

State Of Haryana & Ors vs Charanjit Singh & Ors., Etc. Etc on 5 October, 2005

Equivalent citations: AIR 2006 SUPREME COURT 161, 2005 AIR SCW 5632, 2006 (1) AIR JHAR R 238, 2005 LAB. I. C. 4322, 2006 (1) AIR BOM R 158, 2006 (1) AIR KANT HCR 80, 2006 (9) SCC 321, (2005) 6 SERVLR 693, (2006) 1 ALLMR 115 (SC), (2005) 7 SUPREME 193, (2005) 8 SCALE 482, (2006) 3 SCT 170, (2006) 1 LABLJ 431, (2005) 7 SCJ 536, (2006) 38 ALLINDCAS 151 (SC), (2005) 107 FACLR 994, (2005) 4 LAB LN 949, (2006) 1 PAT LJR 176, (2006) 1 JLJR 144, 2006 (1) KCCR SN 39 (SC)

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Bench: S. N. Variava, Ar. Lakshmanan, S. H. Kapadia

CASE NO.:

Appeal (civil) 6562 of 2002

PETITIONER:

STATE OF HARYANA & ORS.

RESPONDENT:

CHARANJIT SINGH & ORS., ETC. ETC.

DATE OF JUDGMENT: 05/10/2005

BENCH:

S. N. Variava, Dr. AR. Lakshmanan & S. H. Kapadia

JUDGMENT:

J U D G M E N T With (Civil Appeal No.6567/2002, Civil Appeal No.6568/2002, Civil Appeal No.6570/2002, Civil Appeal No.6572/2002, Civil Appeal No.6569/2002, Civil Appeal No.6573/2002, Civil Appeal No.6574/2002, Civil Appeal No.6575/2002, Civil Appeal No.6528/2002, Civil Appeal No.6647/2002, Civil Appeal No.6485/2002, Civil Appeal No.7093/2002, Civil Appeal No.8090/2002, Civil Appeal No. _____ of 2005 (arising out of SLP(C)...../2003 CC 905), Civil Appeal No.1272/2003, Civil Appeal No.1475/2003, Civil Appeal No. 6167 of 2005 (arising out SLP(C) No.4852/2003), Civil Appeal No.4154/2003, Civil Appeal No.4636/2003, Civil Appeal No.5104/2003, Civil Appeal No.6322/2003, Civil Appeal No.4447/2003, Civil Appeal Nos.6654-6657/2003, Civil Appeal No.8636/2003, Civil Appeal No.185/2004, Civil Appeal No.189/2004, Civil Appeal No.6648/2002) S. N. VARIAVA, J.

Delay condoned.

Special leave granted in S. L. Ps.

1) In all these Appeals, the Respondents were daily wagers who were appointed as ledger clerks, ledger keepers, pump operators, mali-cum-chowkidar, fitters, petrol men, surveyors etc. All of them claimed the minimum wages payable under the pay-scale of regular Class IV employees from the date of their appointments. The question whether or not these persons were entitled to the minimum of the pay-scale of a regular Class IV employee was referred to a Full Bench for consideration. The Full Bench gave its decision. Following the Full Bench decision all these Writ Petitions have been disposed off with short Orders. In all these cases the Respondents have been directed to be given the minimum of the wages in the scale payable to a regular Class IV employee from the date of the filing of the respective Petition.

2) One other fact which must be mentioned is that, whilst these Appeals were pending before this Court, all the Respondents have been regularized. From the date of their regularization they being paid pay-scales as payable to a regular Class IV employee. The question therefore is only whether the directions of the High Court to pay the minimum wage in the scale payable to a Class IV employee, from the date of their filing the respective Petition, is required to be interfered with.

3) When these Appeals came up for hearing on 23rd August, 2004 this Court referred the matters to a larger Bench for consideration by passing the following Order:

"The respondents in all these appeals were initially appointed as Ledger-clerks, ledger keepers, pump operators, mali-cum-chowkidars, fitters, petrol man, surveyor, drivers etc. on daily wages or on contractual basis. They were all regularized with effect from October, 2003 and they have been getting the minimum payable under the regular pay scale of Class-IV employees from the date of their regularization. In the writ petitions filed by these respondents before the High Court of Punjab and Haryana at Chandigarh, the Division Bench directed that these respondents shall be paid the minimum salary and dearness allowances payable to their counter parts working on regular basis. The question for consideration before this Court, in the present set of cases, is that whether these respondents are entitled to get the minimum scale of pay from the date of their appointment as daily wagers/casual employees or they are entitled to get the minimum salary in the scale of pay from the date of their regularization.

