



2026:DHC:1668



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

% Date of Decision: 18.02.2026

+ **W.P.(C) 3113/2019**

INDIAN RED CROSS SOCIETYPetitioner
Through: Mr. L.R. Khatana, Advocate

versus

JITENDER KUMARRespondent
Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present writ petition has been filed seeking setting aside of the Award dated 26.06.2018 passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No. 1, *Dwarka Courts Complex, Delhi* in ID No. 70/2015.

Vide the impugned Award, the learned Presiding Officer held that the respondent/claimant was entitled to receive salary and other consequential and cascading benefits, granting the scale and allowances for the period from 01.12.2000 to 14.12.2004, and the regular pay scale of Rs.3050-4590 of Caretaker w.e.f. 15.12.2004.

2. On 14.11.2019, this Court took note of the office report, as per which the respondent/claimant was served both through ordinary as well as speed post. The respondent/claimant, despite being served, chose not to appear and on 02.12.2021 was directed to be proceeded against *ex-parte*. This Court



again, on 12.02.2026, after noting that the respondent continues to be employed with the petitioner, directed that a copy of the order passed be served on the respondent, informing him of the pendency of the present petition. The petitioner was further directed to file an affidavit of service. In pursuance to the said directions, an affidavit of *dasti* service has been filed, stating that a copy of the order passed was served on the respondent who duly received the same and appended his signatures on a copy of the order. An endorsement to the above effect was also made in the peon book, which was also countersigned by the respondent. The respondent has, however, continued to ignore the repeated efforts to apprise him of the pendency of the present petition. In the aforesaid backdrop, this Court has proceeded to hear the present appeal in the absence of the respondent.

3. The impugned Award came to be passed in the context of a claim application filed by the respondent/claimant raising an industrial dispute, the terms of reference for which are as under:-

“Since the salary slip and identity card issued by the employer state the workman to be a caretaker, is the workman entitled to receive salary and other consequential and cascading benefits granting scale and allowances for the period 1/12/2000 to 14/12/2004 and regular pay scale or Rs.3050-4590 w.e.f. 15.12.2004?”

4. The claimant filed the claim application stating that though his appointment letter mentioned the designation as *Chowkidar*, however, his identity card and salary slip mentioned his designation as Caretaker. Not only this, but his duties were also those of a Caretaker. It is submitted that initially he was appointed as Caretaker *vide* letter dated 09.01.2001. He thus claimed that he was given a consolidated salary of Rs.2,500/- per month from 01.12.2000 to 14.12.2004; whereas he was entitled to the minimum



basic pay scale plus all allowances of a Caretaker for the said period. In the claim application, it was stated that he should be granted salary, other consequential and cascading benefits as given to a Caretaker.

5. The management had taken a preliminary objection of being a non-profit organisation and, hence, not an “industry” under the Industrial Disputes Act, 1947. It also contended that the claim was filed after a long gap and without any sufficient explanation. On the basis of the pleadings of the parties, the Tribunal had framed the following issues:-

“(i) Whether the workman is entitled to receive salary and other benefits, including grant of pay and allowances for the period 01.12.2000 to 14.12.2004 and regular pay scale of Rs.3050-4590 with effect from 15.12.2004?”

“(ii) Whether management is an ‘industry’ within the meaning of section 2 (j) of the Industrial Disputes Act, 1947?”

6. Insofar as Issue No. 2 is concerned, the Tribunal held that the management falls within the ambit of “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947. The Tribunal also rejected the objection of the dispute being stale.

7. Issue No.1 was also decided against the management by holding that the respondent/claimant is entitled to receive salary and other consequential and cascading benefits, granting the scale and allowances for the period from 01.12.2000 to 14.12.2004 and the regular pay scale of Rs.3050-4590 for the post of Caretaker w.e.f. 15.12.2004 as per the policy of “equal pay for equal work”.

