

A RAJESH PRAVINCHANDRA RAJYAGURU

v.

GUJARAT WATER SUPPLY & SEWERAGE BOARD AND ORS.

(Civil Appeal No. 7578 of 2021)

B DECEMBER 17, 2021

**[DR. DHANANJAYA Y CHANDRACHUD
AND M.R. SHAH, JJ.]**

- C *Service Law – Grant of pay-scales – Autonomous body vis-à-vis State Government – Claim for parity – Appellants worked as daily rated employees with the Respondent-Board – Respondent adopted a Resolution in 1988 (the Parent Resolution) passed by State Government granting benefits to the skilled daily wager workmen – Appellants were accordingly granted pay scale of Rs.750 and other benefits flowing from the said Resolution – Subsequent Resolutions issued by State Government in 1991 and 1992 modified the Parent Resolution, granting pay scale of Rs.950-1500 to a class of daily wagers as specified therein – Appellants claimed entitlement to the aforesaid pay scale – Writ petition allowed by Single Judge – Order set aside by Division Bench – On appeal, held: Board never adopted the subsequent Resolutions – Appellants working with the respondent, an autonomous body cannot claim parity with the employees of the State Government – State Government and the autonomous bodies cannot be put at par – Appellants cannot claim the benefits flowing from the subsequent Government Resolutions as a matter of right – Further, benefits under the subsequent resolutions were mistakenly given by some of the zonal offices, which subsequently came to be withdrawn and recovery was also sought – Appellants cannot claim parity with such other daily rated employees by invoking Article 14 if they otherwise are not entitled to such benefit – Constitution of India – Article 14 – Principle of equal pay for equal work.*
- G *Service Law – Fixation of wage/pay-scale – Held: Economic viability or the financial capacity of the employer is an important factor while fixing the wage structure – Employees cannot claim that their pay-scales should necessarily be revised and/or they must be granted certain additional benefits/benefits – Granting of pay*
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parity by Courts may result in a cascading effect having adverse consequences. A

Constitution of India – Article 14 – Principle of positive equality – Held: Article 14 embodies concept of positive equality alone and not negative equality – It cannot be relied upon to perpetuate illegality and irregularity. B

Dismissing the appeals, the Court

HELD: 1.1 The Board never adopted the subsequent Resolutions dated 01.05.1991 and 15.02.1992. The parent Resolution dated 17.10.1988 was specifically approved by the Board vide communication dated 08.06.1989. On the contrary the administrative instructions vide communication dated 29.08.1991 were issued to all the Chief Engineers of zonal offices that benefits pursuant to Government Resolution of 1991 are not to be granted to the daily rated employees of the Board. Right from adopting the parent Resolution dated 17.10.1988, the Respondent-Board granted benefits under the parent Resolution to all the original writ petitioners-daily rated employees upon their completion of 5 years and of 10 years. Therefore, as such the Board which is an autonomous and statutory body created under the Act never adopted the Government Resolutions dated 01.05.1991 and 15.02.1992 and unless the said Resolutions are adopted by the Respondent-Board, the daily rated employees working with the Respondent-Board shall not be entitled to the benefits flowing from the subsequent resolutions. There shall not be automatic adoption and/or applicability of the subsequent resolutions. Under the circumstances as rightly held by the Division Bench, the daily rated employees of the Respondent – Board cannot claim the benefits from the Resolutions of 1991 and 1992 as a matter of right. [Para 13.2][861-E-H; 862-A-B] C

1.2 Even being the daily rated employees working with the Respondent-Board they cannot claim the parity with the employees of the State Government. The Respondent-Board is an autonomous and statutory body created under the Act. It is ultimately for the Respondent-Board to take a conscious decision which can be termed as a policy decision on the pay scales to be D