Learned counsel for the State contended that they are entitled to get minimum of the scale of pay only from the date of regularization whereas the respondents contended that applying the principle of "equal pay for equal work" they are entitled to get the minimum of the pay scale from the date of their employment as casual employees or daily wagers. The respondents, in this connection, relied on the decision of this Court reported in AIR 1986 SC P. 584, Surinder Singh & Anr. vs. Engineer- in-Chief, C.P.W.D. & Ors. wherein the petitioners were appointed on daily wages in the Central Public Works Department were given salary and allowances which were payable to the regular employees from the date on which they were employed but in series of

other decisions rendered by this Court reported in 1996 (11) SCC p.77, State of Haryana & Ors. Vs. Jasmer Singh & Ors. in paras 9 and 10 it was held that the daily rated workmen who were to be paid minimum wages admissible to such workmen as prescribed and not in the pay scale applicable to similar employees working on regular service. Reliance was also placed on earlier decisions in Harbans Lal Vs. State of H.P. 1989 (4) SCC p.459. A similar view was taken by this Court in Orissa University of Agriculture & Technology & Anr. Vs. Manoj K. Mohanty, 2003 (5) SCC P.188 AND Ghaziabad Development Authority & Ors. Vs. Vikram Chaudhary & Ors., 1995 (5) SCC p.210 and also in State of Haryana & Anr. Vs. Tilar Raj & Ors., 2003 (6) SCC p.123.

It appears that there is a conflict of decision and earlier decision in Surinder Singh & Anr. Vs. Engineer-in- Chief, C.P.W.D. & Ors., [AIR 1986 SC 584] was not referred to in later decisions. Therefore, in our view, these cases have to be considered by a larger bench so that the conflict may be resolved. The registry is requested to place these matters before the Hon'ble Chief Justice of India for posting the same before a larger bench."

The matters are thus before this three Judge Bench.

4) In the case of Surinder Singh vs. Engineer-in-Chief, C.P.W.D., reported in (1986) 1 SCC 639 = AIR (1986) SC 4, a two Judge Bench of this Court held that the doctrine of "equal pay for equal work" is not an abstract doctrine which is not capable of being enforced in a court of law. This Court cited with approval the following observations made in the case of Dhirendra Chamoli vs. State of U.P., reported in (1986) 1 SCC 637:

"We therefore allow the writ petitions and make the rule absolute and direct the Central Government to accord to these persons who are employed by the Nehru Yuvak Kendras and who are concededly performing the same duties as Class IV employees, the same salary and conditions of service as are being received by Class IV employees, except regularization which cannot be done since there are no sanctioned posts. But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuvak Kendras, so that these persons can be regularized. It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organizations which have been in existence for over 12 years. The salary and allowances of Class IV employees shall be given to these persons employed in Nehru Yuvak Kendras with effect from the date when they were respectively employed.

Earlier the court also observed that it was a peculiar attitude to take on the part of the Central Government to say that they would pay only daily wages and not the same wages as other similarly employed employees, though all of them did identical work. The court said:

This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This article declares that there should be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for equal work of equal value It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees."

5) In Dhirendra Chamoli's case this Court then held that the Central Government like all organs of a State is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work. On this basis, this Court directed the Government to pay to the Petitioners therein and all other daily wagers the same salary and allowances as were paid to regular and permanent employees. To be immediately noted that in this case, there is no discussion as to whether or not the concerned employees were similarly situated with the regular employees and what was the nature of their work and the nature of work of a regular employee. The case appears to have proceeded on the footing that everything was identical and that the doctrine of equal pay for equal work applied. Counsel for the Respondents have also relied upon other Judgments of this Court. They are being dealt with later.

