



2024:DHC:1112



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 30th January, 2024**

+ **W.P.(C) 2226/2020 & CM APPL. 7794/2020**

THE MEDICAL SUPERINTENDENT SAFDARJUNG HOSPITAL

..... Petitioner

Through: **Mr. Rakesh Kumar, CGSC with Mr. Sunil, Advocate**

versus

THE DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL) &

ORS

..... Respondents

Through: **Ms. Sumita Hazarika and Mr. Lalgoulen Kipgen, Advocates for R-2
Mr. Mayank Kumar, Advocate for R-4**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“a). Call for the records of the proceedings held in the Application filed by Delhi Asptal Theka Karamchari Union though Dr Mrigank, its alleged General Secretary on behalf of contract workmen dated 28.08.2017 from the Ld. Deputy Chief Labour Commissioner (Central), New Delhi and issue an appropriate writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 16.05.2018 passed



by *Ld. Deputy Chief Labour Commissioner (Central), New Delhi.*

b). Pass any other or further order as this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

2. The facts leading to the filing of the instant petition are as follows:

- a. The petitioner, i.e., Safdarjung Hospital, is a multi-specialty hospital engaged in providing tertiary health care services to the public at large.
- b. The respondent no. 2, i.e., Delhi Asptal Theka Karmchari Union, had filed an application dated 14th August, 2017 under Rule 25 (2) (V) (a) of the Contract Labour (R&A) Central Rules, 1971 framed under Contract Labour (Regulation & Abolition) Act, 1970, (hereinafter “CLRA”) before the respondent no. 1, i.e., the Deputy Chief Labour Commissioner (Central) (hereinafter “learned Labour Commissioner”) on behalf of contract laborers engaged by the petitioner hospital through contractors, i.e., respondent nos. 3 to 6, with the petitioner hospital .
- c. In the said application, it was alleged by the respondent no. 2 Union that the contractors viz. respondent nos. 3 to 6 had employed the contract laborers under different capacities/categories with the petitioner hospital for doing same or similar kind of work as done by the similarly placed



regular employees and were not being treated at par. Accordingly, vide the said application, the following reliefs were claimed by the respondent o. 2 Union:

- i. Nursing Attendants/*Safai Karamcharis* should be given basic pay of Rs.18,000/- per month or the current prevalent rate, whichever is more and is equal to the permanent employees.
 - ii. Computer Operator/Data entry Operator should be given basic pay of Rs.18,247/- per month or the current prevalent rate, whichever is more and is equal to LDC.
 - iii. Security Guards should be given basic pay of Rs. 18,000/- per month or the current prevalent rate, whichever is more and is equal to the permanent employees.
 - iv. Weekly offs, holidays on festival and national holidays, bonus, etc. to all the contractual employees.
- d. The above said matter was listed on 10th April, 2018 for final disposal. The matter was adjudicated and vide the award dated 16th May, 2018, the learned Deputy Chief Labour Commissioner & Authority passed the award in favour of the workmen Union, thereby, directing for payment of wages along with allowances at par with the regular employees of the petitioner.
- e. Being aggrieved by the impugned award dated 16th May,



2018, the petitioner has preferred the instant petition assailing the said award.

3. Mr. Rakesh Kumar, learned CGSC appearing on behalf of the petitioner submitted that the learned Labour Commissioner erred in passing the impugned award since it failed to consider the entire facts and circumstances in accordance with the law which makes the award liable to be set aside.

4. It is submitted that the impugned award has been passed without even enquiring or comparing the nature of duties being performed by the contractual workers and regular employees of the petitioner as well as without ascertaining if any regular employee at all existed against all the work/post for which the contract workers were engaged.

5. It is submitted that the learned Labour Commissioner has not made any enquiry to ascertain whether the nature of work performed by the workers engaged by the outsourced agencies were similar to the nature of duties being performed by the regular employees of the petitioner.

6. It is submitted that the learned Labour Commissioner has further failed to appreciate that there was no material placed on its record to show that the nature of work being performed by the contract workers were similar to the duties performed by the regular employees.