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- A adopted and/or certain benefits which would have financial implications. Everything depends upon its economic viability or the financial capacity. The economic viability or the financial capacity of the employer is an important factor while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down inevitably and have disastrous consequences for the employees themselves. The employees cannot legitimately claim that their pay-scales should necessarily be revised and/or they must be granted certain additional benefits/benefits. Equation of posts and salary is a complex matter which should be left to the expert body and undertakings and the court cannot interfere lightly. Granting of pay parity by the court may result in a cascading effect having adverse consequences. There are limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work'. The Respondent-Board is an independent entity and it might have its own financial capacity and therefore its employees cannot claim parity with the employees of the State Government. The State Government and the autonomous Board/bodies cannot be put at par. The Board has to depend upon their own financial resources. Therefore, the daily rated employees of the Board cannot as a matter of right claim the parity of pay scales with the Government employees. The Single Judge erred in directing the Board to grant the benefits flowing from the Government Resolutions dated 01.05.1991 and 15.02.1992 which is rightly set aside by the Division Bench of the High Court. [Paras 13.3-13.6, 14] [862-C-H; 863-C-D, F-G]
- F 1.3 So far as the submission on behalf of the original writ petitioners which was accepted by the Single Judge that as number of other daily rated employees of the Board were granted the benefits flowing from the Resolutions of 1991 and 1992, not paying similar benefits to the remaining daily rated employees would be discriminatory and violative of Article 14 of the Constitution of India is concerned, it is required to be noted that as such right from the very beginning it was the case on behalf of the Respondent-Board that the benefits under the Resolutions of 1991 and 1992 were inadvertently and mistakenly given by some of the zonal offices, which subsequently came to be withdrawn
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and even the recovery is also sought. The original writ petitioners-daily rated employees of the Board are not entitled to the benefits flowing from the Government Resolutions of 1991 and 1992. Therefore, they cannot invoke Article 14 of the Constitution to claim benefit on the ground of parity if they otherwise are not entitled to such benefit. As per the settled proposition of law Article 14 of the Constitution embodies concept of positive equality alone and not negative equality. It cannot be relied upon to perpetuate illegality and irregularity. Challenge to the impugned judgment passed by the Division Bench of the High Court fails. [Para 15][863-G-H; 864-A-C]

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State of Gujarat and Others v. PWD Employees Union and others, (2013) 12 SCC 417: [2013] 10 SCR 1091 – held inapplicable.

State of U.P. & Others v. Rajkumar Sharma & Others, (2006) 3 SCC 330 : [2006] 2 SCR 877; State of West Bengal & Others v. Debasish Mukherjee & Others, (2011) 14 SCC 187 : [2011] 13 SCR 1077; Punjab State Cooperative Milk Producers Federation Limited and Another v. Balbir Kumar Walia and Others, (2021) 8 SCC, 784 2021 (7) JT 275 – relied on.

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P. Singaravelan & Others v. District Collector, Tiruppur and DT and Others, (2020) 3 SCC 133 : [2019] 15 SCR 408; Secretary, Finance Department and Others v. West Bengal Registration Service Association & Others, 1993 Supp (1) SCC 153; State of Bihar and Others v. Bihar Secondary Teachers Struggle Committee, Munger and Others, (2019) 18 SCC 301 – referred to.

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Case Law Reference

[2013] 10 SCR 1091	held inapplicable	Para 7	
[2006] 2 SCR 877	relied on	Para 9.8	G
[2011] 13 SCR 1077	relied on	Para 9.8	
[2019] 15 SCR 408	referred to	Para 9.8	

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No.7578
of 2021.

From the Judgment and Order dated 24.07.2020 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No.82 of 2020.

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C Civil Appeal No.7579 of 2021.

Sanjay Parikh, Sr. Adv., Pukhrambam Ramesh Kumar, Satwik Parikh, Ms. Anupama Ngangom, Karun Sharma, Advs. for the Appellant.

C Ms. Aastha Mehta, Ms. Vishakha, Ms. Deepanwita Priyanka,
Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

D 1. As common question of law and facts arise in these two appeals
both these appeals are decided and disposed of together.

E 2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No.82 of 2020 by which the High Court has allowed the said appeal preferred by Respondent no.1 herein – Gujarat Water Supply

F and Sewerage Board (hereinafter referred to as ‘the Board’) and has quashed and set aside the judgment and order passed by the learned Single Judge passed in Special Civil Application No.16470 of 2018 by which the learned Single Judge allowed the said writ petition preferred by the appellants herein and held that the appellants herein – original respondents are entitled to the pay scale of Rs.950-1500 with all consequential benefits upon completion of 10 years of service and revised their pay scale as per 5th, 6th and 7th Pay Commission scales on such basis, the original writ petitioners have preferred the present appeal.

G 3. In another Letters Patent Appeal No.179 of 2020, the Division Bench of the High Court has just followed its decision in Letters Patent Appeal No.82 of 2020 which is the subject matter of another appeal. Therefore, for the sake of convenience the facts in Civil Appeal No. 7578 of 2021 arising out of the impugned judgment and order passed by the High Court in Letters Appeal No.82 of 2020 are narrated and considered and the said appeal be treated as a lead appeal.

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4. That the Respondent – Board has been formed under the Gujarat Water Supply and Sewerage Board Act, 1978 (hereinafter referred to as ‘the Act’) for rapid development and proper regulation of the water supply and sewerage activities in the State of Gujarat. Till the Board frames its own Rules and Regulations, the Board had, for better administration, decided through a Resolution dated 06.08.1980 to follow the Rules, Regulations, Circulars, Policies, Instructions and all Schemes of the State Government from the date of formation of the Board. It appears that there were many daily wagers working under various departments of the State Government for past several years. With a view to resolve the issue relating to service condition of daily wagers engaged in maintenance and repairing work a committee called ‘Shri Daulatbhai Parmar Committee’ was constituted under the Chairmanship of the then Minister of Roads and Building Department – Shri Daulatbhai Parmar. On the basis of the recommendations made by the Committee, Government of Gujarat passed a Resolution dated 17.10.1988 wherein the Government decided to give certain benefits to the skilled daily wager workmen depending upon the period of services undergone, i.e. less than 5, 5 or more or 10 years.

