

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 873 of 1993 (O&M)

Haryana State and Others ... Appellant(s)

Versus

Harbans Lal Sethi ... Respondent(s)

AND

2. Regular Second Appeal No. 874 of 1993 (O&M)

Haryana State and Others ... Appellant(s)

Versus

Gopal Singh (Since Deceased) through his Legal representatives ... Respondent(s)

RESERVED ON: 09.01.2024
PRONOUNCED ON: 31.01.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Vibha Tewari, Assistant Advocate General,
Haryana and Mr. Jaspal Singh Pannu, Assistant Advocate
General, Haryana, for the appellant(s).

Mr. Sachmeet Singh Randhawa, Advocate
for the respondent(s).

Anil Kshetarpal, J.

1. With the consent of the learned counsel representing the parties,
two connected appeals involving an identical issue shall stand disposed of
by a common judgment. Both the appeals have been filed by the State of
Haryana (defendant in the plaintiffs' suits) to assail the correctness of the

concurrent findings of facts, arrived at by both the Courts below, while

**Regular Second Appeal No. 873 of 1993 (O&M) AND
Regular Second Appeal No. 874 of 1993 (O&M)**

2

decreeing the plaintiffs' suits for the grant of decree of declaration that the plaintiffs, in both the suits, shall be entitled to same pay and benefits as were being paid to the regular employees.

2. In Regular Second Appeal No. 873 of 1993, the respondent is Harbans Lal Sethi. He filed a suit on 17.01.1989 claiming that he has been paid salary @ ₹500/- per month while working as a Supervisor, Adult Education. Whereas the regular employees were being paid a higher salary. In this case, the plaintiff claims that he is entitled to be paid 'equal pay for equal work' from 19.02.1979 to 23.04.1982.

3. In Regular Second Appeal No.874 of 1993, respondent-Gopal Singh filed a similar suit on 17.01.1989 claiming that he is entitled to be paid salary equivalent to the regular employees from 01.03.1979 to 06.03.1982 while working as a Supervisor, Adult Education.

4. In both the cases, the plaintiffs relied upon the judgment passed by the Supreme Court in *Bhagwan Dass and Others v. State of Haryana and Others AIR 1987 SC 2049*.

5. Originally, the plaintiffs, in both the suits, were appointed on temporary basis as Supervisor under Adult Education on the pay @ ₹500/- per month. They continued to get the aforesaid salary. Subsequently, their services were regularized. In the year 1989, they filed two separate suits which were decided by the same Presiding Judges in the trial as well as the Appellate Court on even date.

6. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

**Regular Second Appeal No. 873 of 1993 (O&M) AND
Regular Second Appeal No. 874 of 1993 (O&M)**

3

were not only filed beyond the prescribed period of limitation, but their claims for 'equal pay for equal work' can also not be granted because the judgment in *Bhagwan Dass's case (supra)* has been partly overruled by the Supreme Court in *State of Haryana and Others v. Jasmer Singh and Others (1996) 11 SCC 77*. The learned State counsel further submits that the plaintiffs in both the suits were appointed on temporary basis and they were working only for four hours in a day. She submits that the judgments passed by both the Courts below suffer from an error, therefore, those are liable to be dismissed.

8. On the other hand, the learned counsel representing the respondents submits that the Supreme Court, in *Bhagwan Dass's case (supra)*, has already examined the identical issue with regard to the Supervisors, who were working on temporary basis in Adult Education. He submits that all those employees have already been granted the benefits and the respondents should not be deprived of the same.

9. This Court has considered the submissions of the learned counsel representing the parties.

10. It is evident that the plaintiffs, in both the suits, filed their respective claims in the trial Court on 17.01.1989 i.e. nearly after a period of five years from the date they last received salary @ ₹500/- per month. Subsequently, their services were regularized and thereafter, they continued to get the regular pay scale. The learned State counsel is correct in submitting that both the suits filed by the respective plaintiffs were filed beyond the prescribed period of limitation. For the recovery of salary, the

**Regular Second Appeal No. 873 of 1993 (O&M) AND
Regular Second Appeal No. 874 of 1993 (O&M)**

4

the salary was claimed for a period of three years i.e. February/March, 1979 till March/April, 1982. With respect to the month of April 1982, the suit could be filed within a period of three years i.e. upto March/April, 1985, whereas both the suits were filed in the year 1989. Admittedly, thereafter, the plaintiffs were being paid according to the regular pay scale. In these circumstances, the suits filed by both the plaintiffs with respect to the benefit of salary was filed beyond the prescribed period of limitation.

11. In fact, *Bhagwan Dass's case (supra)* was considered by the three Judges Bench of the Supreme Court in *State of Haryana and Others v. Charanjit Singh and Others (2006) 9 SCC 321*. In para 17 of the said case, the Court, after relying upon the judgment passed in *Jasmer Singh's case (supra)*, held that the persons selected by the Selection Committee on the basis of merits with due regard to the seniority can be granted a higher pay scale as they have been evaluated by the competent authority. Thus, the judgment passed in *Bhagwan Dass's case (supra)* has already been partly overruled. Furthermore, in a recent judgment of the Supreme Court in *State of Bihar and Others v. The Bihar Secondary Teachers Struggle Committee Munger and Others (2019) 18 SCC 301*, after discussing the entire case lay on the subject 'equal pay for equal work', has laid down as under:-

“96. Analysis of the decisions referred to above shows that this Court has accepted following limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work':-

96.1) The doctrine of 'equal pay for equal work' is not an abstract doctrine.

**Regular Second Appeal No. 873 of 1993 (O&M) AND
Regular Second Appeal No. 874 of 1993 (O&M)**

5

96.2) The principle of 'equal pay for equal work' has no mechanical application in every case.

96.3) The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.

96.4) The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job.

96.5) 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.

96.6) Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.

96.7) Equation of posts and salary is a complex matter which should be left to an expert body.

96.8) Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.

96.9) 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.

96.10) In a given case, mode of selection may be considered as one of the factors which may make a difference."

12 In the aforesaid case, some teachers were working as 'Niyojit Teachers', whereas some teachers were the regular employees of the government. Both the categories of the teachers were performing same functions. Still, the Supreme Court held that it would not be appropriate for the Court to invoke the principle of 'no work no pay', particularly when the

**Regular Second Appeal No. 873 of 1993 (O&M) AND
Regular Second Appeal No. 874 of 1993 (O&M)**

‘Niyojit Teachers’ were appointed in a different manner than the government teachers, although both were working in the same schools.

13. In any case, it is well settled that the judgment passed by the Court with respect to the identically situated employee does not give a fresh cause of action for filing the claim. In *Bhagwan Dass’s case (supra)*, petition under Article 32 of the Constitution of India was directly filed in the Supreme Court. The Supreme Court granted salary to the employees from the date of filing of the petition i.e. 01.09.1985. In this case, if we apply the same analogy, the respondents filed the suits in the year 1989 when they were getting regular pay scale.

14. Keeping in view the aforesaid facts and circumstances, both the appeals are allowed. The judgments passed by both the Courts below are set aside and the suits filed by the plaintiffs shall stand dismissed.

15. The miscellaneous application(s) pending, if any, in both the appeals shall stand disposed of.

(Anil Kshetarpal)
Judge

January 31, 2024
“DK”

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