7. It is submitted that the impugned award has been passed in a



mechanical and pre-determined manner without applying judicial mind, thereby, arbitrarily holding that the contract workers engaged by the outsourced agencies were entitled to grades of respective levels with Dearness Allowance (hereinafter “DA”) @ 5% as applicable to the workmen directly employed by the petitioner hospital.

8. It is submitted that there is no admission by the petitioner that the workers engaged by the outsourced agencies were doing the same or similar work as was being performed by the regular employees of the petitioner.

9. It is submitted that the learned Labour Commissioner has not given any reason in support of his conclusion that the workers engaged by the outsourced agencies are entitled to the wages being paid to the regular employees of the petitioner establishment. The impugned order is bereft of any reasons and is a non-speaking order and thus, is liable to be quashed.

10. It is submitted that the learned Labour Commissioner failed to appreciate that no regular employees were employed by the petitioner hospital at the position of Security Guard (Civil), Security Supervisor, QRT Guard, Data Entry Operator and Record Clerk, as the said posts did not exist in the petitioner hospital. However, this information was provided to the respondent no. 1 vide letters dated 9th October, 2017 and 31st October, 2017, and the same have been ignored by the learned Labour Court, which shows illegality and arbitrariness in the impugned award.



11. It is submitted that vide the above mentioned letters, the learned Labour Commissioner was also informed that the wages of outsourced Security Guard (Ex- Servicemen) was Rs.20,779/- per month, whereas the minimum of pay scale for the said post was Rs. 18,000/- to Rs. 56,900/-.

12. It is also submitted that the respondent no. 1 whilst passing the impugned award has held that the Security Guards engaged by the contractor M/s Trig Detectives were entitled to the grade of Level-1 (Rs. 18,000/- to Rs. 56,900/- + Rs. 56,900 + DA @ 5% + allowance) as applicable to the workmen directly employed by the principal employer of the petitioner hospital for the same and similar work. The respondent no.1 has committed grave error by paying lesser wages to the Security Guard (Ex-Servicemen) engaged by the outsourced agencies, than were being paid to them under the contract.

13. It is submitted that the learned Labour Commissioner failed to correctly appreciate the law settled by the Hon'ble Supreme Court in the judgment of *State of Punjab v. Jagjit Singh*, (2017) 1 SCC 148. wherein it was held that the temporarily engaged employees (daily-wage employees, ad- hoc appointees, employees appointed on casual basis, contractual employees and the like) are entitled to minimum pay which shall include the regular pay-scale, along with dearness allowance as revised from time to time on account of them performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts.



14. It is further submitted that the learned Labour Commissioner has wrongly applied the said judgment and held that the workers engaged by the outsourced agencies are entitled to the grade of Level-1, Level-2 and Level-4 along with DA @ 5%, which is contrary to the judgment of Hon'ble Supreme Court, which granted only the minimum wage of the regular pay-scale, along with the dearness allowance.

15. It is submitted that learned Labour Commissioner has committed grave error in allowing grades of different levels and dearness allowance without specifying which other allowance the said workers engaged by the outsourced agencies would be entitled to.

16. It is also submitted that the learned Labour Commissioner failed to appreciate that the workers engaged by the outsourced agencies, who are not selected by following the selection procedure, cannot be paid the similar wages and allowances as payable to the regular employees of the petitioner hospital, which would amount to back door entry into government employment.

17. It is submitted that the learned Labour Commissioner failed to appreciate that by compelling the petitioner hospital to pay different grades to workers engaged by the outsourced agencies with allowances, would tantamount to abolition of provisions of contract labour, without following the procedure prescribed under Section 10 of the CLRA.

18. It is submitted that the regular employees in the petitioner



hospital have undergone a strict selection process and have been subjected to the rigors of assessment and competition while being selected for the designated posts, whereas, the outsourced workers have not been subjected to the same degree of assessment and hence, are different from the regular employees.

19. It is submitted that the learned Labour Commissioner failed to appreciate that the agreement entered into by the petitioner with the outsourced agencies were mainly "Contract for Service" for providing services in the establishment of the petitioner. The petitioner is already paying for the equipment, chemical and other costs along with paying for the wages of the employees of the contractor. Hence, the employees of the contractor cannot be regarded to be doing similar work as that of the regular employees of the petitioner as they are providing a specific service for a definite time period and do not share the same responsibilities as that of a regular employee.

