Public Enterprises directing all administrative Ministries/Departments that all the casual workers/daily wagers employed by the Central Public Sector Enterprises (CPSEs) be paid wages equivalent to the minimum of the relevant pay scale plus dearness allowance. Relevant portion of the office memorandum is reproduced hereunder:—

"No. W-02/0038/2019-DPE (WC)-GL-XVIII/19 Government of India Ministry of Heavy Industries & Public Enterprises Department of Public Enterprises Public Enterprises Bhawan, Block No. 14, CGO Com-

plex, Lodhi Road, New Delhi-110003. Dated, the 13th September, 2019 OFFICE MEMORANDUM

Subject: Equal pay for Equal work' for Casual Workers: Compliance with Hon'ble Courts' Judgments thereon-reg.

On the above subject, the undersigned is directed to refer to various instructions issued by the Hon'ble Supreme Court and also to the DOPT's OM dated 49014/1/2017-Estt.(C) pt. dated 04th September, 2019.

2. The following provisions are hereby extended to casual worker/daily wager employed by Central Public Sector Enterprises (CPSEs):

i. Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

ii. In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the state Government/Union Territory Administration, whichever is higher as per the Minimum Wage Act, 1948.

iii. Persons on daily wages (casual workers) should not be recruited for work of regular nature.

3. All CEOs of CPSEs and administrative Ministries/Departments are requested to ensure strict compliance of the above provisions."

(Emphasis supplied)

7. All the Departments of the Ministry of Central Government as well as PSUs under the Central Government are directed to comply with the office memorandums dated 07th June, 1988, 04th September, 2019 and 13th September, 2019 and file the status report with respect to the compliance thereof before the Central Government. The compliance report shall clarify how many casual/temporary workers were working under those PSUs and the date from which they were given benefits. The Central Government shall produce all the compliance reports before this Court on the next date of hearing. The Central Government shall circulate the copy of this order to all the Ministries and PSUs."

14. Thus, towards implementation of **Jagjit Singh** (supra), the Central Government has already issued instructions to its Ministries and PSUs that where the nature of work performed by casual workers is same as that of regular employees, wages at the minimum of the payscale are required to be paid. Thus it is now a settled law that the employees who are not regular, irrespective of their nomenclature such as 'Temporary, Work Charge, Daily Wage, Casual, Ad-hoc or Contract Basis,' are required to be granted minimum of pay scale at the lowest grade of regular pay scale as extended to the regular employees holding the same post.

15. We may also make useful reference to the case of Ambulance Drivers engaged by various Zilla Parishads through Contractors. Such Ambulance Drivers have filed series of petitions before this Court seeking wages at the minimum of payscale relying on

the judgment in Jagjit Singh. It is pertinent to note that the Ambulance Drivers are engaged through contractors and not directly by Zilha Parishads. In **Dhiraj S/o. Sudhakar Rao Wankhede & Ors. V. Zilla Parishad, Chandrapur and Ors.**, Writ Petition No. 2247 of 2014 decided on 20.11.2019, this Court held that such Ambulance drivers are entitled to be paid wages at the minimum of the payscale. The decision in Dhiraj Wankhede & Ors. (supra) was followed by this Court in **Ashok Dhondiba Meher and Ors. v. The Chief Executive Officer, Zilla Parishad, Solapur**. That judgment came to be assailed by the Zilla Parishad, Solapur before the Apex Court in Special Leave Petition (C) No. 8395 of 2021, **The Chief Executive Officer, Zilla Parishad, Solapur. Vs. Ashok Dhondiba Meher and Ors.** By its order dated 23.03.2022 the Apex Court upheld the decision of this Court relying upon the judgment in **Jagjit Singh** (Supra). The Apex Court held that,

*“10. In the above circumstance, it is noticed that in the present facts the only relief granted by the High Court to the private respondents herein is to be paid the wages at the minimum of the pay-scale at lowest grade, in the regular pay-scale extended to the regular employees holding the same post. The said benefit ordered to be extended is in tune with the observations of this Court in **Jagjit Singh** (supra). Further, in the instant facts what cannot be overlooked is also that the private respondents though employed through the contractors are discharging the onerous duties of driving the ambulance which is operated to provide the benefit of public health to the citizens in the PHC's under the Zilla Parishad which in turn is for discharging the obligation of the State. Therefore, in such circumstances, the minimum relief that has*

