

Suresh Chandra Sharma vs U.P. State Sugar Corporation And Others on 9 August, 2018

Author: Sudhir Agarwal

Bench: Sudhir Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 34

Case :- WRIT - A No. - 6305 of 2000

Petitioner :- Suresh Chandra Sharma

Respondent :- U.P. State Sugar Corporation And Others

Counsel for Petitioner :- Vikram Nath, Jitendra Kumar, Prasoon Tomar

Counsel for Respondent :- R.K. Srivastava, S.C., S.C. Srivastava

Hon'ble Sudhir Agarwal, J.

1. Heard Sri Jitendra Kumar, learned counsel for petitioner and Sri V.K. Singh Somvanshi, Advocate holding brief of Sri R.K. Srivastava, learned counsel for respondents.

2. Claim of petitioner is that working as Assistant Law Officer in the field he is entitled for the same salary and pay scale as applicable to Assistant Law Officers working in Headquarter on the principle of equal pay for equal work. Reliance is placed on Labour Court's award dated 30.04.1993 passed in Misc. Case No. 41 of 1991 and this Court's decision in Civil Misc. Writ Petition No. 36389 of 1995 (Raj Deo Verma vs. The U.P. State Sugar Corporation Limited and another), decided on 17.02.2003.

3. However, I find that so far as award of Labour Court is concerned, it is on an application under Section 33-C(2) of Industrial Disputes Act, 1947 (hereinafter referred to as "Act, 1947") and there is no adjudication of question, whether persons working as Assistant Law Officers in field offices are discharging same duties and entitled for pay scale as applicable to Assistant Law Officers working in Headquarter. In the judgment passed by this Court in Raj Deo Verma (supra) also I do not find that this question has been adjudicated but following aforesaid judgment of Labour Court order has been passed directing to pay difference of salary.

4. In the present case relief sought by petitioner read as under:

"(a) a suitable writ, order or direction be issued in the nature of mandamus commanding the respondents to place the petitioner in the pay scale as determined by the Labour Court vide award dated 30.04.1993.

(b) a suitable writ, order or direction be issued in the nature of mandamus commanding of the respondents to pay the balance amount of the award dated 30.04.1993 of the Labour Court.

(c) a suitable writ order or direction be issued in the nature of mandamus commanding the respondents to pay the difference in wages from the period beyond December 1990 till date.

(d) and any other or further relief which the Court may deem fit and proper in the interest of justice be awarded in favour of the petitioner.

(e) costs may be awarded to the petitioner.

(f) issue a suitable writ, order or direction in the nature of mandamus commanding the respondents corporation to revise all retiral dues including pension of the petitioner and make payment of the same day with arrear @ 18% interest forthwith."

5. Award of Labour Court dated 30.04.1992 in exercise of power under Section 33(c)(2) is in the nature of execution hence cannot be taken as an adjudication on the question that principle of equal pay for equal work whether attracted in the case in hand or not. In absence of any adjudication on the question whether principle of equal pay for equal work would apply in respect of Assistant Law Officers working in field vis-a-vis Assistant Law officers working in Headquarter, the question has to be examined independently.

6. Learned counsel for petitioner could not dispute that an Assistant Law Officer working in the field basically assist field officers in the matter of local individual problems, departmental inquiries etc. while those working in Headquarter are concerned with entire centralised work at corporate level which includes policy matters, legal issues of general application to different field units and functioning of corporation as a whole. Level of nature of dispute, nature of legal assistance, nature of legal expertise, degree of responsibility, degree of secrecy, element of value judgment, level of

quality of work etc., all are different at the two levels. Mere fact that persons posted at two different posts possess similar qualification or nature of their work, i.e., rendering legal advice is same, by itself is not sufficient to attract doctrine of equal pay for equal work. The Judges discharging duties in District Courts, High Courts and Supreme Court, though basically do the same thing, i.e., adjudication of dispute but in various ways they are different and for the purpose of application of salary or pay they cannot be equated. Similarly, Assistant Law Officers working in field and/or Headquarter cannot be equated for their level of responsibility, duties etc are different. Doctrine of equal pay for equal work is not an abstract doctrine but it has to be applied only when all relevant factors and considerations in comparative posts are same.