6) The question as to when such a doctrine can apply was considered by this Court in the case of State of Haryana vs. Jasmer Singh, reported in (1996) 11 SCC 77. In this case, it was held that the principle of equal pay for equal work is not easy to apply. It was held that there are inherent difficulties in comparing and evaluating the work of different persons in different organizations or even in the same organization. Earlier judgments directing payment on the basis of the doctrine of equal pay for equal work were taken note of. The Court recorded that a note of caution had been expressed in the case of State of U.P. v. J.P. Chaurasia [(1989) 1 SCC 121]. It was pointed out that the principle of "equal pay for equal work" has no mechanical application in every case of similar work. It was held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. It was held that these qualities or characteristics must have a reasonable relation to the object sought to be achieved. It was held that in service matters merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. It was held that a higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. It was held that even though persons may do the same work, their quality of work may differ. It was held that where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are

evaluated by competent authority cannot be challenged. Note was also taken of the case of Mewa Ram Kanojia v. All India Institute of Medical Sciences [(1989) 2 SCC 235] wherein it was held that a classification based on difference in educational qualifications justified a difference in pay scales. This Court further observed that the judgment of the Pay Commission in this regard relating to the nature of the job, in the absence of material to the contrary, should be accepted. The case of Harbans Lal v. State of H.P. [(1989) 4 SCC 459] was referred to with approval. In that case it was held that a mere nomenclature designating a person as a carpenter or a craftsman was not enough to come to the conclusion that he was doing the same work as another carpenter in regular service. In that case, carpenters employed by the Himachal Pradesh Handicraft Corporation on daily wages sought parity of wages with carpenters in regular service. This Court negatived this contention, holding that a comparison cannot be made with counterparts in other establishments with different management or even in the establishments in different locations though owned by the same management. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It was held that it must be left to be evaluated and determined by an expert body. In Jasmer Singhs' case this Court summed up as follows:

" the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted.

9. This court in the case of Harbans Lal v. State of H.P. [(1989) 4 SCC 459 : 1990 SCC (L&S) 71 : (1989) 11 ATC 869] further held that daily-rated workmen who were before the Court in that case were entitled to be paid minimum wages admissible to such workmen as prescribed and not the minimum in the pay scale applicable to similar employees in regular service - unless the employer had decided to make such minimum in the pay scale applicable to the daily-rated workmen. The same position is reiterated in the case of Ghaziabad Development Authority v. Vikram Chaudhary [(1995) 5 SCC 210 : 1995 SCC (L&S) 1226 : (1995) 31 ATC 129].

10. The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the

qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed."

7) In the case of State of Haryana vs. Tilak Raj, reported in (2003) 6 SCC 123, it has been held that the principle of equal pay for equal work is not always easy to apply. It has been held that there are inherent difficulties in comparing and evaluating the work of different persons in different organizations or even in the same organization. It has been held that this is a concept which requires, for its applicability, complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. It has been held that the problem about equal pay cannot be translated into a mathematical formula. It was further held as follows:

"11. A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one. "

8) In the case of Orissa University of Agriculture & Technology vs. Manoj K. Mohanty, reported in (2003) 5 SCC 188, this Court set aside the Order of the High Court granting equal pay for equal justice on the basis that the High Court, before issuing such directions, had not examined facts of the case in order to appreciate whether the Respondent therein satisfied the relevant requirements such as the nature of work done by him as compared to the nature of work done by a regularly employed person, the qualifications, the responsibilities, etc. It was noted that as the Respondent therein was only on a temporary basis and he had not undergone the process for regular recruitment and in such cases direction to give regular pay scale could not be given without examining the relevant factors. It was held that before giving such directions the Court must also keep in mind what to what would be its implications and impact on the other employees. It was held that in the absence of necessary averments and materials placed on record, there is no scope to give such a direction. It was held that the burden to prove that everything was equal is on the person claiming equal pay for equal work and in the absence of necessary averments and proofs a party would not be entitled to get such directions.

9) In the case of Government of West Bengal vs. Tarun K. Roy reported in (2004) 1 SCC 347, a three Judge Bench of this Court has also considered the doctrine of equal pay for equal work in the following terms:

"Equal Pay for Equal Work Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently. In State of Jammu & Kashmir v. Trilok Nath Khosa AIR 1974 SC 1 : 1974 (1) SCC 19 : 1974-I-LLJ-121, this Court held :

"Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification."