4.1 As per scheme contained in Resolution dated 17.10.1988 all the daily wage workers were not entitled for regularization or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

“(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi-skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(iii) Daily wagers and semi-skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness

- A allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/she will be eligible for getting medical allowance and deduction of provident fund.
- B (iv) Daily wagers and semi-skilled workers who has service of more than 15 years will be considered as permanent worker and such semi-skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi-skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly.”
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- E 4.2 That the Respondent – Board adopted the Government Resolution dated 17.10.1988 by way of communication dated 08.06.1989. That the respective original petitioners are working as daily rated employees with the Board. That on adoption of GR dated 17.10.1988 (hereinafter referred to as the ‘parent Resolution’) by the Respondent - Board all the daily rated employees working with the Board including the original petitioners were granted the benefit of the pay scales of Rs.750 and other benefits upon their completion of 5 years services.
- F 4.3 That thereafter vide Resolution dated 01.05.1991, the State Government modified the Resolution dated 17.10.1988. Under the modified GR dated 01.05.1991 it provided that all departments would assign administrative work of clerical cadre Class – III to those SCC pass daily wagers who have completed 7 years and it further provided that such daily wager should be paid pay scale of Rs.950-1500 from the date of assignment of duty. Another Resolution dated 15.02.1992 was issued wherein it was stated that pay of Rs.950 would be granted in the pay scale of Rs.950-1500 w.e.f. 01.05.1991 to all SSC pass daily wagers who have completed 7 years of service. As observed hereinabove the Respondent – Board granted benefits under the parent Resolution to all the writ petitioners and the daily rated employees working with the Board
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upon their completion of five years and placed them at the basic pay of Rs.2550. That the Respondent – Board also granted benefits under the parent Resolution to all daily rated employees working with the Board including the original writ petitioners upon their completion of 10 years and placed them in the pay scale of Rs.2550-55-2600-60-3200.

4.4 It appears that some of the zonal offices of the Board erroneously and inadvertently extended the benefit of the modified Resolutions dated 01.05.1991 and 15.02.1992 to unskilled daily wagers. That it came to notice of the Head Office of the Respondent – Board that in absence of any policy decision to adopt the Resolutions dated 01.05.1991 and 15.02.1992, inadvertently benefit of pay scale of Rs.950-1500 has been granted to certain daily wagers and therefore vide instructions dated 05.06.2015, it was instructed that such benefits should not be granted. In fact, the Respondent – Board withdrew the benefit of pay scale of Rs.950-1500 granted inadvertently applying the Resolutions dated 01.05.1991 & 15.02.1992 and even started recovery, which is the subject matter before the High Court in some other proceedings.

4.5 It appears that the respective original writ petitioners sent various representations to the Board to place them in the pay scale of Rs.950-1500 as per the Resolutions dated 01.05.1991 & 15.02.1992 and further revision of pay to the extent of Rs.3050-4590. That thereafter the original writ petitioners approached the High Court by way of SCA No.16470 of 2018 to grant them the benefit of pay scale under the Government Resolutions dated 01.05.1991 and 15.02.1992 and to put them in the pay scale of Rs.950-1500. The said writ petition was opposed by the Board by filing a detailed reply. It was the specific case on behalf of the Board that the modified Government Resolutions dated 01.05.1991 and 15.02.1992 are never adopted by the Board like the parent Resolution dated 17.10.1988. It was also the case on behalf of the Board that in some zonal offices the benefit of Resolutions dated 01.05.1991 and 15.02.1992 were inadvertently given which have been withdrawn. It was the specific case on behalf of the Board that unless the Board specifically adopts the Government Resolutions dated 01.05.1991 and 15.02.1992, the original writ petitioners and other daily rated employees are not entitled to the benefit under the said Resolutions. It was also submitted that there is no automatic adoption of the subsequent resolutions. It was also the case that as the others were given the benefit of the Government Resolutions dated 01.05.1991 and 15.02.1992 inadvertently