7. In *Randhir Singh v. Union of India and Ors.*, (1982) 1 SCC 618, Apex Court considering principle of equal pay for equal work held that it is not an abstract doctrine but one of substance. Construing Articles 14 and 16 in the light of Preamble and Article 39(d) of the Constitution, Apex Court held that principle of equal pay for equal work is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer. However it was also held -

"It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional, avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of 'equal pay for equal work' would be an abstract doctrine not attracting Article 14 if sought to be applied to them..."

8. In *R.D. Gupta and Ors. v. Lt. Governor, Delhi Administration and Ors.* (1987) 3 SCC 505, the Apex Court applying principle of equal pay for equal work, in para 20 of the judgment, considered correctness of defence taken by employer justifying non application of said principle, and held -

"the ministerial staff in the NDMC constitute a unified cadre. The recruitment policy for the selection of the ministerial staff is a common one and the recruitment is also done by a common agency. They are governed by a common seniority list. The ministerial posts in the three wings of the BDNC viz, the general wing, the electricity wing and the waterworks wing are interchangeable posts and the postings are made from the common pool according to administrative convenience and exigencies of service and not on the basis of any distinct policy or special qualifications. Therefore, it would be futile to say that merely because a member of the ministerial staff had been given a posting in the electricity wing, either due to force of circumstances or due to voluntary preferment, he stands on a better or higher footing or in a more advantageous position than his counterparts in the general wing. It is not the cast of the respondents that the ministerial staff in the electricity wing perform more onerous or more exacting duties than the ministerial staff in the general wing. It therefore follows that all sections of the ministerial staff should be treated alike and

all of them held entitled to the same scales of pay for the work of equal nature done by them." (para 20) (emphasis added)

9. In Federation of All India Customs and Central excise Stenographers and Ors. v. Union of India and Ors., (1988) 3 SCC 91, it was held :

"there may be qualitative difference as regards reliability and responsibility justifying different pay scale. 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 bonafide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination" (Para 7)

10. It was further observed that-

"the same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less, it varies from nature and culture of employment," (para 11)

11. In Jaipal and Ors. v. State of Haryana and Ors., (1988) 3 SCC 354, the Apex Court held :

"The doctrine of equal work equal pay would apply on the premise of similar work, but it does not mean that there should be complete identity in all respects. If the two classes of persons do same work under the same employer, with similar responsibility, under similar working conditions the doctrine of 'equal work equal pay' would apply and it would not be open to the State to discriminate one class with the other in paying salary. The State is under a constitutional obligation to ensure that equal pay is paid for equal work." (para 6)

12. In State of U.P. and Ors. v. J.P. Chaurasia and Ors. (1989) 1 SCC 121, the Apex Court while considering justification of two pay scales of Bench Secretaries of the High Court, observed :

"Entitlement to the pay scale similar would not depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of Interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or

Committee, the court should normally accept it. The Court should not try to linker with such equivalence unless it is shown that it was made with extraneous consideration" (para 18)

13. In *Grih Kalyan Kendra Workers' Union v. Union of India and Ors.* JT 1991 (1) SC 60, it was observed :

"the question of parity in pay scale cannot be determined by applying mathematical formula. It depends upon several factors namely nature of work, performance of duties, qualifications, the quality of work performed by them. It is also permissible to have classification in services based on hierarchy of posts, pay scale, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the object sought to be achieved." (para 7)

14. In *The Secretary, Finance Department and Ors. v. West Bengal Registration Service Association and Ors.* JT 1992 (2) SC 27, the Apex Court observed :

"job valuation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. The factors which may have to be kept in view for job evaluation may include (1) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested In him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to coordinate with other departments etc. It was further observed that normally a pay structure is evolved keeping in mind several factors e.g., ((i) method of recruitment, (ii) level at which recruitment is made, (in) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer 's capacity to pay. Etc. (para 12)

