Harbans Lal & Ors vs State Of Himachal Pradesh & Ors on 1 August, 1989

Equivalent citations: 1989 SCR (3) 662, 1989 SCC (4) 459, AIRONLINE 1989 SC 21, 1989 (4) SCC 459, 1990 SCC (L&S) 71, (1989) 2 LAB LN 966, (1989) 3 JT 296, 1990 UJ(SC) 1 13, (1989) 3 JT 296 (SC), 1990 UJ(SC) 13, (2006) 2 ALL RENTCAS 563, (2006) 3 ALL WC 2180, (2006) 63 ALL LR 704

Author: K.J. Shetty

Bench: K.J. Shetty, A.M. Ahmadi

PETITIONER:
HARBANS LAL & ORS.

Vs.

RESPONDENT:
STATE OF HIMACHAL PRADESH & ORS.

DATE OF JUDGMENT01/08/1989

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
AHMADI, A.M. (J)

CITATION:
1989 SCR (3) 662 1989 SCC (4) 459
JT 1989 (3) 296 1989 SCALE (2)200

ACT:
Constitution of India, 1950: Articles 32, 39(d)-- Equal pay for equal work--Carpenters in Wood Working Centre, Himachal Pradesh State Handicrafts Corporation--Whether entitled to claim wages payable to their counterparts in regular service.

HEADNOTE:
The petitioners employed as daily rated carpenters at the Wood Working Centre of the Himachal Pradesh State Handicrafts Corporation sought enforcement of their fundamental right to have "equal pay for equal work" in terms paid to their counterparts in regular services, or in the alternative, the minimum wages prescribed by the Deputy Commission-

er for like categories of workmen.

The petitioners' claim was resisted by the respondents. Their case was that the unit where the petitioners were working was a factory registered under the Factories Act , that they were treated as industrial workmen and given all benefits due to them under the various labour legislations, that the Government had not fixed the minimum wages payable to the workmen engaged in the Corporation or other like industries but the Corporation had adopted for its workmen the minimum wages payable for similar work in the construction industry, and that there were no regular employees of the petitioners' categories in its establishment and, as such, the question of payment to them the pay admissible to regular employees does not arise.

Dismissing the writ petition,

HELD: 1. Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work" cannot be enforced. A comparison cannot be made with counterparts in other establishments with different management, or even in establishments in different geographical location though owned by the same master. [668B]

In the instant case, the petitioners were employed by a company incorporated under the Companies Act. They cannot claim wages pay-

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able to their counterparts in government service. [668C]

Meva Ram Kanojia v. All India Institute of Medical Sciences & Anr., [1989] 2 SCC 235, referred to.

Randhir Singh v. Union of India, [1982] 1 SCC 618, explained.

2. The principle of 'equal pay for equal work' has no mechanical application in every case of similar work. No two jobs by the mere nomenclature or by the volume of work performed can be rated as equal. It is not just a comparison of physical activity. It requires the consideration of various dimensions of the job. The accuracy required by the job and the dexterity it entails may differ from job to job. It cannot be evaluated by the mere averments in the self-serving affidavits or counter-affidavits of the parties. It must be left to be evaluated and determined by expert body. [666D, 668D-E]

In the instant case, however, the Corporation had no regularly employed carpenters. Even assuming that the petitioners' jobs were comparable with the counterparts in Government service they could not enforce the right to equal pay for equal work. [667G, 668A]

State of U.P. v. J.P. Chaurasia, [1989] 1 SCC 121; Meva Ram Kanojia v. All India Institute of Medical Sciences & Anr., [1989] 2 SCC 235 and Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India, [1988] 3 SCC 91, referred to.

3. The order issued by the Deputy Commissioner on March

20, 1986 in exercise of his powers under the H.P. Financial Rules prescribing minimum wages was applicable only to skilled and unskilled workers in Class IV employees in Government service. The benefit of the rates prescribed under that order cannot be extended to the petitioners unless the Government makes it applicable to the employees of the Corporation. [668F-G]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 548 of 1987.

(Under Article 32 of the Constitution of India).

M.C. Dhingra for the Petitioners.

Kapil Sibal, K.G. Bhagat, A.K. Ganguli, Ms. Kamini Jaiswal, Ms. Aruna Mathur, A. Mariarputham, Harminder Lal and Naresh K. Sharma for the Respondents.