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- A and by mistake and in fact the same are sought to be withdrawn/ withdrawn, the writ petitioners cannot claim the parity. That by judgment and order dated 15.10.2019, the learned Single Judge allowed the writ petition and directed the Board to grant the benefits of pay scale of Rs.950-1500 to the original writ petitioners – daily rated employees with all consequential benefits upon completion of 10 years of service and revised their pay scales as per 5th, 6th and 7th Pay Commission scales on such basis. The learned Single Judge also directed to pay the arrears.
 - 5. Feeling aggrieved and dissatisfied with the aforesaid judgment and order passed by the learned Single Judge, the Board preferred the Letters Patent Appeal 16470 of 2018 before the Division Bench of the High Court. By the impugned judgment and order the Division Bench of the High Court has allowed the Letters Patent Appeal and quashed and set aside the judgment and order passed by the learned Single Judge by holding that at the subsequent modified Government Resolutions dated 01.05.1991 and 15.02.1992 are not adopted by the Board, the daily rated employees of the Board are not entitled to any benefit flowing from modified Government Resolutions dated 01.05.1991 and 15.02.1992 which as such are not adopted by the Board.
 - 6. Feeling aggrieved and dissatisfied with the impugnment and order passed by the Division Bench of the High Court holding that the original writ petitioners are not entitled to pay scale of Rs.950-1500 and the benefits flowing from the modified Government Resolutions dated 01.05.1991 and 15.02.1992, the original writ petitioners – daily rated employees of the Respondent – Board have preferred the present appeals.
 - 7. Shri Sanjay Parikh, learned Senior Counsel appearing on behalf of the original writ petitioners has vehemently submitted that as such the Division Bench of the High Court has erred in quashing and setting aside the well-reasoned judgment and order passed by the learned Single Judge.
 - 7.1 It is submitted that the learned Single Judge considered every aspect of the matter and considering the material on record has rightly held that the original writ petitioners are entitled to the benefit flowing from the Government Resolutions dated 01.05.1991 and 15.02.1992.
 - 7.2 It is further submitted by Shri Parikh, learned Senior Counsel that as such the Respondent – Board passed a Resolution dated
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06.08.1990 that till the Board frames its own Rules and Regulations, A
Board shall follow the Rules, Regulations, Circulars, Policies, Instructions
and all schemes of the State Government. It is submitted that till date no
Rules and Regulations are framed by the Board. It is submitted that
therefore the Board is bound to follow and/or act upon its own Board
Resolution dated 06.08.1990.

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7.3 It is further submitted that even otherwise once the parent
Resolution dated 17.10.1988 came to be adopted by the Board, all
successive amended resolutions shall be applicable and shall have to be
implemented by the Board.

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7.4 It is further submitted that the Board being a statutory body,
has to adopt all subsequent policy decisions/resolutions in the same manner
in which the parent Resolution was adopted.

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7.5 It is further submitted by Shri Parikh, learned Senior Counsel
for the original writ petitioners that in fact there are several employees
who have been granted such benefits under the Government Resolutions
dated 01.05.1991 and 15.02.1992 and only few of the daily rated
employees like the original writ petitioners are denied the benefit under
the GRs of 1991 and 1992. It is submitted therefore as rightly observed
and held by learned Single Judge the action of the Respondent - Board
in denying the benefit of Government Resolutions dated 01.05.1991 and
15.02.1992 to some of the daily wage employees would be discriminatory
and violative of Article 14 of the Constitution of India. It is submitted
that out of total 3348 daily rated employees, only 474 daily rated employees
like the original writ petitioners are denied the benefits of 1991 and 1992
Resolutions.

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7.6 It is further submitted by Shri Parikh, learned Senior Counsel
for the appellants that as such earlier the service of water supply and
sewerage was under the control of Government of Gujarat and only on
formation of the Board under the Act such activity was transferred to
the Board. It is submitted that therefore, the Board is undertaking the
activities which earlier the Government was performing. It is submitted
that therefore when the Board is the creation of the statute and is
undertaking the activities which earlier were carried out by the State
Government and the same is funded by the State Government, the daily
rated employees of the Board like the original writ petitioners are entitled
to the same benefits which are available to the daily rated employees of
the other departments of the State Government. Heavy reliance is placed G
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- A on the decision of this Court in the case of **State of Gujarat and Others versus PWD Employees Union and others**, (2013) 12 SCC 417.
8. Making above submissions and relying upon the above decision, it is prayed to allow the present appeals and quash and set aside the impugned judgment and orders passed by the Division Bench and restore
- B the judgment and order passed by the learned Single Judge allowing the benefits flowing from 1991 and 1992 Resolutions.
9. Present appeals are vehemently opposed by Ms. Aastha Mehta, learned counsel appearing on behalf of the Respondent – Board.
- C 9.1 It is vehemently submitted by Ms. Mehta, learned counsel appearing for the Respondent – Board that in the facts and circumstances of the case the Division Bench of the High Court has not committed any error in allowing the appeals preferred by the Respondent – Board and **quashed and set aside** the order passed by the learned Single Judge.
- D 9.2 It is submitted that as such the original writ petitioners – daily rated employees working with the Respondent – Board have been granted the benefit under the parent Resolution dated 17.10.1988. It is submitted that such benefits have been granted as the Board specifically adopted the parent Resolution dated 17.10.1988. It is submitted that however the subsequent modified Resolutions of 1991 and 1992 have never been
- E adopted by the Board. It is submitted that therefore the daily rated employees working with the Respondent - Board like the original writ petitioners are not entitled to any benefit flowing from the Resolutions of 1991 and 1992. It is submitted that therefore the Division Bench of the High Court has rightly held that as the subsequent resolutions of 1991 and 1992 are not adopted by the Respondent – Board, the original writ
- F petitioners – daily rated employees of the Respondent – Board are not entitled to any benefit under the Resolutions of 1991 and 1992.
- G 9.3 Ms. Mehta, learned Counsel appearing on behalf of the Respondent – Board has further submitted that as such and despite the fact that the Resolutions of 1991 and 1992 were never adopted by the Board, in some of the zonal offices inadvertently and mistakenly the benefits under the Resolutions of 1991 and 1992 were given. It is submitted that immediately when the Head Office came to know, instructions were issued to all the zonal offices to stop granting the benefit under the Resolutions of 1991 and 1992 and to recover the amount mistakenly given. It is submitted that the subsequent decision in the year
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2015 withdrawing the benefit under the Resolutions of 1991 and 1992 which are given mistakenly and inadvertently is never challenged by the original writ petitioners. It is submitted that therefore the decision to withdraw the benefit flowing from the Resolutions of 1991 and 1992 stands.