15. In *Jaghnath v. Union of India and Anr.*, AIR 1992 SC 126, the Court, following its earlier judgments observed:

"classification of officers into two grades with different, scales of pay based either on academic qualification or experience, or length of service is sustainable. Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There is selection grade for District Judges. There is senior time scute in Indian Administrative Service. There is supertime scale in other like services. The entitlement to these higher pay scales

depends upon seniority-cum-merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the Interest of the service itself." (para 7)

16. In Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, AIR 1992 SC 1203 the Court held that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. It does not mean that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake, sometimes on account of want of relevant data and scales for evaluating performance of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. Some of the factors which have to be kept in view for job evaluation may include (i) the work programme of his department, (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions, (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties, (v) the extent of powers vested in him, (vi) the extent of his dependence on superiors for the exercise of his powers,, (vii) the need to coordinate with other departments, etc.

17. The Court further says that a pay structure is evolved normally keeping in mind several factors, like, (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. The list is not exhaustive but illustrative.

18. In State of Madhya Pradesh and Anr. v. Pramod Bhartiya and Ors. (1993) 1 SCC 539, the Court held as under-

"It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukharji, J. (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may vary from post to post. It may vary from institution to institution We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The respondents (original petitioners) have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that the distinction between their scale of pay and that of non technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is

vitiated by mala fides, either in law or in fact (see the approach adopted in Federation case). It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14. the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the original petitioners (respondents herein) have failed to discharge." (para 13)

19. In *Shyam Babu Verma and Ors. v. Union of India and Ors.* (1994) 2 SCC 521, the Court observed :

"the principle of equal pay for equal work should not be applied in a mechanical or casual manner. Inequality of the men in different groups excludes applicability of the principle of equal pay for equal work to them. Unless it is established that there is no reasonable basis to treat them separately in matters of payment of wages or salary, the Court should not interfere holding different pay scale as discriminatory"(para 9)

20. In *Sher Singh and Ors. v. Union of India and Ors.* (1995) 6 SCC 515, the Court rejected the claim of Library staff of Delhi University and its constituent colleges regarding parity in pay with the teaching staff on the ground that the nature of duties, work load, experience and responsibilities of the two sets of employees in question are totally different from each other.

21. In *Union of India and Ors. v. Delhi Judicial Service Assn. and Anr.* JT 1995 (2) SC 578, the Court, reversing the judgment of High Court which allowed same scale of pay to all officers of Higher Judicial Services, held :

"We think that the high Court was not right in giving selection grade scale of pay to all the officers on the principle of equal pay for equal work. If that be so the Dist. Munsif (Junior civil Judge, Junior subordinate Judge) etc. lowest officer in judicial hierarchy is entitled to the pay of the Senior most super-time scale district Judge as all of them are discharging judicial duty. The marginal difference principle also is equally inappropriate. Similarly of posts or scale of pay in different services are not relevant. The nature of the duty, nature of the responsibility and degree of accountability etc. are relevant and germane considerations. Grant of selection grade, supertime scale etc. would be akin to a promotion. The result of the impugned direction would wipe out the distinction between the time scale and selection grade officers. The learned Counsel for the Union of India, pursuant to our order, has placed before us the service conditions prevailing in the Higher Judicial Services in other States in the country. Except Gujarat which had wiped out the distinction after the judgment in all India Judges Association's case, all other States maintained the distinction between the Grade I and Grade II Higher Judicial offices or Time scale and Selection Grade or Supertime scales etc. In fact this distinction is absolutely necessary to inculcate hard work, to maintain character, to improve efficiency, to encourage honesty and integrity among the officers and accountability. Such distinctions would not only be necessary in the Higher Judicial Service but also,

indeed in all services under the State and at every stage." (para 5)

22. In *Sita Devi and Ors. v. State of Haryana and Ors.* JT 1996 (7 SC 438, the Court upheld different pay scales on the basis of qualification, relying on its earlier judgments in *The State of Mysore and Anr. v. P. Narasinga Rao*, AIR 1968 SC 349; *State of Jammu and Kashmir v. Triloki Nath Khosa*, AIR 1974 SC 1 and *P. Murugesan and Ors. v. State of Tamil Nadu*, 1993 (2) SCC 340.