The Post of Operator-cum-Mechanic and Sub-Assistant Engineers are technical posts. As noticed hereinbefore, whereas for the posts of Operator-cum-Mechanic the qualification of school final examination and a certificate obtained from the Industrial Training institute would be sufficient; for the posts of Sub-Assistant Engineer the person must have a diploma from a polytechnic apart from being a matriculate.

It is also not in dispute that such qualification was prescribed as far back as in the year 1971 and the respondents herein were appointed thereafter.

The Court, in exercise of its power of judicial review cannot hold that matriculates with a certificate from ITIs or simply graduates in science would be entitled to hold the posts of Sub-Assistant Engineers. It is for the executive to lay down the qualification required for holding a post and not for the Courts.

In Debdas Kumar's case (supra) the issue which fell for determination by this Court was as to whether those Operators-cum-Mechanic who were diploma holders, having regard to the aforementioned notification dated November 19, 1974 were entitled to be designated as Sub-Assistant Engineers. This Court noticed that the Post of Sub-Assistant Engineer is direct recruitment post and not a promotional post and, thus, they are entitled to be designated as Sub-Assistant Engineers, particularly, when such a status had been conferred upon 17 persons similarly situated. This Court granted relief to Debdas Kumar's case (supra), only on the ground that they had been discriminated against.

Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equality Clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid

classification based on a reasonable differentia. Doctrine of 'equal pay for equal work', therefore is not attracted in the instant case.

There is nothing on record to show that the duties and functions of two categories of employment are at par, and, thus, parity in pay-scales is not permissible.

The very fact that from the very beginning two different pay scales were being maintained is itself suggestive of the fact that the duties and functions are also different. In fact it is not disputed that the two post of Sub-Assistant Engineer is a higher post.

In *Chairman-cum-Managing Director, National Textiles Corporation Ltd. v. N.T.C. (WBAB & O) Ltd. Employees Union* 2003-III-LLJ-1102, this Court, held at p. 1106 :

"9. In view of the fact that the nature of duties of the staff in the two categories has been found to be not at par, parity in pay scales may not be possible."

In *Orissa University of Agriculture & Technology v. Manoj K. Mohanty* 2003-II-LLJ-968 this Court noticed at p. 970 :

"10. It is clear from the averments made in the writ petition extracted above, nothing is stated as regards the nature of work, responsibilities attached to the respondent without comparing to the regularly recruited Junior Assistants. It cannot be disputed that there was neither necessary averments in the writ petition nor any material was placed before the High Court so as to consider the application of principle of 'equal pay for equal work'."

This Court further noticed at p. 971 of LLJ :

"11. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned single Judge was right when he stated in the order that in the absence of such material it was not possible to grant relief to the respondent."

12. Before giving such direction, the High Court also did not keep in mind as to what would be its implications and impact on the other employees working in the appellant- University. From the averments made in the writ petition extracted above, it is clear that no details were given and no material was placed before the High Court for comparison in order to apply the principle of 'equal pay for equal work'. The Court in *State of Haryana v. Jasmer Singh* AIR 1997 SC 1788 : 1996 (11) SCC 77 : 1997-II-LLJ-667 observed that the principle of 'equal pay for equal work' is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations or even in the same organization.

13. Yet, in another decision in *State Bank of India v. M. R. Ganesh Babu* 2002 (4) SCC 556 : 2002-II-LLJ-829, a Bench of three learned Judges of this Court, while dealing with the same principle, has expressed that :

'..... 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 made a difference. ...'

In Tarun Roy's case an argument that relief should be given as in an earlier matter objection was not taken was rejected in the following terms:

"In a case of this nature, the Courts are required to determine the issue having regard to larger public interest. It is one thing to say that in a given case the High Court or this Court may not exercise an equitable jurisdiction under Article 226 or Article 136 of the Constitution of India, but it is another thing to say that the Courts shall grant a relief to a party only on the ground that a contention which is otherwise valid would not be raised on the ground that the same was not done in an earlier proceedings. In the instant case, the appellant has explained under what circumstances the order of the learned single Judge of the Calcutta High Court had to be obeyed. If rule of law is to be followed, judicial discipline demands that the Court follows its earlier binding precedent. The Calcutta High Court itself has rejected such a plea. The matter is pending in appeal. An order passed to the contrary by another learned single Judge in ignorance of the earlier binding precedent by itself would not constitute a binding precedent and may be held to have been rendered per incuriam.

