

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.234 OF 2005.

Mr. Dilip Gulelkar, Warden (Jail
Guard), Sub Jail Sada Vasco da Gama,
Goa ...Petitioner.

1. State of Goa through its Chief
Secretary having his Office at
Secretariat, Panaji, Goa
2. The Inspector General of Prisons/
Collector (North Goa), Having his
Office at Collectorate, North Goa,
Panjim, Goa ...Respondents.

Mr A. D. Bhobe and Ms S. Shaikh, Advocate for the petitioner.
Mr. D. Shirodkar, Addl. Govt. Advocate for the Respondents.

WITH

WRIT PETITION NO.246 OF 2005

1. Shri Shamsundar U. Kaskar;
2. Shri Gaude Somnath Keshav;
3. Shri Prakash Vithal Gurav;
4. Shri Nilesh S. Chari;
5. Shri Jayesh V. Gaonkar;
6. Shri Khaja Noroddin A. Kader;
7. Shri Sandesh S. Naik;
8. Shri Vijay S. Naik;
9. Shri Krishna Mandrekar;
10. Shri Vishwanath Kurtikar;

11. Shri Vilas Kanelkar;
12. Shri Rakesh S. Baneskar,
All Jail Guards in the Office of the
Inspector General of Prisons,
Government of Goa, Panaji, Goa
(presently posted at Sub-Jail Sada,
Vasco-da Gama-Goa).
..... Petitioners.

Versus

1. State of Goa, through its) Chief
Secretary, having Office at Secretariat,
Porvorim, Bardez-Goa.
2. The Inspector General of Prisons,
Government of Goa, Panaji-Goa. Respondents.

Mr J. Supekar and Mr R. D'Souza, Advocate for the petitioners.

Mr. M. Salkar, Govt. Advocate for the Respondents.

WITH
WRIT PETITION NO.604 OF 2006.

Shri Anil Ramchandra Arlekar, r/o
'SAI' H. No.179/2, Vidhya Nagar,
Porvorim-Goa. ...Petitioner.

1. State of Goa through its Chief
Secretary, Secretariat, Porvorim
Goa.
2. The Inspector General of Prisons/
Collector (North Goa), having his
Office at Collectorate, North Goa,
Panjim, Goa ...Respondents.

Mr J. Supekar and Mr R. D'Souza, Advocate for the petitioners.
Mr. M. Salkar, Govt. Advocate for the Respondents.

**CORAM: BHARAT P. DESHPANDE, &
VALMIKI MENEZES, JJ.**

**Reserved on : 19th April 2024
Pronounced on: 26th April 2024.**

JUDGMENT : (Per BHARAT P. DESHPANDE,J)

1. Heard Mr Supekar, and Mr A. Bhobe learned counsel for the petitioners, Mr Salkar, learned Government Advocate and Mr Shirodkar, learned Addl. Govt. Advocate for the respondents.
2. All these petitions involve issue regarding pay parity to the jail guard, and thus, are taken for final disposal together. Rule was issued in these matters. Affidavit in reply have been filed from time to time. Even at the intervention of this Court representations were filed before the Government and final decision of the Government is placed on record with an additional affidavit. Additional affidavit filed by respondent no.1 on 2.1.2024 reads thus:-

“1. I, Shri Vivek K. Naik, the Under Secretary (Home-I), Department of Home(General), Government of Goa, Respondent No.2 herein, do hereby state and submit on solemn affirmation in reply to the Petition as under:

- 1. I say that the pay scales may be granted to the Petitioners and the other Jail Staff with notional benefits from 22/01/2016 and actual monetary benefits being granted from 21/06/2023.*
- 2. I say that the Petitioners who have retired shall also get benefit of the grant of pay scale.*
- 3. I say that the Government will ensure to grant the parity in pay in a time bound manner. However, as the process requires concurrence of other Government departments viz Administrative Reforms, Personnel Department and Finance Department, it will take minimum 06 months to complete the entire process.*
- 4. I say that whatever stated herein above is true to the best of my knowledge and is based on records to which I have access and nothing here in is false.*
- 5. Solemnly affirmed at Panaji, Goa , on this 2nd day of January, 2024.”*

3. Though this decision was taken by the Government, same is not acceptable to the petitioners, who claim that they have retired long back and that such decision will not be of any help finally or otherwise to them.