*been granted by the High Court would not call for interference. We at this juncture also take note of the fact that the judgment dated 20.11.2019 passed by the coordinate bench of the High Court in **Dhiraj S. Wankhede** (supra), relied upon by the High Court in the instant case had been assailed before this Court in a Special Leave Petition (Civil) bearing Diary No. 12195/2020. However, the Special Leave Petition came to be dismissed by this Court on 22.02.2021."*

Thus extension of payscale to Ambulance Drivers is upheld by the Apex Court, even though they are not appointed by Zilha Parishads but by contractors.

D-2. APPLICATION OF JAGJIT SINGH JUDGMENT TO PRESENT CASE

16. Applying the principle of **Jagjit Singh** (supra) to the present case, it is apparent that the State Government has clearly discriminated Watchmen/Security Guards engaged in aided private Ashram Schools viz.-a-viz their counterparts in Government Ashram Schools. True it is that the sanction of posts of Watchmen/Security Guards in private aided Ashram School was conditional i.e. on payment of monthly consolidated honorarium. However, the question that arises is whether the State Government was justified in doing so? As observed by us herein above, the Government Resolution dated 23.01.2014 which created the posts of Watchmen/Security Guards in private aided Ashram School was silent about the pay scale/honorarium payable in respect of 849 posts created in Special Education Unit for better management of Government and aided Ashram Schools. It appears

that for the said 849 posts the regular pay scales are paid. However, in respect of posts of Woman Superintendent and Watchmen/Security Guards, a special provision is made for payment of monthly honorarium of Rs. 3200/-. Subsequent Government Resolution dated 18.06.2016 stipulates that the engagement on the post of Watchmen/Security Guards would be temporary for 11 months while enhancing monthly consolidated honorarium of Rs. 5,000/-.

17. We are however not concerned with the issue whether the appointment is against permanent or temporary post. From various Government Resolutions, it does appear that the posts are temporary. Consequently, the appointments are also temporary. However, for such temporary posts and temporary appointments, whether the Government is justified in paying the consolidated monthly honorarium or whether the regular pay scales ought to have been granted is the issue before us. Applying the principle laid down by the Apex Court in **Jagjit Singh** (supra) the State Government is obliged to extend the same pay scales to temporary employees on par with regular employees. Undeniably, the Watchman/Security Guards appointed in Government Ashram School are being paid regular pay scales. Therefore, as per the law laid down in **Jagjit Singh** (supra), it is mandatory for the State Government to extend the regular pay scales to Watchmen/Security Guards engaged in private aided Ashram Schools on par with their counterparts in the Government Ashram Schools.

D-3. DISCRIMINATION BETWEEN TEACHERS IN AIDED AND GOVERNMENT SCHOOLS

18. The issue of payment of same salary and allowances to the teachers in privately managed aided Schools at par with the teachers in Government Schools has been decided by the Apex Court in **Rajpal Sharma** (supra). The Supreme Court followed its earlier decision in **Haryana State Adhyapak Singh v. State of Harayana (1988) 4 SCC 571** in which it is held that,

“In paragraph 12 of the Judgment the Court issued the following directions:

'(i) The pay scales of the teachers of government aided schools shall be revised so as to bring them at par with the pay scales of teachers of government schools with effect from 1/4/1979 and the differential amount as a result of such revision in pay scales shall be paid in four six monthly instalments, the first instalment being payable by 30/6/1990.

(ii) The teachers of the government aided schools shall be paid additional dearness allowance on the basis of revised pay scales with effect from 1/4/1979 to 31/12/1985 and the arrears of such additional dearness allowance found payable as a result of such revision shall be paid along with the last part of the five instalments of additional dearness allowance which is to be paid in September 1990.

