A STATE OF HARYANA AND ANR.

v.

TILAK RAJ AND ORS.

JULY 14, 2003

B [DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Service Law:

Principle of 'equal pay for equal work'—Applicability of—Held, for its
C *applicability wholesale identity is required between the one who is claiming and the one who has already earned such pay scale—The principle cannot be always translated into mathematical formula—Constitution of India, 1950—Article 14.*

D **Respondents who were employed on daily wages with the appellant- State filed writ petition before High Court *inter alia* contending that they were to be paid same salary as paid to regular employees, since the nature of work done by them was similar. Appellant-State disputed the claim of respondents on the ground that they were educationally not qualified for appointment to the post and that the principle of "equal pay for equal work" was factually**
E **and legally not applicable to their case. High Court allowed the writ petitions directing that respondents be paid the minimum pay in the scale of pay applicable to the regular employees. Hence the present appeal.**

Allowing the appeal, the Court

F **HELD: 1. The principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organization. Equal pay for equal work is a concept which requires for its applicability complete and wholesale identity between a group of employees**
G **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. [524-F; 526-E]**

State of Haryana and Ors. **v.** *Jasmer Singh and Ors.*, **[1996] 11 SCC 77;** *Federation of All India Customs and Central Excise Stenographers -*

H

(Recognised) and Ors. **v.** *Union of India and Ors.*, **[1988] 3 SCC 91;** *State of U.P.* **v.** *J.P. Chaurasia,* **[1989] 1 SCC 121;** *Harbans Lal* **v.** *State of Himachal Pradesh,* **[1989] 4 SCC 459;** *Ghaziabad Development Authority* **v.** *Vikram Chaudhary,* **[1995] 5 SCC 210 and** *State of Orissa and Ors.* **v.** *Balaram Sahu and Ors.*, **[2003] 1 SCC 250, relied on.** A

2. 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 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. [526-E, F] B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4570 of 2003. D

From the Judgment and Order dated 10.1.2002 of the Punjab and Haryana High Court in C.W.P. No. 2237 of 2000.

Praveen Kr. Rai for Ms. Kavita Wadia for the Appellants.

Jasbir Maik for S.K. Sabbarwal for the Respondent. E

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

The State of Haryana is in appeal against the judgment rendered by a Division Bench of the Punjab and Haryana High Court, whereby the respondents herein were directed to be paid the minimum pay in the scale of pay applicable to the regular employees. F

Factual position so far as relevant for determination of the controversy needs to be noted in brief. G

The thirty five respondents were appointed at different points of time as helpers on daily wages in the Haryana Roadways. They filed writ petition claiming that they were entitled to regularization in view of service rendered for long period and/or that they were to be paid the same salary as paid to H

A regular employees since the nature of work done by them was similar. In other words for the second relief claimed principle of "equal pay for equal work" was pressed into service. They asserted to be educationally qualified for the post. The appellants disputed the claim of the respondents that they were educationally qualified for appointment to the post of helper and also took the stand that the principle of "equal pay for equal work" was factually and B legally not applicable to their case. The High Court allowed the writ petition, inter alia, with the following observations:

> "In this view of the matter, the petitioners would be entitled to the relief, but again not the regular pay scale which their regular counter C parts are receiving. The petitioners would be entitled to minimum of the pay scale with dearness allowance alone."

The High Court was of the view that since the claims were not pressed till 2000 and the respondents filed the writ petition without serving any notice of demand upon the employer, they would be entitled to get the relief only D w.e.f. 1.4.2000 i.e. two months later to the institution of the writ petition.

Learned counsel appearing for the appellant-State submitted that the directions given by the High Court are contrary to the position of law enunciated by this Court in several cases. Strong reliance was placed on State E of *Haryana and Ors.* v. *Jasmer Singh and Ors.*, [1996] 11 SCC 77. Per contra, learned counsel for the respondents-employees submitted that there being no dispute to the fact that the concerned employees have worked for a considerable length of time, the principle of "equal pay for equal work" is clearly applicable and the High Court's direction is in order.

F The principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organization. In *Federation of All India Customs and Central Excise Stenographers (Recognised) and Ors.* v. *Union of India and Ors.*, [1988] 3 SCC 91, this Court G explained the principle of "equal pay for equal work" by holding that differentiation in pay scales among government servants holding the 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 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 H culture of employment. It was further observed that judgment of administrative

authorities concerning the responsibilities which attach to the posts 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.

In *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. In *Harbans Lal* v. *State of Himachal Pradesh,* [1989] 4 SCC 459 it was held that a mere nomenclature designating a person as a carpenter or a craftsman was not enough to come to a conclusion that he was doing the work as another carpenter in regular service. A comparison cannot be made with counterparts in other establishments with different managements or even in the establishments in different locations though owned by the same management. The quality of work which is produced may be different, 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 requires may differ from job to job. It must be left to be evaluated and determined by an expert body. Same was the view expressed in *Ghaziabad Development Authority* v. *Vikram Chaudhary,* [1995] 5 SCC 210.

At this juncture, it would be proper to take note of what was stated in *Jasmer Singh's* case (supra). In paragraphs 10 and 11, it was noted as under:

> "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.

A 11. The High Court was, therefore, not right in directing that the respondents should be paid the same salary and allowances as are being paid to regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wage is prescribed for such workers, the respondents would be entitled to it if it is more than what they are being paid."

B

In *Harbans Lal's* case (supra) and *Vikram Chaudhary's* case (supra), it was held that daily rated workmen 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 C had decided to make such minimum in the pay scale applicable to the daily rated workmen.

In a recent case this Court in *State of Orissa and Ors.* v. *Balaram Sahu and Ors.*, [2003] 1 SCC 250, speaking through one of us (Doraiswamy Raju, J) expressed the view that the principles laid down in the well considered D decision of *Jasmer Singh's* case (supra) indicated the correct position of law. It was noted that the entitlement of the workers concerned was to the extent of minimum wages prescribed for such workers, if it is more than what was being paid to them.

E 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 F 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.

G "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.

H Judged in the background of aforesaid legal principles, the impugned

judgment of the High Court is clearly indefensible and the same is set aside. However, the appellant-State has to ensure that minimum wages are prescribed for such workers and the same is paid to them. The appeal is allowed to the extent indicated above. There will be no order as to costs.

K.K.T. Appeal allowed.