4. Thus matters were taken up for final disposal. The petitioner in Writ Petition No. 234 of 2005 claim that he was appointed as jail guard and though he is doing the same work as that of police constable, he has been denied pay parity. It is basic contention of the petitioner that till third pay commission, pay of the jail guard and

that of constable in the police department was equal. However, subsequently, there was disparity as a jail guard were discriminated, though having qualification of SSCE as compare to police constable. Discrepancy in the pay arose at the time of implementation of IIInd pay commission when the police constable with SSCE started drawing pay scale 950-1500 where as non SSCE police constable began drawing salary of pay scale of 925-1200. However, jail guards were put on only one category irrespective of their qualification on the pay scale of Rs.800- Rs.1150/- . It is contention of the petitioner that duty of the jail guard and that of police constable in the police department are similar in nature and jail guard are also required to work 24 hours when they enter the jail premises and to remain in the jail for 24 hours and only thereafter they are relieved. Prayers in the petition read thus:-

- “(a) for a writ of mandamus or any other appropriate writ, order or direction commanding the Respondents to grant to the Petitioner the same Pay Scale of his counter part in the Police Dept., viz. the Police constable, from the date of implementation of the Fourth Pay commission Report, i.e. w.e.f. 1-1-1986 along with all consequential benefits including arrears of pay etc.*
- (b) any other this Hon’ble Court deems fit and proper.*

(c) *for costs.”*

5. Writ Petition No. 246 of 2005 is filed by in all 12 petitioners who are also working as jail guards. It is their contention that petitioners were appointed somewhere in the year 2000 as jail guards thereby indicating their duties. All of the said petitioners succeeded in matriculation i.e. SSCE examine. Prayers in the said petition read thus:-

- “a. This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction, commanding the Respondents to pay to the Petitioners and other Jail Guards Pay Scale of Rs.3050-4590 with effect from February 2000 along with all consequential benefits;*
- b. This Hon’ble Court also be pleased to issue a writ mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondents to pay to the Petitioners Pay Scale of Rs.3050-4590, which is the Pay Scale of Police Constables having Matriculate qualification;*
- c. For such other and further reliefs that this Hon’ble Court deems fit and proper;*
- d. For costs.”*

6. Writ Petition No.604 of 2006 is filed by Anil claiming that he worked as Assistant Jailor and retired voluntarily. However, he was

party in the Writ Petition No. 276/2002 which was disposed of vide order dated 15.9.2023 and there after representation was filed before the Ombudsman. However, such representations were rejected on erroneous grounds. He, therefore, filed petition claiming that pay scale of jail guard be granted as prayed in Writ Petition No. 276/2002. This petition was adjourned along with earlier two petitions.

7. Basic contention in these petitions is that the police constable were at par with the pay scale of the jail guard initially and even their education qualification was similar. Subsequently educational qualification of the police constable were changed to SSCE pass and accordingly, their pay scale was increased. Even though the petitioners are also SSCE passed, no higher pay scale was given to them on the basis of their qualification. It is further claimed by the petitioners that qualification of the jail guard was subsequently increased to SSCE pass and even recommendation/ report of All India Committee on Jail Reforms suggested that pay and allowance of the jail prison personnel should be at par with that of all police department. It is claimed in the petition that Model Prison Manual was adopted by the State of Goa which further suggests that the

salaries and other employment benefits at par with those equivalent rates in the police department were recommended. Thus, basically it is the claim of the petitioners that since they are performing similar/same duty as that of police constable in the police department they be granted pay parity.

8. In these matters record clearly goes to show that earlier petitions were filed which were withdrawn with the liberty to the petitioners and others to file representation. Record clearly goes to show that petitions were filed before this Court from the year 1998 and subsequently in the year 2003. Such petitions were disposed of with a direction to file representation and also to approach Ombudsman for the purpose of redressal of the dispute.

9. Record further shows that the petitioners and others filed their petitions/representations before the Ombudsman who after conducting detailed inquiry submitted report dated 27.09.2004, thereby, rejecting the contention raised by the petitioners for grant of pay parity with that of police constables. Thus finally present petitions were filed challenging the said decision of the Government.

10. Mr Supekar and Mr Bhobe, appearing for the petitioners would submit that duties of the jail guards are quite similar to that of

police constables. Qualification for the said post is also similar. It is their contention that discrimination in the pay scale of the jail guard vis-a-vis the police constable is not at all having any justification. Reply filed by the State along with documents would go to show that in fact Department of Personnel accepted the proposal for equal pay/pay scale with that of police constable, however, it was only stalled because of the report of the Department of finance.