Furthermore, in the order dated October 1, 1991, the learned Judge categorically directed that the same would be subject to any order that may be passed in the appeal which is pending before the Division Bench from the judgment and order dated January 20, 1989 passed in *Nemai Chand Ghosh's* case (supra). The said order, therefore, did not attain finality.

In the aforementioned situation, the Division Bench of the Calcutta High Court manifestly erred in refusing to consider the contentions of the appellant on their own merit, particularly, when the question as regard difference in the grant of scale of pay on the ground of different educational qualification stands concluded by a judgment of this Court in *Debdas Kumar's* case (supra). If the judgment of *Debdas Kumar's* case (supra) is to be followed a finding of fact was required to be arrived at that they are similarly situated to the case of *Debdas Kumar* (supra) which in turn would mean that they are also holders of diploma in engineering. They admittedly, being not, the contention of the appellants could not be rejected, non- filing of an appeal, in any event, would not be a ground for refusing to consider a matter on its own merits *State of Maharashtra v. Digambar* 1995 (4) SCC 683.

In State of Bihar v. Ramdeo Yadav AIR 1996 SC 3135 :

1996 (3) SCC 493 wherein this Court noticed Debdas Kumar's case (supra) holding :

"Shri B. B. Singh the learned counsel for the appellants contended that though an appeal against the earlier Order of the High Court has not been filed, since larger public interest is involved in the interpretation given by the High Court following its earlier judgment, the matter requires consideration by this Court. We find force in this contention. In similar circumstances, this Court in State of Maharashtra v. Digambar 1995 (4) SCC 683 and in State of West Bengal v. Debdas Kumar 1991 Suppl (1) SCC 138 : 1995-III-LLJ (Suppl)-294, had held that though an appeal was not filed against an earlier order, when public interest is involved in interpretation of law, the Court is entitled to go into the question."

The three Judge Bench decision of this Court is binding on this Court. Even otherwise we are in full agreement with what has been stated therein.

10) In the case of State of Orissa vs Balaram Sahu & Ors., reported in (2003) 1 SCC 250, this Court has held that the applicability of the principle depends not only on the nature or volume of the work but also on the qualitative difference in reliability and responsibilities also. It is held that it is for the claimant of parity to substantiate a clear cut basis of equivalence and a resultant hostile discrimination. It is held that in the absence of requisite substantiating material the Court would be wrong to grant parity in pay merely on the presumption of equality of nature of work. It was held that such workers would be entitled to prescribed minimum wages.

11) Now we examine the authorities relied upon by counsel for various Respondents to see whether this Court has laid down anything contrary.

12) In the case of State of U.P. & Ors. vs Putti Lal, reported in (2003) 8 Scale 259, a three Judge Bench of this Court, of which one of us (Variava, J.) was a party directed the Government to pay the concerned daily rated workers the minimum of the pay scale payable to a regularly employed worker. However, this was pending a scheme for regularization. Thus, there was no direction to pay retrospectively. Further the order proceeds on the basis that everything was equal and that the principle applied. It was not argued before this court that the principle had no application.

13) In the case of State of Punjab vs Devinder Singh & Ors., reported in (1988) 9 SCC 595, it was noted that the concerned Ledger Clerks were found to have been given similar work as regular Ledger Clerks. This Court without any further discussion or consideration held that concerned Ledger Clerks would be entitled to the minimum of the pay scale of Ledger Clerks. It was directed that this be paid for a period of three years prior to the filing of the Writ Petition. It seems that attention of this Court was not brought to the earlier authorities, which lay down when the principle of equal pay for equal work can apply. Also we are unable to accept the finding that for similar work the principle of equal pay applies. Equal pay can only be given for equal work of equal value.