20. It is submitted that the learned Labour Commissioner exceeded its jurisdiction and held that the agreement between the principal employer and the respective contractors to pay the minimum wage as notified by the appropriate government from time to time was not justifiable under the provisions of Rule 25(2) (v) (a) of CLRA as it deprives the contract workmen of their statutory right to get the equal wage for equal work. The learned Labour Commissioner had no jurisdiction or authority to adjudicate upon the justifiability of the contracts entered between the petitioner establishment and various



outsourcing agencies.

21. It is further submitted that the learned Labour Commissioner failed to consider that the outsourced employees are engaged in terms of the respective contracts with the respective agencies. Such employees are not paid by the petitioner hospital instead their emoluments are paid by the outsourced agencies and not by the petitioner. Moreover, the central government employees are governed by CCA/CCS Conduct Rules, but the workers employed by the outsourced agencies are paid as per the agreement entered into after competitive bidding process and have to be paid the minimum wages as prescribed by the government.

22. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs may be granted as prayed for.

23. *Per Contra* the learned counsel appearing on behalf of the respondents vehemently opposed the instant writ petition submitting to the effect that there is no infirmity in the impugned order and in view of the same the petition is liable to be dismissed being devoid of any merits.

24. Learned counsel appearing on behalf of the respondent no. 2 Union submitted that there is no illegality or infirmity in the impugned award and the same has been passed after taking into consideration the entire facts and circumstances.

25. It is submitted that denial of equal pay for equal work to daily



wagers, temporary, casual and contractual employees amounts to exploitative enslavement, emerging out of a domineering position.

26. It is submitted that denial of the principle of equal pay for equal work is an infringement of the workers' fundamental rights and in this regard, the same tantamount to violation of the law settled by the Hon'ble Supreme Court in *Jagjit Singh (Supra)*, wherein, it was held that the contract workers should get the same pay as permanent workers.

27. It is submitted that as per the agreement entered into between the petitioner, i.e., the principal employer and the contractor; more particularly in the present case the Clause 25 thereunder, which states that it is the petitioner who decides the rate of wages to be paid to the contractual employees.

28. It is submitted that the learned Labour Commissioner under the terms of the license issued to the contractors has been bestowed with the power to decide whether the workmen employed by the contractor perform the same or similar kind of work as the workman directly employed by the petitioner and to maintain the pay parity among them.

29. It is submitted that the learned Labour Commissioner passed the impugned award after detailed examination of facts and evidences available before it and it is baseless to say that the award has been passed in a mechanical manner. Therefore, it calls for no interference.

30. It is submitted that the services which have been contracted to



the respondent contractors are permanent in nature. No hospital can function without sanitization, house-keeping or nursing staff or security guards. The recruitment to these posts which were previously directly managed by the petitioner is now being managed through the contract employment.

31. It is submitted that the workers are not seeking regularization but only parity in pay and therefore, the existence of sanctioned posts is not necessary.

32. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

33. Heard the learned counsel for the parties and perused the record.

34. The petitioner vide the present petition impugns the order dated 16th May, 2018 passed by the learned Labour Court, whereby, the petitioner was directed to pay certain monies under Rule 25 (2) (v) (a) of the CLRA to the respondents-workmen. It is the petitioner's case that the services rendered to it were through contractors, who had requisite licenses, issued from the Ministry of Labour and employment, Government of India. Therefore, there would be no liability on the principal employer under the concept of the equal pay for equal work. The pleadings as per the petitioner have been reproduced hereunder:

“... K. Because the Hon'ble Supreme Court in the case of State of Punjab &Ors Versus Jagjit Singh &Ors. has held that the



temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay-scale, along with dearness allowance (as revised from time to time on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts. But the Ld. Deputy Chief Labour Commissioner (Central) has wrongly applied the said judgment and held that the workers engaged by the outsourced agencies are entitled to grade of Level-1, Level-2 and Level-4 along with DA@ 5% and allowance, which is contrary to the judgment of Hon'ble Supreme Court, which granted only minimum of the regular pay-scale, along with dearness allowance.

