A S.C. CHANDRA AND ORS.

v.

STATE OF JHARKHAND AND ORS.

AUGUST 21, 2007

B [A.K. MATHUR AND MARKANDEY KATJU, JJ.]

Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981—ss. 2(d), 3 and 19:

C *Proprietary school—HCL, a Government enterprise was giving financial aid to it—Due to financial difficulties, HCL stopped financial aid—Teachers and staff working in the school did not get salaries—They filed writ petition before High Court seeking writ of mandamus against the management of HCL—Held: Giving financial assistance does not necessarily mean that all* D *teachers and staff working in the school became employees of HCL—School was not run by management of HCL which merely provided funds—Hence, no writ of mandamus could be issued against the management of HCL to provide relief to the teachers and staff of the school—Alternative plea for issuance of mandamus to State Government to take over management of the school also not tenable since there was no such request from Managing* E *Committee of the school—Constitution of India, 1950—Article 226—Service Law—Employer-employee relationship.*

Proprietary school—Respondent-company (BCCL) providing funds to it—Teachers of the school seeking pay parity with clerks working in F *Respondent-company—Held: Respondent-company was only extending financial assistance—School was essentially managed by a body independent of the management of Respondent-company—Therefore, Respondent-company cannot be saddled with the responsibilities of granting the teachers salaries equated to that of the clerks working in Respondent-company—Principle of equal pay for equal work not applicable, since the two groups viz. teachers* G *and the clerks in Respondent-company are not identical—There is no question of pay parity, more so when the teachers are not employees of Respondent-company—Constitution of India, 1950—Article 39(d)—Service Law—Equal pay for equal work.*

HCL, a Government Enterprise, used to provide financial aid to a

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proprietary school as defined in Section 2(d) of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981. Most employees of HCL were in Managing Committee of the said school. The management of HCL however came to be closed on account of financial stress, consequently no financial aid could be extended to the school and the teachers as well as the non-teaching staff of the school could not get their salaries. They filed writ petition before High Court seeking relief. The petition was dismissed.

In appeal to this Court the questions which arose for consideration are 1) Whether the management of the school was the direct responsibility of HCL and a writ of *mandamus* could be issued against it and that 2) Whether, even if the school is not a part of the management of HCL, a direction could be given to the State Government under the Act of 1981 to take over management of the school.

In the connected set of appeals, teachers of a proprietary school sought pay parity with the clerks of Bharat Coking Coal Limited (BCCL) which used to provide financial assistance to the school from time to time. The question which arose for consideration before this Court is whether the claim of pay parity was tenable.

Dismissing all the appeals, the Court

HELD [Per A.K. Mathur, J.]:

1.1. Though through various communications an impression was sought to be given that the school is being run by the HCL but in substance the HCL only used to provide financial assistance to the school and the management of the school was entirely different than the management of the HCL. Giving financial assistance does not necessarily mean that all the teachers and staff who are working in the school have become the employees of the HCL. Therefore, there was no relationship of the management of the HCL with the management of the school though most of the employees of the HCL were in the managing committee of the school. But by that no inference can be drawn that the school had been established by the HCL. The children of workers of HCL were being benefited by the education imparted by this school. Therefore, the management of HCL was giving financial aid but by that it cannot be construed that the school was run by the management of HCL.

[Para 5] [136-E, F, G]

A 1.2. So far as issuance of *mandamus* to the State Government for taking over of the proprietary school is concerned, that cannot be issued because the proprietary school, as defined under section 2(d) read with Section 19 of the Bihar Non Government Secondary Schools (Taking over of Management and Control) Act, 1981, will have to make a request to the State of Jharkhand that they will bear all the financial responsibilities. If the Managing Committee B makes a request to this effect to the State of Jharkhand, then the Government may consider but at present there is no such offer by the Managing Committee and as such no direction can be given to the State of Jharkhand to grant recognition to proprietary school because nobody is prepared to take the financial responsibilities of the management of the school.

