

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-443-2021 (O&M)
Decided on : 15.03.2022**

Parveen Kumar

... Appellant(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Jagdish Manchanda, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

The appellant/plaintiff assails the correctness of the concurrent findings of fact arrived at by both the Courts below while dismissing the suit for declaration instituted by him to the effect that the plaintiff was entitled to equal pay and allowance at par with his junior namely Smt. Rajni Mahna with effect from the date of her promotion/joining as Superintendent, Grade-II along with 18% interest on arrears and 8% interest on delayed payment till the date of payments with mandatory injunction.

Learned counsel for the appellant/plaintiff submits that though he was senior to Smt. Rajni Mahna, however, he was still getting less pay than her, hence, he was entitled to equalization of pay and allowances at par with said Smt. Rajni Mahna with effect from the date of her promotion to the post of Superintendent, Grade-II under defendant No.3 at Patiala. It was also submitted that the aforesaid discrimination had been brought to the notice of then respondent/defendant No.2 vide letter dated 03.04.2014, but in vain. In addition, a legal notice too was sent on 01.02.2015 to respondent/defendant No.3, however, it too proved to be futile. It was

further contended that the appellant/plaintiff had also received one proficiency step-up on 15.02.1987. Since the appellant/plaintiff was senior to Smt. Rajni Mahna, she was not entitled to higher a pay-scale than him. It was also urged that as the nature of the work and the duties of both of them were similar, his case thus stood at par with that of Smt. Rajni Mahna. Learned counsel vehemently argued that there could be no discrimination in pay, once the parties stood promoted to the same post and thereafter had been performing the same duties, which thus, was violative of the concept of 'Equal Pay for Equal Work', as enshrined in Article 14 of the Constitution of India.

I have heard learned counsel for the parties and perused the material on record.

Admittedly, the appellant/plaintiff was drawing a salary of Rs.400/- p.m. at the time of joining as Clerk in the Department, whereas, Smt. Rajni Mahna, who joined as Sr. Assistant on 25.02.2005, was drawing a salary of Rs. 570/- p.m. It also needs to be noticed that the appellant/plaintiff had joined as a clerk, whereas, respondent - Smt. Rajni Mahna was appointed as an Assistant, though in the same Department. It is also matter of record that respondent - Smt. Rajni Mahna was drawing higher salary than the appellant from the very beginning of her appointment. In the said circumstances, she was bound to get more pay than the appellant/plaintiff, even though she was promoted to the post of Superintendent, Grade-II, after the promotion of the appellant/plaintiff as Superintendent, Grade-II on 04.01.2013. Hence, the appellant/plaintiff in the given scenario cannot invoke the principle of parity doctrine of equal pay for equal work.

The Hon'ble Supreme Court in Union of India v. Manoj Kumar, 2021(4) SCT 53, has categorically held that parity cannot be given to an employee merely on the basis of his or her designation. Further, in case of Government of West Bengal v. Tarun K. Roy, 2004(1) SCT 78, the Hon'ble Supreme Court also held that just because the nature of work was the same, the doctrine of equal pay for equal mark would not apply. The relevant observations of the Hon'ble Supreme Court are extracted as under:-

“14. Equal Pay for Equal Work, Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied.”

Still further, the Hon'ble Supreme Court in Official Liquidator vs. Dayachand, SC 2008(10) SCC 1, observed as under:-

“73. The principle of equal pay for equal work for men and women embodied in Article 39(d) was first considered in Kishori Mohanlal Bakshi vs. Union of India [AIR 1962 SC 1139] and it was held that the said principle is not capable of being enforced in a Court of law. After 36 years, the issue was again considered in Randhir Singh Vs. Union of India (supra), and it was unequivocally ruled that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. The ratio of Randhir Singh Vs. Union of India (supra) was reiterated and applied in several cases - Dhirendra Chamoli vs. State of U.P. (supra), Surinder Singh and Another vs.

Engineer-in-Chief, CPWD and Others (supra), Daily Rated Casual Labour vs. Union of India (supra), Dharwad District P.W.D. Literate Daily Wage Employees' Association vs. State of Karnataka (supra) and Jaipal vs. State of Haryana [1988 (3) SCC 354] and it was held that even a daily wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in Federation of All India Customs and Central Excise Stenographers (Recognized) Union vs. Union of India [1988 (3) SCC 91], Mewa Ram Kanojia vs. A.I.I.M.S. [1989 (2) SCC 235], V. Markandeya vs. State of A.P. [1989 (3) SCC 191], Harbans Lal and others vs. State of Himachal Pradesh and others [1989 (4) SCC 459], State of U.P. and others vs. J.P. Chaurasia and others [1989 (1) SCC 121], Griha Kalyan Workers' Union vs. Union of India [1991 (1) SCC 619], Ghaziabad Development Authority vs. Vikram Chaudhary [1995 (5) SCC 210], State of Haryana and others vs. Jasmer Singh and others [1996 (11) SCC 77], State of Haryana vs. Surinder Kumar [1997 (3) SCC 633], Union of India vs. K.V. Baby [1998 (9) SCC 252], State of Orissa vs. Balram Sahu [2003 (1) SCC 250], Utkal University vs. Jyotirmayee Nayak [2003 (4) SCC 760], State of Haryana and another vs. Tilak Raj and others [2003 (6) SCC 123], Union of India vs. Tarit Ranjan Das [2003 (11) SCC 658], Apangshu Mohan Lodh vs. State of Tripura [2004 (1) SCC 119], State of Haryana vs. Charanjit Singh [2006 (9) SCC 321], Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh (supra), Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara (supra) and Canteen Mazdoor Sabha vs. Metallurgical & Engineering Consultants (India) Ltd. [2007 (7) SCC 710], the Court consciously and repeatedly deviated from the ruling of Randhir Singh Vs. Union of India (supra) and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must

consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc.”

Hence, as per the settled law, the doctrine of equal pay for equal work can not be mechanically applied. Admittedly the eligibility criteria for initial appointment of the appellant and the respondent to their respective posts, was different coupled with the fact that their appointments too were made for different posts, the doctrine of equal pay for equal work would not be applicable in the instant case.

Thus, keeping in view of the aforesaid facts, this Court does not find any merit in the instant appeal, consequently, the appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

March 15, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*