O. Because the Ld. Deputy Chief Labour Commissioner (Central) has erred in applying' the judgment of the Hon'ble Supreme Court, as he has held that 223+223 contract workers deployed in housekeeping; 500 Security Guards, 48 QTR Guards and 21 Supervisors for security services; 265 workmen as HMTS, Nursing Attendant, Stretcher Bearer and Housekeeping workers are entitled to the grade of Level-1 (18000-56900+ 56900+ DA @ 5%+ allowance) and LDC, Record Clerk, Library Clerk are entitled to the grade of Level-2 (19900- 63200+DA@ 5%+ allowance), and DEO and UDCs are entitled for the grade of Level-4 (21700-81100 +DA@ 5%+ allowance), and the impugned order is arbitrary and wholly unjust as the Hon'ble Supreme Court in State of Punjab & Ors Versus Jagjit Singh & Ors. held that the temporary employees would be entitled to only "minimum of the regular pay-scale, alongwith dearness allowance", which the Ld. Commissioner has failed to understand and has not properly applied the said judgment in his order Hence, the order of the Ld. Commissioner is arbitrary and needs to be set aside.



Q. Because the regular employees in the Petitioner's establishment have undergone a strict selection process and have been subjected to the rigours of assessment and competition while being selected for the designated posts. On the other hand, the outsourced workers of the contractors working in the establishment of the Petitioner have not been subjected to the same degree of assessment and hence are different from the regular employees in competitiveness as they provide better and qualitative services, whereas the outsourced workers have been kept to supplement or assist the regular workers in their tasks.

R. Because the Ld. Deputy Chief Labour Commissioner (Central) failed to appreciate that there was no material on record to establish that the nature of work of the Temporary employees and that of the Regular employees working in the establishment of the Petitioner were similar or kind of similar. The Ld. Deputy Chief Labour Commissioner (Central) failed to appreciate that the regular employees are recruited through proper governmental examinations and are governed by the Central Civil (Service) Rules, whilst the temporary workers recruited by the contractors are not governed by the same yardsticks and standards. Hence, the pedigree and therefore the incumbent responsibilities designated to the regular and temporary workers by the Petitioner are very different and could not be equated....”

35. In rival submissions it has been submitted before this Court that there is no illegality in the impugned award and the learned Labour Commissioner has passed the same on the basis of principle of equal pay for equal work as envisaged in the judgment of **Jagjit Singh (Supra)**. Hence, the respondent no. 2 Union prays that this Court upheld the impugned award. Relevant submissions as per the counter



affidavit filed by the respondent no. 2 Union are as follows:

“...K. The Award Passed by the Deputy Labour Commission (Central) is also in consonance with Article 39(d) of The Constitution of India which provides for “Equal pay for equal work” for both men and women i.e. equal pay for equal work for everyone and as between the sexes. Even though this directive principle under the Constitution is not a fundamental right, nonetheless, is certainly a Constitutional goal and therefore, Article 39 (d) of the Constitution has to be read alongwith the Articles 14 and 16 of the Constitution. Article 14 of the Constitution contemplates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 16 of the Constitution declares that there shall be equality of opportunity to all the citizens in the matter relating to the employment or an appointment to any office under the State. The equality clause under Articles 14 and 16 of the Constitution enshrines the principle of equal pay for equal work.

A.As pointed out earlier the Labour Commissioner under the terms of the license issued to the contractors has been bestowed with the power to decide whether the workmen employed by the contractor perform the same or similar kind of work as the workman directly employed by the principal employer of the establishment and to maintain pay parity between the two.

B. It is denied that the Labour Commissioner has failed to examine the authority of Dr Mrigank to file the application on behalf of the workmen. Dr Mrigank was duly authorised by the Union.

D. The Labour Commissioner after satisfying himself o the documents produced by the parties before it has passed the award impugned herein. Even otherwise under the terms of



the license the Labour Commissioner is vested with the power to decide the same....”