9.4 It is submitted that the learned Single Judge allowed the writ petitions and directed the Respondent – Board to grant the benefits flowing from the Resolutions of 1991 and 1992 solely and mainly on the ground of discrimination and violation of Article 14 of the Constitution of India by observing that the other daily rated employees working with the Respondent – Board are granted the benefit under the Resolutions of 1991 and 1992 and therefore not to pay similar benefits to the original writ petitioners is discriminatory and violative of Article 14 of the Constitution of India. It is submitted that however the learned Single Judge failed to appreciate that as such the benefits which were given to the other employees have been withdrawn and even the recovery is also sought. It is submitted that thereafter it cannot be said that the action of the Respondent – Board in not granting the benefit under the Resolutions of 1991 and 1992 can be said to be discriminatory and/or in violation of Article 14 of the Constitution of India.

9.5 Ms. Mehta, learned counsel appearing for the Respondent – Board has requested to consider the following chronological list of dates and events:

S.No	Date	Particulars
1.	17.10.1988	Govt. of Gujarat passed a resolution dated 17.10.1988 wherein the Govt decided to give certain benefits to skilled daily wager workmen depending upon the period of service undergone, i.e. less than 5, 5 or more or 10 years. This is referred to as the Parent Resolution/policy in the SLP.
2.	08.06.1989	The Respondent Board adopted the above-referred Resolution by way communication dated 08.06.1989.
3.	01.05.1991 Resolution in question	Vide the resolution, certain modification was carried out in the parent resolution of 1988. The resolution prescribes that all departments would assign administrative work of clerical cadre Class-III to those SSC pass daily wagers who have completed 07 years. It was further decided that such daily wager should be paid pay scale of Rs. 950-1500 from the date of assignment of duty.

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A	4.	29.08.1991	Administrative instructions were issued to all Chief Engineers of Zonal offices that benefit pursuant to Govt. resolution of 1991 are not to be granted to the daily rated employees of the Board.
B	5.	15.02.1992	Another resolution was issued wherein it was stated that pay of Rs. 950 would be granted in the pay scale of Rs. 950-1500 w.e.f 01.05.1991 to all SSC pass daily wagers who have completed 7 years service.
C	6.	13.08.2003	Respondent granted benefits under the 1988 (Parent resolution) to the Petitioner upon his completion of 5 years and placed him at the basic pay of Rs. 2550/-.
C	7.	03.08.2004	Respondent granted benefits under the 1988 (Parent resolution) to the Petitioner upon his completion of 10 years and placed him pay scale of Rs. 2550-55-2600-60-3200.
D	8.	30.03.2015 /10.04.2015	Respondent Board on account of inadvertence, extended the benefit of 01.05.1991 and 15.02.1992 benefits to unskilled daily wager in certain zonal offices.
D	9.	05.06.2015	It came to the notice of the Head Office of the Respondent Board that in absence of any policy decision to adopt 01.05.1991 & 15.02.1992, inadvertently benefit of pay scale of 950-1500 was granted to certain daily wagers, and vide instructions dated 05.06.2015 it was instructed that such benefits should not be granted.
E	10.	2015-2018	Petitioner sent various Representations to the Respondent Board to consider the application of 1991 and 1992 resolutions.
F	11.	2018	Petitioner filed SCA No. 16470 of 2018 before the High Court claiming parity with certain other employees who had been granted benefits under 1991 and 1992 resolutions.
G	12.	23.07.2019	Respondent Board filed its Affidavit-in-Reply raising the <u>following contentions</u> : <ol style="list-style-type: none"> 1. Policies of Govt are not automatically applicable and binding on the Respondent. 2. The Board has not taken any decision to grant benefits available to skilled workmen under 1991 and 1992 notifications and extend the same to unskilled workmen who were given benefits of 1988 resolution. 3. Vide communication 05.06.2015, the Board instructed all Chief Engineers of Zones to not grant any benefits. 4. Despite proposal sent by the Board to the Govt for granting such benefits to eligible unskilled daily wagers, the Govt has not taken any decision.
H	13.	07.09.2019	Petitioner filed Affidavit-in-Rejoinder.
H	14.	09.09.2019	Govt Department concerned turned down the request for application of benefits under 1991 resolution to daily rated workmen of the Board.