C [Para 6] [138-A, B]

2.1. As far as the other proprietary school is concerned, firstly, the same is not being managed by the BCCL as from the facts it is more than clear that the BCCL was only extending financial assistance from time to time. By that BCCL cannot be saddled with the liability to pay the teachers of the school D as being paid to the clerks working with it or in the Government of Jharkhand. The school is essentially managed by a body independent of the management of BCCL. [Para 11] [140-A, B]

2.2. For application of the principle of equal pay for equal work, there should be total identity between both groups i.e. the teachers of the school on E the one hand and the clerks in BCCL on the other, and, as such, the teachers cannot be equated with the clerks of the State Government or of the BCCL. Moreso, when the teachers are not employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL.

[Para 12] [140-C, F]

F *State of Haryana & Ors.* v. *Charanjit Singh & Ors.*, [2006] 9 SCC 321, relied on.

HELD [Per Markandey Katju, J. (Supplementing)]:

1.1. Fixation of pay scale is a delicate mechanism which requires various G considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. 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. Realizing this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is H 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). It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply. [Paras 4, 13 and 14] [141-D; 145-D, E, F]

1.2. 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. [Para 11] [143-E]

State of Haryana **v.** *Tilak Raj,* **[2003] 6 SCC 123;** *State of Haryana & Ors.* **v.** *Charanjit Singh & Ors.,* **[2006] 9 SCC 321;** *State of U.P. and Ors.* **v.** *Ministerial Karamchari Sangh,* **AIR (1998) SC 303;** *State of Haryana* **v.** *Jasmer Singh and Ors.,* **AIR (1997) SC 1788;** *Federation of All India Customs and Excise Stenographers (Recognized) and Ors.* **v.** *Union of India and Ors.,* **AIR (1988) SC 1291;** *Indian Drugs & Pharmaceuticals Ltd.* **v.** *Workmen, Indian Drugs and Pharmaceuticals Ltd.,* **[2007] 1 SCC 408;** *Asif Hameed* **v.** *State of Jammu and Kashmir,* **AIR (1989) SC 1899;** *Government of West Bengal* **v.** *Tarun K. Roy and Ors.,* **[2004] 1 SCC 347;** *State of Haryana and Anr.* **v.** *Haryana Civil Secretariat Personal Staff Association,* **[2002] 6 SCC 72 and** *Union of India and Ors.* **v.** *Pradip Kumar Dey,* **[2000] 8 SCC 580, relied on.**

Dhirendra Chamoli and Anr. **v.** *State of U.P.,* **[1986] 1 SCC 637;** *Surinder Singh* **v.** *Engineer-in-Chief, C.P.W.D.,* **[1986] 1 SCC 639 and** *Randhir Singh* **v.** *Union of India,* **[1982] 1 SCC 618 etc., referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1532 of 2005.

From the final Judgment and Order dated 04.03.2004 of the High Court of Jharkhand at Ranchi in Writ Petition (S) No. 3666 of 2001.

WITH

C.A. Nos. 6595, 6601, 6602-6003 of 2005.

Sunil Kumar, Shree Praksh Sinha, Abhishek Singh, Anshuman Kumar S. Chandra Shekhar, Braj K. Mishra, Ujjwal K. Jha, Aparna Jha, Vikram Abhishek Yadav, M.P. Jha Ram Erbal Roy, Harshvardhan Jha and Anil K. Chopra for the Appellants.

Manish Kumar Sharan, Deba Prasad Mukherjee, Nandini Sen, Sushma Suri, Shreekant N. Terdal, Ajit Kumar Sinha, Mohit Shah, Gopal Singh, Rituraj Biswas and Anukul for the respondents.

The Judgments of the Court were delivered by

A.K.MATHUR, J. C.A. NO. 1532 of 2005.