11. Learned counsel would submit that only because decision to grant equal pay would put burden on the exchequer, would not be a ground for rejecting such prayer. It was further submitted that Model Prison Manual which was accepted by the Government of Goa clearly suggest in clause no. 27.15 that the salaries and other employments benefits should not be arbitrarily fixed but should be related to the work performance in a modern correctional system, which is complex and arduous and is in the nature of an important social service. The correctional staff should be paid salaries and allowances at par with those of equivalent ranks in the police department.

12. Both the learned counsel would submit that once such Model Prison Manual is accepted by the Government of Goa, it was incumbent upon them to consider the representation of the

petitioners sympathetically and considering the nature of the duties performed by both set of employees. Learned counsel further submit that resolution was passed in a National Conference on Criminal Activities and Radicalisation in Jails dated 10.10.2019 stating that all prison and correctional services personnel should be given pay parity with their counterparts on the police department in their respective States/Union Territories. Learned counsel for the petitioners would further submit that the affidavit filed by the respondents no where gives any plausible reason for not accepting such resolution passed from time to time by respective authorities and decision taken by the Government not to grant same pay scale, is arbitrary and suffers from discrimination.

13. Per contra Mr Salkar and Mr Shirodkar for the State would submit that first of all decision of Ombudsman is passed on evidence concluded during the inquiry, it cannot be assailed in these petitions as this Court while entertaining and exercising writ jurisdiction, cannot sit in appeal against such decision.

14. They further submitted that there is no question of parity with regard to pay scale of jail guard and police constable of the police department, since duty and qualification of both these posts are quite

distinct and separate. It is further submitted that the petitioners failed to demonstrate before this Court about their entitlement with regards to parity in the pay scale and in fact there is absolutely no material to show that both the posts are having equal qualification and similar duties.

15. Mr Salkar placed reliance on the following decisions:-

1. ***Union of India Vs Arun Jyoti Kundu and others*¹**
- 2 . ***Punjab State Electricity Board and another, VS Thana Singh and others,* ²**

16. Mr Shirodkar, place reliance on the following decisions:-

1. ***S. S. Chandra VS State of Jharkhand*³**
2. ***Steel Authority of India Limited and others Vs. Dibyendu Bhattacharya,* ⁴**

17. Rival contentions fall for determination/consideration.

18. Before considering the contentions raised by the petitioners with regard to parity in the pay scale of jail guard and the police constable, it is admitted by the learned counsel for the petitioners

¹ (2007) 7 SCC 472

² (2019) 4 SCC 113.

³ (2007) 8 SCC 279

⁴ (2011) 11 sCC 122

that duties performed by the police constable and that of the jail guards are not equal. Similarly on the basis of recruitment rules which are placed on record, it is clearly observed that apart from educational qualification which is basic i.e. SSCE pass and there are other qualifications required for applying to the post of police constable, different than the post of jail guard.

19. It has been brought to the notice of this Court that at present qualification for the post of police constable is graduation, apart from other physical fitness qualification.

20. Be that as it may, concept of parity in pay scale is now well settled together with judicial review of such decision.

21. In the case of ***S. S. Chandra and others*** (supra), the Apex Court discussed earlier decision in regard to equal pay for equal work, from paragraph 24 to 35 which read thus:-

“24. The principle of equal pay for equal work was propounded by this Court in certain decisions in the 1980s e.g. Dhirendra Chamoli v. State of U.P. [(1986) 1 SCC 637 : 1986 SCC (L&S) 187] , Surinder Singh v. Engineer-in-Chief, CPWD [(1986) 1 SCC 639 : 1986 SCC (L&S) 189] , Randhir Singh v. Union of India [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] , etc. This was done by applying Articles 14 and 39(d) of the Constitution. Thus, in Dhirendra Chamoli case [(1986) 1 SCC 637 : 1986 SCC (L&S) 187] this Court granted to the casual, daily-rated

employees the same pay scale as regular employees.