9.6 It is submitted that as the Division Bench of the High Court has rightly appreciated the fact and has rightly held that the original writ petitioners and daily rated employees working with the Respondent – Board are not entitled to the benefits flowing from the Government Resolutions of 1991 and 1992. A

9.7 It is submitted that even subsequently the Government has turned down the request for application of benefits under 1991 Resolution. B

9.8 It is submitted that as in some of the zonal offices though not entitled, the daily rated employees were granted the benefits under the Resolutions of 1991 and 1992 inadvertently and mistakenly, the same came to be withdrawn and even recovery is sought. Thereafter there is no question of granting any benefit to the remaining daily rated employees. It is submitted that even otherwise the original writ petitioners have to establish their right to get the benefit under the Government Resolutions of 1991 and 1992 independently. It is submitted that concept of equality cannot be allowed in the present case to perpetuate one mistake for other daily wagers. C D

Reliance is placed in the decision of this Court in the case of **State of U.P. & Others versus Rajkumar Sharma & Others**, (2006) 3 SCC 330 (para 15); **State of West Bengal & Others versus Debasish Mukherjee & Others**, (2011) 14 SCC 187 and **P. Singaravelan & Others versus District Collector, Tiruppur and DT and Others**, (2020) 3 SCC 133. E

9.9 It is further submitted by Ms. Mehta, learned counsel appearing for the Respondent – Board that there cannot be any automatic application of subsequent resolutions by the Board. It is submitted that the Respondent – Board is an autonomous and statutory body and free to take its own decision in regard to pay scales. It is submitted that being the daily rated employees of the Respondent – Board, they are not entitled to the benefits which are given to the State Government employees automatically unless it is adopted by the Board. F

9.10 It is submitted that even otherwise as held by this Court in a catena of decisions, issues of revision of pay scales and determination of pay scales/post should be dealt with by the employer, which depend upon the employers' financial capacity. Reliance is placed on the decisions of this Court in the case of **Secretary, Finance Department and Others versus West Bengal Registration Service Association & Others**, G H

- A 1993 Supp (1) SCC 153; **State of Bihar and Others versus Bihar Secondary Teachers Struggle Committee, Munger and Others**, (2019) 18 SCC 301 and **Punjab State Cooperative Milk Producers Federation Limited and Another versus Balbir Kumar Walia and Others**, (2021) 8 SCC 784.
- B 9.11 It is further submitted that in the present case if the Board is directed to grant the benefit flowing from Government Resolutions of 1991 and 1992 to the daily rated employees working with the Respondent – Board in that case it would have a cascading effect and financial burden upon the Respondent – Board. It is submitted that there shall be additional financial liability on the Board. It is submitted that there are 3348 daily wager employees. Out of 3348 daily wage employees, 474 are not granted the benefits of the 1991 and 1992 Resolutions. It is submitted that additional financial liability per daily wager would be Rs.5 lakhs and therefore considering that 474 employees are not granted, multiplying Rs.5 lakhs into 474 employees, the overall financial liability of the Board comes to Rs.23.7 crores. It is submitted that annually, the additional burden on the Respondent – Board even with respect to the remaining 474 daily rated employees like the original writ petitioners would be Rs.2 crores.

10. Making above submissions it is prayed to dismiss the present appeals.

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- F 11. We have heard learned counsel for the respective parties at length.
12. The short question which is posed for consideration before this Court is whether the original writ petitioners – daily rated employees working with the Respondent - Board are entitled to the benefits flowing from subsequent Resolutions dated 01.05.1991 and 15.02.1992? Another question which is posed for consideration before this Court is whether the principle of negative equality shall be applicable in a case where the other employees were wrongly granted the benefits and/or the employees who are claiming the parity shall have to establish their rights independently to get the particular benefits?