1. This appeal is directed against the order dated 4.3.2004 passed by learned Single Judge of High Courtof Jharkhand at Ranchi in Writ Petition No.3666 of 2001 whereby the learned Single Judge dismissed the writ petition following the decision given by the Division Bench of the Jharkhand High Court in *Chatradhar Mahto & Ors.* v. *State of Jharkhand & Ors.*

2. Brief facts which are necessary for disposal of this appeal are that the writ petitioners- appellant filed a writ petition in the High Court of Jharkhand seeking a writ of *mandamus* against respondent Nos.3 to 6 to release and pay D.A. with arrears along with interest and further a direction was sought to be issued to respondent Nos.3 to 6 not to close the school or in the alternative a direction was sought to be issued to respondent Nos.1 & 2 to take over the management and control of the school in question. All the writ petitioners claimed themselves as teachers and non-teaching staff of the School and claimed themselves to be the employees of the Hindustan Copper Limited (hereinafter to be referred to as 'HCL'). It was alleged that in the year 1933 Indian Copper Corporation, a private sector unit, registered in the United Kingdom started a Lower Primary School at Moubhander for the children of its employees which was named as Moubhander Lower Primary School. In the year 1944-45, the school was upgraded to Upper Primary School i.e. upto Class V. In 1958-59 the School was upgraded to a Middle School and recognition to Middle School was accorded by the then District Superintendent of Education, Chaibasa. Thereafter on 21.9.1972 the Indian Copper Corporation (Acquisition of Undertaking) Act, 1972 was notified and the Indian Copper Corporation was taken over by the Central Government and it became a part of HCL, a Government of India enterprise. It was alleged that thereafter the School was sought to be taken over by the State Government but this was resisted by the Managing Committee of the School. It was alleged that the management of HCL was running two schools, one at Mosabani and another at Moubhander as proprietary schools and they were managed by the Managing Committee. The present school was getting the financial assistance from the management of the HCL. The Bihar Non-Government Secondary

Schools (Taking over of Management and Control) Act, 1981 (hereinafter to be referred to as the 'Act') was passed. Section 19 of the Act laid down certain conditions for grant of recognition to such proprietary schools run through the Managing Committee and therefore, it was contended that the school was run by the Managing Committee and the service conditions of staff of the school were approved by the Executive Director and thereafter request was made by the HCL to the Education Commission for grant of recognition as a High School. The school was recognized by the State Government under the provisions of the Act of 1981. It was alleged that the Managing Committee of the School was constituted and reconstituted by the Management of the HCL. Thereafter 10+ 2 stream was introduced in the said School and a request was made by the President of the School to the Director, Bihar Secondary Education seeking permission to upgrade the ICC High School, Moubhander to +2 stage and the same was recognized by the Government of Bihar. However, in the meanwhile because of critical financial situation the managing committee of the school requested the management of the HCL to approach the State Government for taking over of the school at the earliest. The school was not taken over under the Act of 1981 by the newly formed State of Jharkhand. Since the management of HCL was closed on account of financial stress, therefore, no financial aid could be extended to the school and the writ petitioners could not get their salaries as the financial aid was not coming from the management of the HCL and therefore, they approached the High Court of Jharkhand for issuance of writ of *mandamus* against respondent nos. 3 to 6 to release pay and arrears along with dearness allowance and they also sought a further direction not to close down the school and in the alternative a direction was also sought to be issued against respondent nos. 1 & 2 to take over the management of the school.

3. A reply was filed by the Management of HCL. It took the stand that there was no relationship of employer and employee between the management of HCL and the school and it was stated that the company was merely providing grant for imparting education and the school was run by the Managing Committee. It was also contended that the school was not the liability of the management of the HCL. The school was being managed by the Managing Committee and only financial aid was provided by the management of HCL from time to time but since the management of HCL was in financial doldrums it was unable to manage the school. However, it was categorically stated that there was no relationship of employer and employee between the management of HCL and the staff of the school.