25. *It appears that subsequently it was realised that the application of the principle of equal pay for equal work was creating havoc. All over India different groups were claiming parity in pay with other groups e.g. government employees of one State were claiming parity with government employees of another State.*
26. *Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.*
27. *Thus, in State of Haryana v. Tilak Raj [(2003) 6 SCC 123 : 2003 SCC (L&S) 828] it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.*
28. *In State of Haryana v. Charanjit Singh [(2006) 9 SCC 321 : 2006 SCC (L&S) 1804] discussing a large number of earlier decisions it was held by a three-Judge Bench of this Court that the principle of equal pay for equal work cannot apply unless*

there is complete and wholesale identity between the two groups. Moreover, even for finding out whether there is complete and wholesale identity, the proper forum is an expert body and not the writ court, as this requires extensive evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. Hence in recent decisions the Supreme Court has considerably watered down the principle of equal pay for equal work and this principle has hardly been ever applied in recent decisions.

29. *In State of Haryana v. Tilak Raj [(2003) 6 SCC 123 : 2003 SCC (L&S) 828] the Supreme Court considered the doctrine of equal pay for equal work in the context of daily wagers of the Haryana Roadways. After taking note of a series of earlier decisions the Supreme Court observed : (SCC p. 127, paras 11-12)*
- "11. A scale of pay is attached to a definite post and in case of a daily wager, he holds no post. 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-à-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.*
- 12. 'Equal pay for equal work' 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. The problem about equal pay cannot always be translated into a mathematical formula.”

(emphasis supplied)

30. *In State of U.P. v. Ministerial Karamchari Sangh [(1998) 1 SCC 422 : 1998 SCC (L&S) 287 : AIR 1998 SC 303]* the Supreme Court observed that even if persons holding the same post are performing similar work but if the mode of recruitment, qualification, promotion, etc. are different it would be sufficient for fixing different pay scale. Where the mode of recruitment, qualification and promotion are totally different in the two categories of posts, there cannot be any application of the principle of equal pay for equal work.
31. *In State of Haryana v. Jasmer Singh [(1996) 11 SCC 77 : 1997 SCC (L&S) 210 : AIR 1997 SC 1788]* the Supreme Court observed that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work of different persons in different organisations. Persons doing the same work may have different degrees of responsibilities, reliabilities and confidentialities, and this would be sufficient for a valid differentiation. The judgment of the 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.
32. *In Federation of All India Customs and Central Excise Stenographers v. Union of India [(1988) 3 SCC 91 : 1988 SCC (L&S) 673 : (1988) 7 ATC 591 : AIR 1988 SC 1291]* this Court observed : (SCC p. 104, para 11)

“11. In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. 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. The problem about equal pay cannot always be translated into a mathematical formula.”

33. *It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide Indian Drugs & Pharmaceuticals Ltd. v. Workmen [(2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270].*
34. *There is broad separation of powers under the Constitution, and the judiciary should not ordinarily encroach into the executive or legislative domain. The theory of separation of powers, first propounded by the French philosopher Montesquieu in his book *The Spirit of Laws* still broadly holds the field in India today. Thus, in Asif Hameed v. State of J&K [1989 Supp (2) SCC 364 : AIR 1989 SC 1899] a three-Judge Bench of this Court observed (vide paras 17 to 19) : (SCC pp. 373-74)*
“17. Before advertiring to the controversy directly involved in these appeals we may have a fresh look at the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within

their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

*18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles* [2 L Ed 2d 630 : 356 US 86 (1958)] observed as under : (US pp. 119-20)*

'All power is, in Madison's phrase, "of an encroaching nature". ... Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint. ...

Rigorous observance of the difference between limits of power and wise exercise of power—between questions of authority and questions of prudence—requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the

difference. It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorised the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.'

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

(emphasis supplied)

35. *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)."

22. Thus, observation clearly restrict judicial review with regard to power of executive or legislature which is required to be taken by considering various factors including the expert opinion. The Apex Court observed that granting pay scale is purely executive and thus Court should not interfere with the same as it may have cascading effect creating all kind of problems to the Government and the authority. Limited scope for interference by the Court is found mentioned in paragraph 35 wherein it is observed that the Court should avoid applying the principles of equal pay for equal work unless there is complete and wholesale identity between the two groups. Matter in hand and as considered above including that by Ombudsman that the duty of the jail guard and that of the police constable are quite distinct and separate. There is no whole sum identity between the two groups as far as duties are concerned.

23. In ***Steel Authority of India Limited*** (supra), the Apex Court after discussing the various decisions on this issue observed that it is the duty of an employee seeking parity of pay under Article

39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of “equal pay for equal work” as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is only on the person claiming such right.

