



W.A.(MD)No.1715 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)No.1715 of 2018

and

C.M.P.(MD)Nos.12457 of 2018 and 782 of 2021

1.The Registrar,
Anna University,
Chennai-600 025.

2.The Dean,
Regional Campus,
Tirunelveli,
Anna University,
Chennai.

... Appellants

Vs.

1.S.Paramasivan
2.S.P.Sakthikumar

...Respondents

PRAYER: Appeal filed under Clause 15 of Letters patent, against the order dated 21.03.2018 passed by this Court in W.P.(MD)No.3730 of 2018.

For Appellant	: Mr.EVN.Siva
For R1	: Ms.Nandhini Priyadharshini for Ms.D.Geetha



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For R2 : No Appearance

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JUDGMENT

(Judgment of the Court was delivered by **V.LAKSHMINARAYANAN, J.**)

The writ appeal has been instituted against the order dated 21.03.2018 passed in W.P.(MD) No.3730 of 2018. The respondents instituted the writ proceedings for a direction to provide yearly increments from 2012 and 7th pay commission revision of wages to the respondents including consequential benefits.

2.The learned Single Judge relying upon the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Jagjit Singh and others [(2017) 1 SCC 148]*** allowed the writ petition.

3.The learned counsel appearing on behalf of the appellant university mainly contended that the conditions stipulated by the Hon'ble Supreme Court in the judgment referred supra, more specifically at paragraph Nos. 42, 44 and 57 have not been considered by the leaned Single Judge and any such grant of increment is subject to the conditions stipulated and the appeal has been instituted seeking modification to that effect.



4.It is relevant to extract the portion of the judgment, which is applicable to the present case on hand.

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

42.1.The onus of proof of parity in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see the Orissa University of Agriculture & Technology case, Union Territory



Administration, Chandigarh v. Manju Mathur, SAIL Case and the National Aluminum Company Limited case).

42.2. *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 case, and the D.S. Nakara case).*

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

42.4. *Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of 'equal pay for equal work' (see - the Randhir Singh case, State of Haryana v. Haryana Civil Secretariat Personal Staff Association, and the Hukum Chand Gupta case). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.*

42.5. *In determining equality of functions and responsibilities,*



under the principle of equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see Federation of All India Customs and Central Excise Stenographers case and the State Bank of India case). 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 Grih Kalyan Kendra Workers' Union case).

42.6. For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see Orissa University of Agriculture & Technology case).

42.7. Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as merit, or seniority, or some other relevant criteria (see - State of U.P. v. J.P. Chaurasia).

42.8. 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 case, and Government of W.B. v. Tarun K. Roy). In such a case, the principle of 'equal pay for equal work', cannot be invoked.

42.9. The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see Union of India v. Pradip Kumar Dey, and Hukum Chand Gupta case).

42.10. A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see Harbans Lal case). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - Official Liquidator v. Dayanand).

42.11. Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see State Bank of India case).



42.12. *The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of equal pay for equal work' would not be applicable (see State of Haryana v. Haryana Civil Secretariat Personal Staff Association).*

42.13. *The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay- scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see - State of West Bengal v. West Bengal Minimum Wages Inspectors Association).*

42.14. *For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see - Union Territory Administration, Chandigarh v. Manju Mathur).*

42.15. *There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e.. between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see - the Hukum Chand Gupta*



case), when the duties are qualitatively dissimilar.

42.16. The principle of equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see-the Hukum Chand Gupta case).

42.17 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 S.C. Chandra case, and the National Aluminum Company Limited case)."

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

44.1.In the Dhirendra Chamoli case 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.

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

44.3. In the *Bhagwan Dass* case this Court recorded, that in a claim for equal wages, the duration for which an employee would remain (or had remained) engaged, would not make any difference. So also, the manner of selection and appointment would make no difference. And therefore, whether the selection was made on the basis of open competition or was limited to a cluster of villages, was considered inconsequential. insofar as the applicability of the principle is concerned. And likewise, whether the appointment was for a fixed limited duration (six months, or one year), or for an unlimited duration, was also considered inconsequential, insofar as the applicability of the principle of 'equal pay for equal work' is concerned. It was held, that the claim for equal wages would be sustainable, where an employee is required to discharge similar duties and responsibilities as regular employees, and the concerned employee possesses the qualifications prescribed for the post. In the above case, this Court rejected the contention advanced on behalf of the Government, that the plea of equal wages by the employees in question,



was not sustainable because the concerned employees were engaged in a temporary scheme, and against posts which were sanctioned on a year to year basis.

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

44.5. In *State of Punjab v. Devinder Singh* 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'.

44.6. In the *Secretary, State of Karnataka* case, a Constitution Bench of this Court, set aside the judgment of the High Court, and directed that daily-wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and



regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization. But, the concept was held as applicable, and was indeed applied to the issue of pay parity - if the work component was the same. The judgment rendered by the High Court, was modified by this Court, and the concerned daily-wage employees were directed to be paid wages, equal to the salary at the lowest grade of the concerned cadre.

44.7.In State of Haryana v. Charanjit Singh, a three-Judge bench of this Court held, that the decisions rendered by this Court in State of Haryana v. Jasmer Singh, State of Haryana v. Tilak Raj, the Orissa University of Agriculture & Technology case, and Government of W.B. v. Tarun K. Roy, 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.

44.8.In State of U.P. v. Putti Lal, 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.

44.9.In the Uttar Pradesh Land Development Corporation case 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.

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57. 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."

5. In view of the judgments cited supra, the order of the learned Single Judge is modified to the effect that the grant of increments and revision of equal pay for equal work is subject to the conditions stipulated by the University and its Regulations. Thus the appellants are directed to consider the case of the respondents based on the conditions, which all are in force for grant of equal pay for equal work.



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6. Accordingly, the order impugned dated 21.03.2018 made in W.P.

(MD)No.3730 of 2018 stands modified and the writ appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (V.L.N., J.)
29.11.2023
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Index : Yes / No
Internet : Yes / No

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To

The Inspector of Police,
SIPCOT Police Station,
Tuticorin.



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S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

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