36. In rejoinder, the below mentioned arguments have been submitted by the petitioner before this Court:

“...A. That the contents of para A of the Primary Submissions are wrong and denied. It is denied that the impugned order dated 16.05.2018 has been passed by Ld. Deputy Chief Labour Commissioner (Central), New Delhi on the basis of law laid down by Hon'ble Supreme Court in the case of State of Punjab versus Jagjit Singh (2017) 1 SCC 148. Respondent No.2 failed to ascertain that every employee of the contractors engaged for the Petitioner's establishment was performing same or similar work of equal quality, and all the other relevant factors to determine the same. Moreover, the Respondent No.1 did not scrutinize the documents submitted by the Petitioner properly and passed a blanket order providing different levels of Grades to all workers of the outsourcing agencies without scrutinizing the merits of each category of employees regarding each posts, which is not fair or justified. It is denied that the contractual employees are entitled to equal wages as are paid to permanent employees.

K. That the contents of para K of the Primary Submissions are wrong and denied except to the extent same are matter of record and the submissions made in the writ petition are being reiterated. It is denied that the impugned order passed by the Respondent No.1 is as per Article 39(d) of the Constitution of India. It is denied that Article 39(d) or 14 or 16 have any applicability in the facts of the present case. The present case is a matter regarding the government employment is contemplated under article 60 nor is regarding differential treatment of equals. It is submitted the persons employed by the contractor cannot be equated with the regular employees of the



petitioner.

D. That the contents of para D of the reply to the grounds are wrong and denied and the contents of the corresponding para of the Ground are being reiterated . It is reiterated that there was no material produced on record of the Respondent no. 1 to show that the nature of work being performed by the workers engaged by the outsource agencies were similar to the nature of work being performed by the regular employees of the Petitioner. As a matter of fact the Respondent No.2 has not produced any material on record, except making bald statement, to show that the work and duties being performed by the workers engaged by the outsourced agencies were similar to the work and duties being performed by the regular employees of the Petitioner....”

37. The respondent no. 2 Union had filed an application dated 14th August, 2017 under Rule 25 (2) (V) (a) of the Contract Labour (R&A) Central Rules, 1971 framed under the Contract Labour (Regulation & Abolition) Act, 1970, before the respondent no. 1, i.e, the Deputy Chief Labour Commissioner (Central) on behalf of contract labourers engaged by the petitioner through contractors, i.e., respondent nos. 3 to 6, in the petitioner hospital. In the said application, the respondent no. 2 Union had alleged that the contractors viz. respondent nos. 3 to 6 had employed the contract labours under different capacities/categories in the establishment of the petitioner for doing same or similar kind of work as done by the similarly placed regular employees and were not being treated at par. Accordingly, vide the



said application, the relief of equal pay for equal work was prayed by the respondent Union. In light of the same the impugned award was passed by the learned Deputy Chief Labour Commissioner (Central), relevant portions of which have been reproduced as under:

“...Hence, in view of the above, I am of the considered that opinion that 223+223 contract workers deployed in housekeeping by the contractor M/s BVG India Ltd, and M/s Sudarshan Facilities, the non applicant No. 2 and 3 each, 500 Security Guards, 48 QTR Guards and 21 Supervisors for security services by the contractor M/s Trig Detectives, the Non Applicant No.4 and 265 workmen as HMTS, Nursing Attendant, Stretcher Bearer and Housekeeping worker by the contractor M/s Sai Communication, the Non Applicant No.5 in the establishment of principal employer, the non applicant No 1, are entitled to the grade of Level -1 (18000-56900+ DA Let reply to the application be filed within weeks with advance copy to the opposite who shall be at the liberty to file the rejoinder, if any, before site party who shall be at re the next date of hearing 5%+ allowance) whereas the LDC, Record Clerk, Library Clerk deployed by the contractor M/s Sai Communication, the Non Applicant No. 5 are entitled to the grade of Level -2 (19900-63300 5% + allowance) and the DEO and UDCs deployed by the contractor M/s Sai Communication, the Non Applicant No.5 ace. entitled to the grade of Level -4 (21700-81100 + DA (a) 5% +- allowance) as applicable to the workmen directly employed by the principal employer of the establishment for the same and similar work under the provisions of Rule 25(2)(v) (a) of Contract Labour (RM) Central Rules for the respective contract period with CEO..”