8. Learned counsel for the petitioner contends that the respondent was never initially engaged as a Caretaker on a regular scale, and that it was only a temporary arrangement to tide over the security arrangement of the



accommodation on a consolidated salary of Rs.2,500/- per month. He submitted that there is no sanctioned post of Caretaker with the management.

9. It was only later, i.e., on 13.01.2005, that the respondent was offered a regular appointment *vide* an appointment letter to the post of *Chowkidar* in the pay scale of Rs.2550-3200/-. The said appointment letter was accepted without any demur or protest. The respondent continued to work as a *Chowkidar* on the said post. On 01.10.2007, at the asking of the respondent, a *Certificate of Residence* was issued wherein again his designation was mentioned as *Chowkidar*. After nearly 10 years, the respondent raised the dispute for the first time seeking salary and other consequential and cascading benefits. It is contended that the appointment of respondent is governed by the terms stated in the appointment letter, under which he was appointed to the post of *Chowkidar* and not Caretaker. Mere issuance of a salary slip in the name of Caretaker will not classify his post as Caretaker. It was an error in the salary slip that was rectified later. Further, the issuance of an identity card as a Caretaker would also not supersede the terms of the appointment letter.

10. In the present petition, the management has restricted its challenge to the impugned Award only to the extent of whether the respondent/claimant was entitled to seek the pay scale of a post which never existed. No contentions were raised on any other issue, including the one as to whether the management would fall within the definition of an “industry”.

11. As noted above, the respondent was initially engaged as a Caretaker from 01.12.2000 to 14.12.2004. The said arrangement, according to the



management, was purely temporary in nature on a consolidated salary of Rs.2,500/- per month. Thereafter, the respondent was regularized as a *Chowkidar* in the pay scale of Rs.2550-3200 w.e.f. 15.12.2004. The respondent's appointment letter reads as under:-

"No. 25/Persnl/2005

13th January, 2005

MEMORANDUM

Sub: Personnel – Shri Jitender Kumar, Chowkidar - Regularization of Services-Orders issued.

The Services of Shri Jitender Kumar are regularized as Chowkidar in the pay Scale of Rs.2550-55-2660-60-3200 w.e.f. 15.12.2004. His initial basic pay will be Rs.2550/- per month. He is eligible for D.A. and other allowance as per rules.

His services are transferable to any of the unit/Branch of the Society anywhere in India.

He will be on probation for a period of one-year w.e.f. 15th December 2004 during which his services will be terminable without notice and without assigning any reason. After completion of probationary period, if confirmed, his services will be terminable on one month's notice on either side.

In case the post offered and the terms and conditions thereof are acceptable, he is advised to return the duplicate copy of this order under his signature immediately to the undersigned.

The following documents shall be produced:

- a) A character certificate either from a First Class Magistrate or a Gazetted Officer whom he is known for the last at least three years.*
- b) Original certificates and testimonials as also attested copies of each, in respect of his educational qualification, experience age etc. The originals will be returned after perusal.*
- c) A Medical certificate of fitness from a Government Hospital/Dispensary.*

In case he fails to accept the offer, the appointment will stand cancelled. He shall submit the enclosed form regarding verification of his antecedents, duly completed and signed by him with his passport size



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photograph affixed at the provided space.

S/d-
Director (P&A)

Sh. Jitender Kumar
Chowkidar
B-456, Agar Nagar
Mubark Pur
New Delhi-41.

Copy to
1. Director (F&A)”

12. The management has consistently claimed that there is no post of Caretaker and, as such, there is no pay scale of Rs.3050-4590. The principle of “equal pay for equal work” is premised on the ground that the duties and responsibilities of the claimants are identical to those of other posts with different designations, yet the claimants are placed in a lower scale. The Supreme Court in State of Punjab & Ors. Vs. Jagjit Singh & Ors.¹, delineated the principles governing “equal pay for equal work” and concluded as under:-

“42. All the judgments noticed in paras 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

¹ (2017) 1 SCC 148



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 *Orissa University of Agriculture & Technology case*, *UT Chandigarh, Admn. v. Manju Mathur*, *SAIL case* and *National Aluminium Co. Ltd. case*).