(iii) The parity in the pay scales and dearness allowance of teachers employed in aided schools and those employed in government schools shall be maintained and with that end in view the pay scales of teachers employed in government aided schools shall be revised and brought at par

with the pay scales and dearness allowance payable to the teachers employed in government schools with effect from 1-1-1986.”

19. The issue of payment of same salary to the teachers in privately managed aided Schools, once again came up before the Supreme Court in ***Chandigarh Administration v. Rajni Vali*** (supra) in which it was held in paragraph No. 9 as follows :

“Tested on the touch stone of the principles laid down in the aforementioned decisions, the position is manifest that there is no justification for denying the claim of the respondents for parity of pay scale and to accept the contention of the appellants will amount to confirming the discriminatory treatment against the respondents. Therefore, the High Court rightly rejected the case of the appellants. The directions issued in the impugned Judgment to pay the respondents 1 to 12 the same salary as is being paid to their- counter parts in the privately managed Government aided schools in Chandigarh in the circumstances is unassailable.”

20. Thus, it is well established principle that the teachers engaged in privately managed aided Schools cannot be discriminated vis-a-vis their counterparts working in the Government Schools. Applying same principle, no discrimination can be made even with regard to the watchmen engaged in aided Ashram Schools and Government Ashram Schools.

D-4. EFFECT OF VARIOUS GOVERNMENT RESOLUTIONS

21. Great deal of emphasis is laid by Mr. Pawar on the Government Resolution dated 20.08.2019, by which revised staffing

pattern has been implemented for Government Ashram Schools and the aided Ashram Schools, under which the one post of Watchman has been sanctioned for each Ashram School with a further direction that the eligibility criteria for filling up the posts of Watchmen would be the same as prescribed for the Government Ashram Schools. Government Resolution dated 20.08.2019 was in vogue at the time of filing of the Petition. If the Government Resolution dated 20-08-2019 was operational, Watchmen/Security Guards in private aided Ashram Schools would have been straight way entitled to regular pay scale. However, the same has been subsequently suspended by issuing Government Resolution dated 11-05-2022. Petitioners contend that such suspension was made only to defeat their case. We would steer clear of the controversy, as are not called upon to decide the legality of the Government Resolution dated 11-05-2022. However, suffice it to note that a conscious decision was taken by the State Government to bring the post of Watchman on staffing pattern of the private aided Ashram Schools. This indicates that the State Government itself treats the Watchmen engaged in private aided Ashram Schools on par with those engaged in Government Ashram Schools. We note the Government Resolution dated 20-08-2019 only for the limited purpose of holding that there appears to be no difference in the duties and responsibilities between Watchmen engaged in private aided Ashram Schools and those engaged in Government Ashram Schools. Also, it is not the case of the State Government that there is any difference in the duties and responsibilities. It has also come on record that the

recruitment qualifications of watchmen engaged on both establishments are same.

22. Petitioners have also relied upon the Government Resolution dated 13.12.2019, by which while changing the nomenclature of the post of watchmen to that of Multi Tasking Staff, a pay band for the post is also prescribed. Mr. Shinde has contended that the object behind the Government Resolution dated 13.12.2019 was merely to alter the nomenclature of the post of Watchmen/Security Guards to that of Multi Tasking Staff and that the same applies only to the Government Ashram Schools. However, from the Government Resolution dated 13.12.2019, it does appear that the pay band of 15000- 47600 is made applicable to the post of Watchmen working on the Government Ashram Schools, whose nomenclature is now changed to that of Multi Tasking Staff. This is something which the State Government will have to take into consideration, while implementing our directions issued in the present judgment.