38. A bare perusal of the above states that the learned Labour Commissioner granted the reliefs to the workmen Union as per their



prayer made in application dated 14th August, 2017 under Rule 25 (2) (V) (a) of the CLRA. It held that the contract workers engaged by the petitioner through the contractor agencies and working in the petitioner establishment, i.e., 223+223 contract workers deployed in housekeeping including 500 security guards, 48 QTR guards and 21 supervisors for security services; 265 workmen as HMTS, nursing attendant, stretcher bearer and housekeeping workers are entitled to the grade of Level-1 (Rs. 18,000/- - Rs. 56,000/- + DA @ 5% + allowance). It further held that the DEO and UDCs deployed by the contractors for the respective contract period with each contractors are entitled for the pay as per grade of Level-4 (Rs. 21,700/- to Rs. 81,100/- + DA @ 5% + allowance).

39. In the present petition, both the parties have placed major reliance on the judgment of **Jagjit Singh (Supra)**. The petitioner has submitted that the learned Labour Commissioner has wrongly interpreted the observations made by the Hon'ble Supreme Court in the said judgment and therefore, the award passed is liable to be set aside. On the other hand, the respondent no. 2 Union has submitted that as per the said judgment, the learned Labour Commissioner has upheld the principle of 'equal pay for equal work'.

40. At this stage, this Court finds it imperative to analyze the propositions of law settled *qua* the judgment of **Jagjit Singh (Supra)**. In order to analyze the same, the relevant portions have been reproduced for reference and the same is as under:



“..5. The issue which arises for our consideration is : whether temporarily engaged employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay scale, along with dearness allowance (as revised from time to time) on account of their performing the same duties which are discharged by those engaged on regular basis, against sanctioned posts? The Full Bench [Avtar Singh v. State of Punjab, 2011 SCC OnLine P&H 15326 : ILR (2013) 1 P&H 566] of the High Court, while adjudicating upon the above controversy had concluded, that such like temporary employees were not entitled to the minimum of the regular pay scale, merely for reason, that the activities carried on by daily wagers and the regular employees were similar. However, it carved out two exceptions, and extended the minimum of the regular pay to such employees. The exceptions recorded by the Full Bench of the High Court in the impugned judgment are extracted hereunder : (Avtar Singh case [Avtar Singh v. State of Punjab, 2011 SCC OnLine P&H 15326 : ILR (2013) 1 P&H 566] , SCC OnLine P&H para 37)

“(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any



allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularisation, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wage, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.”

14.3. This Court while examining the challenges narrated the parameters on which the benefit of “equal pay for equal work” can be made applicable, as under : (M.R. Ganesh Babu case [SBI v. M.R. Ganesh Babu, (2002) 4 SCC 556 : 2002 SCC (L&S) 568] , SCC p. 563, para 16)

“16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. 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. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an



intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organisation. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide reasonably and rationally, was not open to interference by the court.”

(emphasis supplied)

54.3. Based on the consideration recorded hereinabove, the determination in the impugned judgment rendered by the Full Bench of the High Court, whereby it classified temporary employees for differential treatment on the subject of wages, is clearly unsustainable and is liable to be set aside.

58. 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. Anyone, 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 dependants 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.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, 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...”

41. Perusal of the aforesaid order clarifies the law regarding the concept of parity in pay among the contractual/temporary/ workers and regular employees; all working in different categories. The Hon’ble Supreme Court enunciated the concept in detail thereby holding that the contractual/temporary/ employees are entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to the regular employees holding the same post. The Hon’ble Court had categorically held that any act of paying lesser wages as compared to other employees situated in a similar position amounts to an act of exploitative enslavement, emerging out of a domineering position.

42. The issue that was considered by the Hon’ble Supreme 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. This Court has also considered and perused the observations made by the Hon'ble Supreme Court in ***State of Haryana v. Tilak Raj*, (2003) 6 SCC 123** and ***State of Punjab v. Surjit Singh*, (2009) 9 SCC 514**. Hence, it is a settled position of law that temporary employees are entitled to draw wages at par with the pay scales which are applicable to the regular employees holding the same post.