24. In the case of ***State of West Bengal and another Vs West Bengal Minimum Wages Inspectors Association and others***⁵. The Apex Court in para 19 observed thus:-

“19 *The principle equal pay for equal work” is not a fundamental right but a constitutional goal. It is*

⁵ (2010) 5 SCC 225

dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees.”

25. Similarly, the Apex Court in paragraph 23 of the above decision observed thus:-

“23 It is now well settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts.”

26. These observations of the Apex Court in paragraph 23 as quoted above is clear answer to the submission advance by Mr Supekar claiming therein that till third pay commission, pay scale to the post of jail guard and that of police constable was equal.

27. In the case of **Punjab State Electricity Board and another** (supra) , the Apex Court in paragraph 10 to 12 observed thus:-

“10. It is fairly well settled that equation of pay scales must be left to the Government and on the decision of the experts and the Court should not interfere with it. Observing that equation of pay scales of posts must be left to the Government and the experts, in SAIL v. Dibyendu Bhattacharya [SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] , this Court held as under: (SCC p. 133, para 26)

“26. In Union of India v. S.L. Dutta [Union of India v. S.L. Dutta, (1991) 1 SCC 505 : 1991 SCC (L&S) 406] , Union of India v. N.Y. Apte [Union of India v. N.Y. Apte, (1998) 6 SCC 741 : 1998 SCC (L&S) 1673] , State of U.P. v. J.P. Chaurasia [State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121 : 1989 SCC (L&S) 71] and Kshetriya Kisan Gramin Bank v. D.B. Sharma [Kshetriya Kisan Gramin Bank v. D.B. Sharma, (2001) 1 SCC 353 : 2001 SCC (L&S) 1000] , this Court held that the determination that two posts are equal or not, is a job of the Expert Committee and the court should not interfere with it unless the decision of the Committee is found to be unreasonable or arbitrary or made on extraneous

considerations. More so, it is an executive function to fix the service conditions, etc. and lies within the exclusive domain of the rule-making authority. (See also *T. Venkateswarulu v. Tirumala Tirupathi Devasthanams* [*T. Venkateswarulu v. Tirumala Tirupathi Devasthanams*, (2009) 1 SCC 546 : (2009) 1 SCC (L&S) 202].”

11. *In S.C. Chandra v. State of Jharkhand* [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897], observing that the grant of pay scales is a purely executive function and the court should not interfere with the same, this Court held as under: (SCC pp. 292-94, paras 33 & 35)

“33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen* [*Indian Drugs & Pharmaceuticals Ltd. v. Workmen*, (2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270].

35. 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)."

(emphasis in original)

12. *Observing that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts, this Court, in SAIL [SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] , held as under: (SCC pp. 133-34, para 30)*

"30. ... the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties."

28. With these settled proposition of law as laid down by the Apex Court, we would like to mention herein that though an attempt was made to demonstrate that work of the jail guard is same or similar to that of police constable, observation of the Ombudsman and that too on recording evidence of the witnesses and conducting inquiry would

clearly reveal that duties, qualification, responsibilities of post of jail guards and that of police constables are quite distinct and separate. It is no doubt true that the jail guards are also working with the prisoners and handling them within prison. Police constables are required to perform duties in the society and handle the situation with regards to law and order, collecting of intelligence, investigating offences etc.

29. Learned counsel for the petitioners fairly conceded that duties of the jail guards are not identical or similar to that of the police constable as observed by Ombudsman in its report. However, they tried to submit that duties of jail guard contains risk which is also handled by the police department. We are afraid to accept such contention for the purpose of contention raised in the present petition for grant of parity. We are very much aware about our power to judicial review in such matters.

30. At present minimum qualification of the jail guard and that of police constable are quite different and distinct. Recruitment Rules speaks about it. Even at the time of appointment of the petitioners as jail guard some of qualification as far as physical condition is concerned were found to be different as that of the police constable.

Accordingly, contention raised by the petitioners with regard to parity in the pay scale, is not having any merits.

31. However, we make it clear that Government has already taken a decision which has been reflected in the affidavit filed by respondent no.1 as quoted earlier. We, therefore, hope that the decision in the present petitions will not in any way affect the decision taken by the Government and reflected in the affidavit in reply dated 12.2.2024 filed by Mr Vivek K. Naik under Secretary (Home), so as to grant such benefits to the jail guards.

32. We therefore see no substance in the petitions and accordingly the petitions stand dismissed.

33. Rule stand discharged. No costs.

VALMIKI MENEZES, J

BHARAT P. DESHPANDE, J