42.2. The mere fact that the subject post occupied by the claimant is in a "different department" vis-à-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 department of the Government (see *Randhir Singh case* and *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 *Randhir Singh case*). For equal pay, the employees concerned 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*, *Mewa Ram Kanojia case*, *Grih Kalyan Kendra Workers' Union case* and *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 *Randhir Singh case*, *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* and *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 Centre Excise Stenographers case* and *SBI 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. Chaurasia* 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-à-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 *Mewa Ram Kanojia case* and *State 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 lie 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 *SBI 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 Assn.*).



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 W.B. v. Minimum Wages Inspectors Assn.).*

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 U.T. Chandigarh, Admn. 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 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 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 National Aluminium Co. Ltd. Case)."*

13. In Tripura State Cooperative Union Ltd. & Anr. Vs. Bimal Kanti Bhattacharjee & Ors.², while setting aside the decision of the High Court which had directed the creation of the post of Photographer, the Supreme

² (1997) 10 SCC 368



Court held as under:-

“5. As to the direction given by the High Court with regard to regularisation, it may be stated that there is no post of Photographer as such in the Cooperative Union and Respondent 1 was discharging the work of clerk. As a result of the direction given by the High Court for regularization of Respondent 1, the Cooperative Union would be required to create a post of Photographer for the purpose of such regularization. Such a direction was not permissible. Since there is no post of Photographer in the Cooperative Union the principle of equal pay for equal work can also not be applied.”

14. The Supreme Court, in *U.P. State Cement Corporation Ltd. & Ors. Vs. B.K. Tiwari*³, considered a case where a claimant had applied for the post of Manager (Personnel) but was offered the post of Dy. Manager (P&IR) under the terms of the appointment letter. Although the claimant accepted the offer and the post of Dy. Manager (P&IR), he subsequently raised a challenge that he was entitled to the revised grade applicable to Manager (P&IR HQ.). The Supreme Court, while dismissing the claim, held as under:-

“6. We do not think there is much controversy involved in the present case. The respondent said that at the time when he had applied for the post of Manager (E-4) it was in the pay scale of Rs 1500-2000 and what was offered to him was the post of Deputy Manager in the pay scale of Rs 1400-1800. Thus, according to the respondent, when he was offered the post of Manager, the pay scale had already been revised to Rs 1800-2250 to which, he said, he was entitled. We don't think this contention of the respondent can be accepted. Letter offering him the appointment of Manager is specific. This letter, as noted above, was written after the revision of pay scales. Not only that, the letter mentioning the designation of the respondent had also, in clear terms, mentioned the pay scale of the Manager which was being offered to him.

7. This letter was accepted by the respondent with the terms and conditions contained therein. The respondent cannot read in the letter more than what it says. Offer of appointment was given to the respondent after revision of the pay scales and the appellant could not possibly have

³ (1998) 2 SCC 542



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given the old pay scales. We, therefore, do not accept the view taken by the High Court.”

15. Indisputably, the respondent did not make any grievance prior to the filing of the claim, regarding the mentioning of his designation as *Chowkidar*, as well as his pay scale, in the Appointment letter, or the Certificate of Residence that was issued on 01.10.2007, mentioning therein that he was working as a *Chowkidar*.

16. Even in cross-examination, the respondent admitted that there was no post of Caretaker in the petitioner’s organisation. In light of the aforesaid facts and law, this Court has no hesitation to conclude that the Tribunal erred in granting the pay scale of Caretaker to the respondent on the principle of “equal pay for equal work” *vide* the impugned Award, despite it being brought on record that no such post or pay scale exists. Consequently, the present writ petition is allowed, and the impugned Award is set aside to the aforesaid effect.

17. The present petition is disposed of in the above terms.

**MANOJ KUMAR OHRI
(JUDGE)**

FEBRUARY 18, 2026

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