H 13. Having heard the learned counsel for the respective parties and considering the list of dates and events reproduced hereinabove it can be seen that the writ petitioners are working as daily rated employees with the Respondent – Board. The State of Gujarat passed a resolution

dated 17.10.1988 wherein the Government decided to grant certain benefits to skilled daily wager workmen. The Respondent – Board which is an autonomous body constituted under the Act adopted the Resolution dated 17.10.1988 and granted the benefits flowing from the GR dated 17.10.1988 which is the parent Resolution. It is not in dispute that the respective original writ petitioners – daily rated employees are granted the benefits flowing from the parent Resolution dated 17.10.1988.

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13.1 However, subsequently the Government issued Resolutions dated 01.05.1991 and 15.02.1992 by which certain modifications were carried out in the parent Resolution dated 17.10.1988 and it was provided that such daily wagers who are SSC passed and have completed 7 years, the Department would assign administrative work of clerical cadre Class III and they shall be paid pay scale of Rs.950-1500 from the date of assignment of duty. The original writ petitioners – daily rated employees are claiming the benefit flowing from the aforesaid subsequent Government Resolutions dated 01.05.1991 and 15.02.1992 mainly on the ground that other similar daily rated employees have been granted the benefit under the aforesaid Government Resolutions of 1991 and 1992 and therefore not extending such benefits to other daily rated employees – other writ petitioners which is discriminatory and violative of Article 14 of the Constitution of India.

13.2 However, it is required to be noted that as such the Board never adopted the subsequent Resolutions dated 01.05.1991 and 15.02.1992. It is required to be noted that the parent Resolution dated 17.10.1988 was specifically approved by the Board vide communication dated 08.06.1989. On the contrary the administrative instructions vide communication dated 29.08.1991 were issued to all the Chief Engineers of zonal offices that benefits pursuant to Government Resolution of 1991 are not to be granted to the daily rated employees of the Board. It is to be noted that right from adopting the parent Resolution dated 17.10.1988, the Respondent - Board granted benefits under the parent Resolution to all the original writ petitioners – daily rated employees upon their completion of 5 years and of 10 years. Therefore, as such the Board which is an autonomous and statutory body created under the Act never adopted the Government Resolutions dated 01.05.1991 and 15.02.1992 and unless the said Resolutions are adopted by the Respondent – Board, the daily rated employees working with the Respondent – Board shall not be entitled to the benefits flowing from the subsequent resolutions.

- A There shall not be automatic adoption and/or applicability of the subsequent resolutions. Under the circumstances as rightly held by the Division Bench, the daily rated employees of the Respondent – Board cannot claim the benefits from the Resolutions of 1991 and 1992 as a matter of right. As rightly observed and held they do not have any right to get the benefits flowing from the aforesaid Resolutions of 01.05.1991 and 15.02.1992 till specifically adopted by the Respondent – Board like adoption of the parent Resolution dated 17.10.1988.

13.3 Even being the daily rated employees working with the Respondent – Board they cannot claim the parity with the employees of the State Government. The Respondent – Board is an autonomous and

- C statutory body created under the Act. It is ultimately for the Respondent – Board to take a conscious decision which can be termed as a policy decision on the pay scales to be adopted and/or certain benefits which would have financial implications. Everything depends upon its economic viability or the financial capacity. As per the settled proposition of law
- D the economic viability or the financial capacity of the employer is an important factor while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down inevitably and have disastrous consequences for the employees themselves. As per the settled proposition of law the employees cannot legitimately claim that their pay-scales should necessarily be revised and/or they must be granted certain additional benefits/benefits.

13.4 As per the settled proposition of law equation of posts and salary is a complex matter which should be left to the expert body and undertakings and the court cannot interfere lightly. Granting of pay parity by the court may result in a cascading effect having adverse

- F consequences. There are limitations or qualifications to the applicability of the doctrine of ‘equal pay for equal work’.

13.5 Being daily rated employees of the Respondent – Board, they cannot claim as of right similar treatment as Government employees.

- G The Respondent – Board is an independent entity and it might have its own financial capacity and therefore its employees cannot claim parity with the employees of the State Government.

13.6 The State Government and the autonomous Board/bodies cannot be put at par. The Board has to depend upon their own financial resources. In the recent decision in the case of **Punjab State**

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Cooperative Milk Producers Federation Limited and Another A
(Supra) it is observed in paragraph 32 as under:

“32. The Central or State Government is empowered to levy taxes to meet out the expenses of the State. It is always a conscious decision of the Government as to how much taxes have to be levied so as to not cause excessive burden on the citizens. But the Boards and Corporations have to depend on either their own resources or seek grant from the Central/ State Government, as the case may be, for their expenditures. Therefore, the grant of benefits of higher pay scale to the Central/State Government employees stand on different footing than grant of pay scale by an instrumentality of the State.”

Therefore, the daily rated employees of the Board cannot as a matter of right claim the parity of pay scales with the Government employees.