43. Now adverting to the facts of the instant petition.

44. Whilst passing the impugned award, the learned Labour Commissioner had observed that the law is clear where as per the provisions of Rule 25 (v) of CLRA, in case the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment; the wage rates, the holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work.

The relevant portion of Rule 25 of CLRA is as under:

“...25. Forms and terms and conditions of licence.— (1) Every licence granted under sub-section (1) of section 12 shall be in



Form VI. (2) Every licence granted under sub-rule (1) or renewed under rule 29 shall be subject to the following conditions, namely:—

(v) (a) in cases where the workman employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work: ...”

45. Upon perusal of the above mentioned provision, it is inferred that as per the law, under a license granted to a particular contractor, the workmen employed thereunder, performing same or similar kind of work as the workmen directly employed by the principal employer of the establishment; the wages etc. shall be the same as applicable to the workmen directly employed by the principal employer of the concerned establishment with respect to the same or similar kind of work.

46. Subsequently, taking into consideration the details of wages of outsourced and regular employees, i.e., the letter dated 31st October, 2017 submitted by the present petitioner before the learned Labour Commissioner, it was of the view that the petitioner's contentions that they are paying the minimum wages to the workmen as per the law is without any merits. While following the law laid down *qua Jagjit*



Singh (Supra), the learned Labour Commissioner held that the nature of work of contractual employees working in the petitioner is similar to the nature of work of the regular employees.

47. It has been admitted by the contractors and the present petitioner before the learned Labour Commissioner that the workmen deployed in the petitioner establishment were being paid different wages than the regular employees and regular employees existed in certain categories where the contract workmen were paid different for doing the same or similar work.

48. Therefore, taking into account the above, this Court is of the considered view that there is no irregularity or infirmity in the decision passed by the learned Labour Commissioner in holding that the contractual workmen employed in the petitioner establishment are entitled to the pay equivalent to the regular employees working in the petitioner establishment doing same or similar kind of work.

49. This Court is unable to uphold the propositions put forth by the petitioner that the workmen represented through the respondent no. 2 Union are not entitled to be paid minimum of the pay scales which are at par with the regular employees working in the petitioner establishment. This Court, in light of *Jagjit Singh (Supra)*, is of the firm belief that the contractual employees in the instant case have been rightly granted the reliefs of equal pay by the learned Labour Commissioner.

50. Further, this Court has observed that as per the letter dated 31st



October, 2017 which was issued by the petitioner hospital to the respondent no. 1, no regular post existed for 'Security Guard (Civil), Security Guard Supervisors, QRT Guard, Data Entry Operator, Record Clerk'.

51. Since, it was admitted by the petitioner hospital that no regular posts in its establishment exists and the said fact was also brought to the notice of the learned Labour Court. Therefore, insofar as the parity *qua* the said posts is concerned, this Court is not satisfied with the findings of the learned Labour Commissioner as to why the parity for the above said posts for which no regular posts in the petitioner hospital exist has been granted by it.

52. This Court is of the view that granting parity for the above said posts is not justified and the same is not supported by any law. Furthermore, upon perusal of the impugned award, it seems that the contents of the same are written hastily as the parity in terms of the above said posts is not substantiated by proper reasoning.

53. Hence, the petitioner has made out his case with respect to the aforementioned posts where no regular posts exist in the establishment of the petitioner hospital. Therefore, it is held that the said failure of the learned Labour Commissioner to consider the settled law and lack of proper reasoning is a sufficient ground to set aside the impugned award to some extent.

54. In view of the afore said terms, the instant petition stands partly allowed to the extent that the parity in pay scale *qua* the wages with



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respect to the posts of 'Security Guard (Civil), Security Guard Supervisors, QRT Guard, Data Entry Operator, Record Clerk' is set aside and parity awarded in terms of the remaining posts is upheld.

55. The impugned award dated 16th May, 2018, passed by Deputy Chief Labour Commissioner & Authority in Application bearing No. ND-20(03)/2017-P A. DYC, in view of the foregoing terms, is partly set aside.

56. Accordingly, the instant petition stands disposed of along with pending applications, if any.

57. The Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 30, 2024
gs/ryp/db

Click here to check corrigendum, if any