D-5 JUDGMENTS RELIED UPON BY STATE GOVERNMENT

23. What remains now is to deal with various judgments relied upon by Mr. Shinde. In **Orissa University of Agricultural and Technology** (supra) the decision was rendered essentially on account of absence of necessary averments and material. The respondent therein failed to prove that he had a right to equal pay on the principle

of equal pay for equal work. The decision is therefore, clearly distinguishable. In **Utkal University and Another** (supra) the issue was essentially with regard to regularization of services of respondent therein. In the present case the relief of regularization is not sought for by the petitioners. So far as the issue of payment of salary at par with similarly placed employees was concerned, the Supreme Court held that the respondents therein did not possess any appointment orders, on the basis of which they could claim the pay scale or regular salary. Even otherwise, the judgment did not involve the specific issue of paying pay scale to the temporary employees, whereas this specific issue has been dealt with by the judgment of the Apex Court in **Jagjit Singh** (supra). In **Harbans Lal** (supra) the comparison was made by the carpenters engaged by the Himachal Pradesh State Handicraft Corporation with that of the carpenters employed in the Government service. In such circumstances, the Supreme Court held that the discrimination complained of must be within the same establishment owned by the same management. We are dealing with the issue of extension of pay scales to same category of staff engaged in Government and aided Ashram Schools. The decision is therefore, clearly distinguishable.

24. Strong reliance has been placed by Mr. Shinde on the decision in **State of Madhya Pradesh Vs. R.D. Sharma and Another** (supra) contending that the same is rendered after considering the judgment in **Jagjit Singh** (supra). The case involved

equation of posts and determination of pay scales and the Supreme Court has held that the same is the function of the executive and not of the judiciary. However, the issue of payment of pay scale to temporary employees was not involved in that case, which is why Jagjit Singh is held to be inapplicable. In State of **Harayana Civil Secretariat Personal Staff Association**, (supra) the High Court had allowed the Writ Petition without comparing the nature of duties and responsibilities of two sections of employees and the qualifications prescribed were also different. Based on these factors, the plea of equal pay for equal work was turned down. Mr. Shinde, the learned AGP has particularly relied upon the findings relating to financial burden of the State to be considered and that the Court should approach the matter with restraint and should interfere only when it is satisfied with the decision of the Government is patently unjust and prejudice to a Section of employees. The defence of financial burden, in our opinion, would no longer be available to the State Government after decision in Jagjit Singh. The law that stands as of today is that decision to engage temporary, casual or contract workforce is required to be taken by the Government keeping in mind the principles in Jagjit Singh mandating extension of minimum pay in the pay scale payable to regular employees.

25. In **Punjab State Electricity Board** (supra) the Apex Court has re-stated the settled principle that equation of pay scales must be left to Government and on decision of experts and that the Court

should not interfere with it. We are in respectful agreement with the said proposition. However, the issue involved in the present case is not about equation of pay scales of two posts. The issue is about the extension of pay scales of temporary employees who are being paid honorarium in the light of the law laid down in **Jagjit Singh** (supra). Therefore, the decision is clearly distinguishable. **P.S. Gopinathan** (supra) is relied upon in support of the contention that having accepted appointments on payments of honorarium, the petitioners are estopped from claiming the pay scales. We are afraid, the principle of estoppel cannot be invoked in the case before us as the Apex Court in **Jagjit Singh** (supra) has specifically dealt with this aspect and has held that

“In the light, who is compelled to work on 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.”

Thus, the principle of estoppel cannot be invoked while deciding the issue of grant of pay scales to the temporary employees.

E. **CONCLUSION**

26. Considering the sound exposition of law on principle of equal pay for equal work to temporary employees in **Jagjit Singh**

(supra), we have no hesitation in holding that the petitioners are required to be granted minimum pay in the payscale admissible for the post of Watchmen/Security Guards/Multi-Tasking Staff engaged in the Government Ashram Schools. The monitory benefits arising out of extension of payscale are however required to be restricted to three years prior to the date of filing of the Petition i.e. w.e.f. 02-02-2018 or from the date of appointment, in the event of appointment being made after 02-02-2018.

F. **ORDER**

27. Consequently, we proceed to pass the following order:

- (i) We direct the respondents to pay to the petitioners wages at the minimum of payscale admissible for the post of Watchmen/Security Guards/Multi-Tasking Staff engaged in the Government Ashram Schools.
- (ii) Monitory benefits arising out of extension of such pay scale is however restricted to three years prior to the filing of the present petition i.e. w.e.f. 02.02.2018 or from the date of engagement of the respective petitioners, whichever is later.
- (iii) Writ Petition is allowed in above terms.
- (iv) There shall be no orders as to costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE