

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

2403

Date of Decision: 09.08.2023

1. CWP-1552-1994 (O&M)

Ram Raj Gupta

.... Petitioner

Versus

Punjabi University, Patiala

.... Respondent

2. CWP-10105-1994 (O&M)

Jagmohan Sood

.... Petitioner

Versus

Punjabi University, Patiala

.... Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: None for the petitioner(s).

Mr. Ajaivir Singh, Advocate  
for the respondent (CWP-1552-1994).

Mr. Abhishek Kaushik, Advocate and  
Mr. Vikrant Sharma, Advocate  
for the respondent (CWP-10105-1994).

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SANJEEV PRAKASH SHARMA, J (ORAL)

1. Vide this common order, two petitions bearing CWP-1552-1994 and CWP-10105-1994, the details of which have been given in the heading, are being decided.
2. None has put in appearance on behalf of the petitioner(s). On the previous date of hearing also, none had appeared for the petitioner(s).

3. Brief case set up by the petitioner(s) is for claiming the pay scale for the post of Library Assistant now designated as Assistant Librarian claiming that the post held by the petitioner is similar to that of Assistant Librarian and he is performing the same duties as are of a Library Assistant. The petitioner possesses the qualifications for the post of Assistant Librarian but he is being granted the pay scale of the Library Assistant which is equivalent to Assistant. While the revised pay scale of Rs.1640-2925 was given to the petitioner as a semi-professional from 01.01.1986, the Library Assistant has been granted the pay scale of Rs.2200-4000 from 01.01.1986 and thus, the action of the respondents is violative of Article 14 of the Constitution of India and principle of 'equal pay for equal work'.

4. Per contra, learned counsel appearing for the respondents have pointed out that the qualification required for the post of semi-professional i.e. Assistant is different from the qualifications required for the post of Assistant Librarian. The method of selection is also different. The field of duties are also different.

5. Learned counsel relies upon the judgments passed by the Hon'ble Supreme Court in the case of '***Punjab State Electricity Board and another Vs. Thana Singh and others***' (2019) 4 SCC 113 and ***Hukum Chand Gupta Vs. Director General, ICAR and others***, (2012) 12 SCC 666.

6. I have considered the submissions and examined the case file carefully.

7. In Thana Singh's case (supra), Hon'ble Apex Court held as under:-

*"20. The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they are entitled to parity of pay scales. After referring to*

*number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court, in SAIL, held as under:-*

*“22. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of “equal pay for equal work” as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is only on the person claiming such right. (Vide **U.P. State Sugar Corpn. Ltd. and Another v. Sant Raj Singh and Others** (2006) 9 SCC 82, **Union of India and Another v. Mahajabeen Akhtar** (2008) 1 SCC 368, **Union of India v. Dineshan K.K** (2008) 1 SCC 586, **Union of India and Others v. Hiranmoy Sen and Others** (2008) 1 SCC 630, **Official Liquidator v. Dayanand and Others** (2008) 10 SCC 1, **U.P. SEB and Another v. Aziz Ahmad** (2009) 2 SCC 606 and **State of M.P. and Others v. Ramesh Chandra Bajpai** (2009) 13 SCC 635.*

*21. Burden of establishing parity in pay scale and employment is on the person claiming such right. There were neither pleadings nor any material produced by the respondents to prove that the nature of work performed by the Sub Fire Officers is similar with that of the Head Clerks and the Internal Auditors to claim parity of pay scale. As pointed out earlier, the burden lies upon the party who claims parity of pay scale to prove similarity in duties and responsibilities. In the writ petition, respondents have only claimed parity of pay*

*scale with those of the employees working under the Punjab Government which was not accepted by the learned Single Judge. Determination of parity or disparity in duties and responsibilities is a complex issue and the same should be left to the expert body. When the expert body considered revision of pay for various posts, it did not revise the pay scale of Sub Fire Officers. When the expert body has taken such a view, it is not for the courts to substitute its views and interfere with the same and take a different view.”*

8. In Hukum Chand Gupta’s case (supra), Hon’ble Apex Court held as under:-

*“20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at Headquarters and the employees working at the institutional level. It is a matter of record that the employees working at Headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the Headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. In our opinion, the prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There can not be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a Writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the*

*Writ Court would lack the necessary expertise undertake the complex exercise of equation of posts or the pay scales.*

*20-A. In expressing the aforesaid opinion, we are fortified by the observations made by this Court in State of Punjab Vs. Surjit Singh. [4] In this case, upon review of a large number of judicial precedents relating to the principle of 'equal pay for equal work', this Court observed as follows:*

*"19...Undoubtedly, the doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation.....A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly*

*interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof.”*

9. Similarly, Hon’ble Apex Court in the case of **‘Union Territory, Chandigarh and others Vs. Manju Mathur and another’, 2011(2) SCC 452**, has held as under:-

*“7. Considering this report of the Equivalence Committee, the respondents are not entitled to the same pay scale as that of Dietician (Gazetted) and Dietician (Non- Gazetted) in the Directorate of Research and Medical Education, Punjab, as held by the High Court in the impugned judgment and order. This Court has held in a recent case [State of Madhya Pradesh & Others v. Ramesh Chandra Bajpai \[\(2009\) 13 SCC 635\]](#) that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated and that similarity of the designation or nature or quantum of work is not determinative of equality in the matter of pay scales and that the Court has to consider several factors and only if there was wholesale identity between the holders of the two posts, equality clause can be invoked, not otherwise. This Court has also held in [State of Haryana & Others v. Charanjit Singh \[\(2006\) 9 SCC 321\]](#) that normally the applicability of principle of equal pay for equal work must be left to be evaluated and determined by an expert body and these are not matters where a writ court can lightly interfere. This Court has further held in this decision that it is only when the High Court is convinced on the basis of material placed before it that there was equal work and of equal quality and that all other relevant factors were fulfilled, it may direct payment of equal pay from the date of filing of the respective writ petition. In the present case, the appellants had seriously disputed the equivalence between the posts held by the respondents and those held by the Dietician (Gazetted) and Dietician (Non-Gazetted) under the Government of Punjab and the High Court instead of referring this*

*dispute regarding parity of posts under the Union Territory Administration, Chandigarh, with the posts under the Government of Punjab to an expert body has erroneously equated the posts under the Union Territory Administration, Chandigarh, with the posts under the Government of Punjab on the basis of the pleadings of the respondents and issued the direction to grant pay scales to the respondents equal to pay scales of Dietician (Gazetted) and Dietician (Non-Gazetted) under the Directorate of Research and Medical Education, Government of Punjab.”*

10. Keeping in view the above discussion, the claim of the petitioner(s) is not sustainable in law. Accordingly, both the writ petitions are dismissed.

(SANJEEV PRAKASH SHARMA)  
JUDGE

09.08.2023  
D.Bansal

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No