14) In the case of Sandeep Kumar & Ors. vs State of Uttar Pradesh & Ors., reported in (1993) Supp (1) SCC 525, regularisation was refused but equal pay was granted on the admitted position that the concerned workmen were doing the same work.

15) In the case of Bhagwan Dass & Ors. vs State of Haryana & Ors., reported in (1987) 4 SCC 634, this Court held that if the duties and functions of the temporary appointees and regular employees are similar there cannot be discrimination in pay merely on the ground of difference in modes of selection. It was held that the burden of proving similarity in the nature of work was on the aggrieved worker. We are unable to agree with the view that there cannot be discrimination in pay on the ground of differences in modes of selection. As has been correctly laid down in Jasmer Singh's case (supra) persons selected by a Selection Committee on the basis of merit with due regard to seniority can be granted a higher pay scale as they have been evaluated by competent authority and in such cases payment of a higher pay scale cannot be challenged. Jasmer Singh's case has been noted with approval in Tarun K. Roy's case.

16) In the case of State of Punjab vs Talwinder Singh & Ors., reported in (2003) 11 SCC 776, this Court granted equal pay following Devinder Singh's case (supra). Jasmer Singh's case was brought to the notice of the Court but it differentiated the case on the ground that in Jasmer Singh's case the Court had concluded that the daily wagers did not discharge the same duties. Thus, this case also proceeds on the basis that the work was identical.

17) Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It

cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regards. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof. If the High Court, is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.

18) As stated above in all these cases the High Court has followed a Full Bench decision of that Court. The Full Bench has also observed that the essential ingredient is similarity. This would be correct. However, at one stage the Full Bench observes that even if some dispute is raised. That would be wrong law. In each case the Court must satisfy itself that the burden of proving that the work and conditions are equal is discharged by the aggrieved employee.

19) We, therefore, set aside all the impugned Judgments and remit all these matters back to the High Court. The High Court shall now examine each case and see whether the necessary averments are there. It shall then consider all relevant facts, as enumerated above, and decide whether everything is identical and equal. If the High Court feels that there is a dispute which would necessitate extensive evidence it may direct that party to raise an appropriate dispute where such questions could be dealt with and which, in fact, would be the appropriate proceedings.

20) One other fact which must be noted is that Civil Appeals Nos. 6648 of 2002, 6647 of 2002, 6572 of 2002 and 6570 of 2002 do not deal with casual or daily rated workers. These are cases of persons employed on contract. To such persons the principles of equal pay for equal work has no application. The Full Bench Judgment dealt only with daily rated and casual workers. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service. In the case of State of Haryana vs Surinder Kumar & Ors., reported in (1997) 3 SCC 633, persons employed on contract basis claimed equal pay as regular workers on the footing that their posts were interchangeable. It was held that these persons had no right to the regular posts until they are duly selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging same duties. It was held that the very object of selection is to test eligibility and then to make appointment in accordance with rules. It was held that the Respondents had not been recruited in accordance with the rules prescribed for recruitment.

21) In the case of Union of India & Ors. vs K. V. Baby & Anr., reported in (1998) 9 SCC 252, the question was whether Commission Bearers/Vendors are entitled to the same salary as regular employees. It was held that their appointment and mode of selection, their qualifications cannot be compared with regular employees. It was held that by their very nature of employment they cannot be equated with regular employees. It was held that recruitment rules and service conditions do not

apply to such persons. It was held that their responsibilities cannot be equated with those of regular employees.

22) Thus it is clear that persons employed on contract cannot claim equal pay on basis on equal pay for equal work. Faced with this situation it was submitted that all these persons were in fact claiming that their respective appointments were regular appointments by the regular process of appointment but that instead of giving regular appointments they were appointed on contract with the intention of not paying them regular salary. It was admitted that the Petitions may be badly drafted and such a contention not put forth specifically. The High Court has disposed of these Petitions also on the footing that the principle of equal pay for equal work applied. We therefore set aside the impugned orders in these cases also and remit the matters back to the High Court for disposal. The High Court shall permit these Petitioners to amend their Petitions to make necessary averments and will also permit the Respondents in these cases to file replies to the amended Petitions.

23) With the above directions all these Appeals stand disposed off. All the matters are remitted back to the High Court. There will be no order as to costs.