23. In *State of Haryana v. Jasmer Singh and Ors.* AIR 1997 SC 1788:1997 (1) AWC2.145 (SC)(NOC), the Court justified different pay scales, on various factors, observing as under:

"It is therefore, clear that 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." (para 8)

24. In *Garhwal Jal Sansthan Karmachari Union and Anr. v. State of U.P. and Ors.* (1997) SCC 24, the Court, in para 8 of the Judgment, rejected the claim of pay parity, between employees of Jal Nigam and Jal Sansthan, on the ground of qualitative difference in the duties, function and responsibilities in the two organizations.

25. Considering difference in mode of recruitment and different service rules, in *State of Rajasthan v. Kunji Raman*, AIR 1997 SC 693, the Court upheld different pay scale for work charged employees and those employed in regular establishment.

26. In *Union of India and Ors. v. Pradip Kumar Dey* (2000) 8 SCC 580 : 2001 (1) AWC 176(SC), question of parity of pay scale of Naik, Radio Operator in CRPF and employees working as Radio Operator in Directorate of Coordination Police Wireless came up for consideration on the principle of equal pay for equal work and the Court negated parity, observing that different pay scale prescribed taking into account hierarchy in service and other relevant factors, cannot be interfered, as it would disturb entire chain of hierarchy.

27. In *State of Orissa and Ors. v. Balaram Sahu and Ors.* (2003) 1 SCC 250 : 2003 (1) AWC 273 (SC), Court observed as under:

"Though "equal pay for equal work" is considered to be a concomitant of Article 14 as much as "equal pay for unequal work" will also be a negation of that right, equal pay

would depend upon not only the nature or the volume of work, tint also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference." (para 11)

28. In *State of Haryana and Anr. v. Haryana Civil Secretariat Personal Staff Association*, (2002) 6 SCC 72 : 2002 (3) AWC 2477 (SC), it was held in para 10 -

"It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge, While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not Justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter..." (Para 10)

29. In *State Bank of India and Anr. v. M.R. Ganesh Babu and Ors.* (2002) 4 SCC 556, the Court observed in para 16-

"The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount

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

30. The difference in pay scale and wages for work charge employees and those engaged in regular establishment has been upheld in *State of Punjab and others Vs. Gurdeep Kumar Uppal and others*, AIR 2001 SC 2691, *State of Punjab and others Vs. Ishar Singh and others*, AIR 2002 SC 2422 and *Punjab State Electricity Board and others Vs. Jagjiwan Ram and others*, JT 2009 (3) SC 400.

31. In *Deb Narayan Shyam and others Vs. State of West Bengal and others*, 2005(2) SCC 286, the Court summarized as to when doctrine of equal pay for equal work would apply in the light of exposition of law laid down in catena of its earlier decisions and said:

"Large number of decisions have been cited before us with regard to the principle of 'equal pay for equal work' by both sides. We need not deal with the said decisions to overburden this judgment. Suffice it to say that the principle is settled that if the two categories of posts perform the same duties and function and carry the same qualification, then there should not be any distinction in pay scale between the two categories of posts similarly situated. But when they are different and perform different duties and qualifications for recruitment being different, then they cannot be said to be equated so as to qualify for equal pay for equal work."

32. The above dictum has been followed in *Union of India and Another Vs. Mahajabeen Akhtar*, AIR 2008 SC 435.

33. In *Haryana State Electricity Board and another Vs. Gulshan Lal and others*, JT 2009(9) SC 95 the Court observed that same or similar nature of work, by itself, does not entitle an employee to invoke doctrine of equal pay for equal work. Qualification, experience and other factors would be relevant for the said purpose.