The Judgment of the Court was delivered by K. JAGANNATHA SHETTY, J. The petitioners are carpenters 1st and 2nd grade employed at the Wood Working Centre of the Himachal Pradesh State Handicrafts Corporation (the "Corpo- ration"). They are termed as daily rated employees. In this petition under Article 32 of the Constitution, they are seeking enforcement of their fundamental right to have "equal pay for equal work". They demand payment in terms paid to their counterparts in regular services. They want the same pay of the regular employees as carpenters or in the alternative, the minimum wages prescribed by the Deputy Commissioner for like categories of workmen. They also seek regularisation of their services with the benefits of pen- sion, gratuity etc. The Corporation has resisted the petitioners' claim. The case of the Corporation is that the unit where the petition- ers are working is a factory registered under the Factories Act. The petitioners are treated as industrial workmen and .are given all benefits due to them under the various labour legislations. The Government has not fixed the mini- mum wages payable to the petitioners engaged in the Corpora- tion or other like industries, but the Corporation has adopted the minimum wages payable for similar work in the construction industry. They are being paid the same wages as are payable to carpenters, painters and carpenters' helpers engaged in the construction industry. They are given bonus under the Bonus Act and provident fund benefits under the Employees' Provident Fund Act. It is also stated that the petitioners are supplied with the necessary tools for carry- ing out their work and also working uniforms like aprons and overalls.

The Corporation has clearly stated that there are no regular employees of the petitioners' categories in its establishment and, as such, the question of payment to the petitioners, the pay admissible to regular employees does not arise.

A little more information about the purpose and object of the Corporation would be useful for proper understanding of the case. The Corporation is a company which has been incorporated under

the Companies Act, 1956. The main object of the Corporation as seen from the Memorandum of Associa- tion is to preserve the traditional arts and crafts and also to popularise handicrafts and handloom items in the State of Himachal Pradesh and other parts of the country and abroad. In order to achieve this primary objec- tive, the Corporation gives training to artisans, weavers and craftsmen in various traditional arts and crafts. During the period of training, the trainees are paid a stipend by the Corporation. Upto 31st March, 1987, the Corporation has imparted training to as many as 1662 persons in different areas like carpet weaving, handloom weaving, painting, metal crafts, wood carving, etc. Apart from giving training, the Corporation also ensures marketing support to the artisans and craftsmen by purchasing their products at remunerative prices and sell them through the marketing network of the Corporation. It is thus a service oriented organisation helping the village artisans and craftsmen to produce and market their products on remunerative prices. It is said that the village artisans and craftsmen make different items on a piece rate basis and in some cases, they execute the work in their own homes.

The financial aspect of the Corporation is stated to be not encouraging, and indeed, it is disappointing. It has suffered huge loss and the total losses accumulated hitherto is Rs.69.77 lakhs. Nonetheless, for the purpose of preserv- ing and promoting traditional arts and crafts, the Corporation has been kept alive. But to avoid or minimise further loss, it is stated that the Corporation has reduced its overheads and maintained only the administrative staff in the production centers at different parts of the State and no permanent craftsmen are employed.

With these facts, we may now turn to the principle upon which the petitioners' case is rested. The principle of "equal pay for equal work" is not one of the fundamental rights expressly guaranteed by our Constitution. The princi- ple was incorporated only under Article 39(d) of the Consti- tution as a Directive Principle of State Policy. Perhaps, for the first time, this Court in Randhir Singh v. Union of India, [1982] 1 SCC 618 has innovated that it is a constitu- tional goal capable of being achieved through constitutional remedies. There the Court pointed out that that principle has to be read into Article 14 of the Constitution which enjoins the State not to deny any person equality before the law or the equal protection of the law and also to Article 16 which declares that there should be equality of opportu- nity for all citizens in matters relating to employment or appointment to any office under the State. Randhir Singh case was concerned with a driver-constable in the Delhi Police Force under the Delhi Administration. He claimed equal salary for equal work at that of other drivers. The Court found that the petitioner therein performed the same func-

tions and duties as other drivers in the service of Delhi Administration. The Court, therefore, directed the Central Government to fix the pay scale of the petitioner on par with his counterparts doing identical work under the same employer.