13.7 In the present case a conscious decision has been taken by the Board not to adopt the Government Resolutions dated 01.05.1991 and 15.02.1992. Even the State Government has refused to extend the benefits under the Government Resolutions of 1991 and 1992. The Board has taken a conscious decision considering the additional financial burden on the Board if the benefits under the Government Resolutions of 1991 and 1992 are allowed.

14. At the cost of repetition, it is observed that unless and until the Board has specifically adopted the Government Resolutions of 1991 and 1992 like adopting the parent Resolution dated 17.10.1988, the daily rated employees/employees of the Respondent – Board shall not be entitled to any benefit flowing from the Resolutions of 1991 and 1992. Therefore, the learned Single Judge erred in directing the Board to grant the benefits flowing from the Government Resolutions dated 01.05.1991 and 15.02.1992 which is rightly set aside by the Division Bench of the High Court.

15. So far as the submission on behalf of the original writ petitioners which was accepted by the learned Single Judge that as number of other daily rated employees of the Board were granted the benefits flowing from the Resolutions of 1991 and 1992, not paying similar benefits to the remaining daily rated employees would be discriminatory and violative of Article 14 of the Constitution of India is concerned, it is

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- A required to be noted that as such right from the very beginning it was the case on behalf of the Respondent – Board that the benefits under the Resolutions of 1991 and 1992 were inadvertently and mistakenly given by some of the zonal offices, which subsequently came to be withdrawn and even the recovery is also sought. As observed and held hereinabove
- B the original writ petitioners – daily rated employees of the Board are not entitled to the benefits flowing from the Government Resolutions of 1991 and 1992. Therefore, they cannot invoke Article 14 of the Constitution to claim benefit on the ground of parity if they otherwise are not entitled to such benefit. As per the settled proposition of law Article 14 of the Constitution embodies concept of positive equality alone and not negative
- C equality. It cannot be relied upon to perpetuate illegality and irregularity.

15.1 As held by this Court in the case of **Rajkumar Sharma** (Supra) in a case of appointments or pay-scales, Article 14 of the Constitution does not envisage negative equality and if State has committed the mistake, it cannot be forced to perpetuate the same

- D mistake.

15.2 In the case of **Debasish Mukherjee** (Supra) while dealing with the concept of equality it is observed in paragraph 26 as under:

- E “26. It is now well settled that guarantee of equality before law is a positive concept and cannot be enforced in a negative manner.
- F If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of Courts and Tribunals to require the state to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally or arbitrarily extended to others. [See : Gursharan Singh vs. New Delhi Municipal Administration - 1996 (2) SCC 459, Union of India vs. Kirloskar Pneumatics Ltd. - 1996 (4) SCC 433, Union of India vs. International Trading Co. - 2003 (5) SCC 437, and State of Bihar vs. Kameshwar Prasad Singh - 2000 (9) SCC 94.]”
- G 16. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove the daily rated employees of the Board cannot claim as a matter of right the benefits flowing from the Government Resolutions dated 01.05.1991 and 15.02.1992 and as such they are not entitled to the benefits flowing from the said Resolutions of 1991 and 1992 automatically and considering
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the fact that even subsequently the mistake committed by other zonal offices have been corrected and the benefits mistakenly and/or inadvertently have been withdrawn and even the recovery sought, the learned Single Judge committed grave error in holding that the action of the Respondent – Board in not granting benefit flowing from the Government Resolution of 1991 and 1992 is discriminately and violative of Article 14 of the Constitution of India. The same is rightly corrected by the Division Bench of the High Court and the Division Bench of the High Court has rightly set aside the order passed by the Single judge.

17. Now so far as the reliance placed upon by learned counsel appearing on behalf of the original writ petitioners in the decision of this Court in PWD Employees Union (Supra) is concerned, the same shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the daily rated employees of the Respondent – Board. In the case before this Court the dispute was with respect to two different departments of the State Government.

As observed hereinabove, the employees of the Government departments and the employees of the Board as such stand on different footings. As observed hereinabove the employees of the Board cannot claim the parity with that of the Government employees.

18. In view of the above and for the reason stated above challenge to the impugned judgment and order passed by the Division Bench of the High Court fails. For the reason stated above, it cannot be said that the Division Bench of the High Court has committed grave error in allowing the Letters Patent Appeals and quashing and setting aside the judgment and orders passed by the High Court. It is held that the original writ petitioners – daily rated employees of the Respondent – Board are not entitled to the benefits flowing from the Government Resolutions dated 01.05.1991 and 15.02.1992. However, they shall be continued to pay or grant the benefits flowing from the parent Resolution dated 17.10.1988 which is reported to be implemented and paid. Both these appeals deserve to be dismissed and accordingly dismissed.

However, in the facts and circumstances of the case there shall be no order as to costs.