34. A three Judge Bench of Apex Court in *State of Haryana and others Vs. Charanjit Singh and others*, AIR 2006 SC 161 said that 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 and 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 a person has not gone through the process of recruitment 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 justify a difference in pay scales. The earlier nomenclature designating a person as a carpenter or a craftsman is not enough to come to the conclusion that he was doing the same work as another carpenter or craftsmen 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 mere volume of work. There may be qualitative difference as regards reliability and responsibility.

35. The above view has been followed in *Union of India and others Vs. Dineshan K. K.*, AIR 2008 SC 1026, *Haryana State Minor Irrigation Tubewells Corporation and others Vs. G.S. Uppal and others*, AIR 2008 SC 2152 and *Food Corporation of India and others Vs. Ashish Kumar Ganguli and others*, 2009(8) SCALE 218.

36. Recently in *State of Punjab and another Vs. Surjit Singh and others*, 2009(11) SCALE 149, after referring to its earlier judgments, the Court has summarized dictum, in the following manner:

"In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the government instead of the court itself granting higher pay)."

37. It further says that grant of benefit of doctrine of "equal pay for equal work" depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity. The Apex Court in *Surjit Singh* (supra) also stressed upon that the principle has undergone a sea change and the matter should be examined strictly on the basis of the pleadings and proof available before the Court to find out whether the distinction between two based on any relevant factor or not. The onus to prove lie on the person who alleges discrimination and claims enforcement of the doctrine of equal pay for equal work.

38. In *State of Madhya Pradesh and others Vs. Ramesh Chandra Bajpai*, 2009(11) SCALE 619 the Court said that it is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in designation or nature or equation of work is not determinative for equality in the matter of pay scales. The Court has to consider the factors like

the source and mode of recruitment/appointment, qualifications, nature of work, the value thereof, responsibility, reliability, experience, confidentiality, functional need, etc. In other words the equality clause can be invoked in the matter of pay scale only when there is a whole sale identity between the two posts.

39. In *State of Punjab Vs. Surjit Singh* (2009) 9 SCC 514, the Court said that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those, who are left out, of course, 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. A mere nomenclature designating a person 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 make a difference. A party who claims equal pay for equal work has to make necessary averments and prove that all things are equal.

40. In *State of Madhya Pradesh and Ors. Vs. Ramesh Chandra Bajpai*, 2009(13) SCC 635, the Court said that doctrine of equal pay for equal work can be invoked only when the employees are similarly situated and that similarity of the designation or nature or quantum of work is not determinative of equality in the matter of pay scales and that the Court has to consider several factors and only when there was wholesale identity between the holders of two posts, equality clause can be invoked and not otherwise.

41. In *A.K.Behra Vs. Union of India & Anr.*, JT 2010 (5) SC 290, the Court, in paras 84 and 85, said:

"84. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed.

85. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive."

42. In *State of Rajasthan & Ors. Vs. Daya Lal & Ors.*, 2011 (2) SCC 429, the Court culled down following principles:

"Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for

equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

43. This decision has been followed in *Union Territory Administration, Chandigarh and Ors. v. Mrs. Manju Mathur and Anr.*, JT 2011 (3) SC 179.

44. In *Hukam Chand Gupta vs. Director General, I.C.A.R. and Ors.* AIR 2013 SC 547, the Court observed that in order to attract doctrine of "equal pay for equal work", assessment of the nature and quality of duties performed and responsibilities shouldered by the incumbents is necessary. Even if, the two persons are working on two posts having same nomenclature, it would not lead to the necessary inference that the posts are identical in every manner.

45. When the question of parity in work, performance and responsibility of Assistant Law Officers in field vis-a-vis Headquarter are seen in the light of above exposition of law, atleast I have no hesitation in holding that there cannot be any parity in the matter of pay scale as the two posts cannot be equated and atleast nothing has been brought on record to show that the same are similar in all respect.

46. In view of above, relief prayed by petitioner based on principle of equal pay for equal work to claim parity in the matter of pay scale with Assistant Law Officers working in Headquarter cannot be granted.

47. In the result, the writ petition lacks merit. Dismissed. Interim order, if any, stands vacated.

Order Date :- 09.08.2018 AK