In the immediate aftermath of the decision in Randhir Singh case, there were bumper cases filed in this Court for enforcement of the right to "equal pay for equal work", perhaps little realising the in-built restrictions in that principle. It may not be necessary here to refer to all those decisions since almost all of them have been consid- ered and explained in the recent two decisions to which one of us was a party (K. Jagannatha Shetty, J.). Reference may be made to: (i) State of U.P. v. J.P. Chaurasia, [1989] 1 SCC 121 and (ii) Meva Ram Kanojia v. All India Institute of Medical Sciences

and Anr., [1989] 2 SCC 235. In Chaurasia case the question arose whether it was permissible to have two different pay scales in the same cadre of Bench Secre- taries of the Allahabad High Court who were for all practi- cal purposes performing similar duties and having same responsibilities. The Court held that the principle of "equal pay for equal work" has no mechanical application in every case of similar work. Article 14 permits reasonable classification rounded on rational basis. It is, therefore, not impermissible to provide two different pay scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority. It was pointed out that in service, merit or experience could be the proper basis for classification to promote efficiency in administration and he or she learns also by experience as much as by other means. Apart from that, the Court has expressly observed that the higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues may also be allowed.

Meva Ram Kanojia is the most recent decision which has exhaustively dealt with all the principles bearing on the question of equal pay for equal work in the light of all the previous decisions of this Court. There the petitioner was a "Hearing Therapist" in the All India Institute of Medical Sciences. He claimed pay scale admissible to "Senior Speech Pathologist", "Senior Physiotherapist", "Senior Occupational Therapist", "Audiologist", and "Speech Pathologist". His case was based on the allegations that he was discharging same duties and performing similar functions as "Senior Speech Therapist", "Senior Physiotherapist", "Senior Occupa- tional Therapist", "Audiologist" and "Speech Pathologist". But the Court held that the principle of equal pay for equal work cannot be invoked invariably in every kind of service particularly in the area of professional services. It was also held that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scales.

Reference may also be made to the decision in Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India, [1988] 3 SCC 91. There the Personal Assistants and Stenographers attached to the Heads of Department in Customs and Central Excise Department of the Ministry of Finance made a claim for parity of wages with the Personal Assistants and Stenographers attached to Joint Secretaries and Officers above them in Ministry of Finance. The Court while rejecting the claim expressed the view (at 100):

> "But equal pay must depend upon the nature of the work done, it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of dif- ferentiation, such differentiation will not amount to discrimination. It is important to emphasize that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right."

Thus the law relating to equal pay for equal work has been practically hammered out and very little remains for further innovation.

In the light of the aforesaid principles, we may now consider whether the equality claims of the petitioners could be allowed. We have carefully perused the material on record and gave our anxious consideration to the question urged. From the averments in the pleadings of the parties it will be clear that the Corporation has no regularly employed carpenters. Evidently the petitioners are claiming wages payable to the carpenters in Government service. We do not think that we could accept their claim. In the first place, even assum- ing that the petitioners' jobs are comparable with the counterparts in the government service, the petitioners cannot enforce the right to "equal pay for equal work". The discrimination complained of must be within the same estab- lishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management, or even in establishments in different geographical locations though owned by the same master. Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work"

> cannot be enforced. This was also the view expressed in Meva Ram Kanojia v. A.I.I.M.S., [1989] 2 SCC 235 at 245. In the instant case, the petitioners are employed by a company incorporated under the Companies Act. They cannot claim wages payable to their counterparts in government service. Secondly, it may be noted that the petitioners are carpenters; better called as craftsmen. By the general description of their job, one cannot come to the conclusion that every carpenter or craftsmen is equal to the other in the performance of his work. The two jobs by the mere nomen- clature or by the volume of work performed cannot be rated as equal. It is not just a comparison of physical activity. It requires the consideration of various dimensions of the job. The accuracy required by the job and the dexterity it entails may differ from job to job. It cannot be evaluated by the mere averments in the self serving affidavits or counter-affidavits of the parties. It must be left to be evaluated and determined by expert body. The principal claim of the petitioners therefore fails and is rejected. The next contention that the petitioners should be paid at least the minimum wages prescribed by the Deputy Commis- sioner under Exhibit P. 2 dated March 20, 1986 cannot also be accepted. Ex. P. 2 was issued by the Deputy Commissioner in the exercise of his powers under the H.P. Financial Rules. It is applicable only to skilled and unskilled work- ers in class IV employees in Government service. It has not been extended to employees of the Corporation. The petition- ers have been treated as construction workers and they are being paid the minimum wages admissible to such workmen. The Court, therefore, cannot direct the Corporation to apply the rates prescribed under Ex. P. 2 unless the Government makes it applicable to employees of the Corporation. As to the claim for regularisation of services of the peti- tioners, we express no opinion, since the factual data is disputed and is insufficient. We leave the petitioners to work out their rights elsewhere in accordance with law applicable to them.

In the result, the petition fails and is dismissed. In the circumstances of the case, we make no order as to costs.

P.S.S. Petition dismissed.