A 4. Learned Single Judge after considering the matter in number of petitions, came to the conclusion that the school was not the dominant object of the HCL and it found that there was no relationship of employer and employee between the Management of HCL and the teachers and other staff of the School. Therefore, no direction was given and the writ petition was dismissed by the learned Single Judge relying on the aforesaid judgment in B the case of *Chatradhar Mahto & Ors.* v. *State of Jharkhand & Ors.*. Hence the writ petitioner- appellants approached this Court by filing the special leave petition against the order of learned Single Judge dated 4.3.2004.

5. We have heard learned counsel for the parties and perused the C records. The basic question before us is whether a writ of *mandamus* could be issued against the management of HCL. Learned Single Judge relying on the Division Bench in an identical matter pertaining to *Bharat Coking Coal Limited* dismissed the writ petition of the appellants. This issue was examined in an analogous writ petition and in the aforesaid case, this issue was extensively considered as to whether the management of the school is the D direct responsibility of the HCL or not. After considering the matter in detail, learned Single Judge relying on the aforesaid judgment found that there is no relationship of master and servant with that of the teachers and other staff of the school with the HCL as the management of the school was done by the Managing Committee through liberal financial grant was being made by E the Corporation. By that there was no direct connection of the management of the HCL with that of the management of the school. Though through various communication an impression was sought to be given that the school is being run by the HCL but in substance the HCL only used to provide financial assistance to the school but the management of the school was entirely different than the management of the HCL. Giving financial assistance F does not necessarily mean that all the teachers and staff who are working in the school have become the employees of the HCL. Therefore, we are of the view that the view taken by learned Single Judge appears to be correct that there was no relationship of the management of the HCL with that of the management of the school though most of the employees of the HCL were G in the managing committee of the school. But by that no inference can be drawn that the school had been established by the HCL. The children of workers of HCL were being benefited by the education imparted by this school. Therefore, the management of HCL was giving financial aid but by that it cannot be construed that the school was run by the management of HCL. Therefore, under these circumstances, we are of opinion that the view H taken by the learned Single Judge appears to be correct.

6. Next, it was contended that even if the school is not a part of the management of the HCL, yet a direction could be given to the State of Jharkhand under the Act of 1981 to take over the management of the school and in that connection our attention was invited to the definition of proprietary school as defined in Section 2(d) of the Act which reads as under :

> "(d) "Proprietary secondary school" means such secondary school whose entire financial liability is borne out by (any Registered Trust, Association or corporate body, individuals or a group of individuals) and which according to such conditions and registrations laid down from time to time by the State Government, may be declared by it proprietary secondary school."

Section 3 laid down taking over control and management of non-government secondary schools by State Government. Section 19 laid down that proprietary secondary school can be established. Section 19 only says that if any registered Trust (Association, Corporate Body, individual or group of individuals) applies for setting up a secondary school and promises in writing to bear the entire financial burden of the school, the State Government shall have the power to permit establishment of such school after fulfillment of the prescribed conditions for recognition under section 19. By this it does not mean that writ of *mandamus* can be issued to the State Government for taking over the management of the school. The proprietary secondary school is defined under Section 2(d) of the Act. The State Government can declare a particular school as proprietary secondary school under Section 19 of the Act on fulfilling certain conditions but the basic thing is that the entire finance will have to be burdened by the Trust, Association, Corporate Body, individual or group of individuals. By that the employees of the school will not be State Government employees. A counter affidavit was filed on behalf of the State of Jharkhand supported by the affidavit of Shri Rajendra Nath Tripathy, Regional Deputy Director of Education, South Chhota Nagpur Division, Ranchi and in paragraph 12 of the counter affidavit it was pointed out that in order to fulfill the constitutional mandate that all children between 6 -14 years of age shall be given free and compulsory education, the Jharkhand Government has given consent and directed the concerned authorities to take the students of this school and admit them in State Committee managed schools or in other Government schools within the same area in equivalent classes in which they were studying. Copy of the letter dated 15.3.2003 has been annexed as Annexure-R-1. Therefore, the Government of Jharkhand in order to fulfill the constitutional mandate has got these students admitted to

A various schools. Therefore, the studies of the students have not been affected. So far as issuance of *mandamus* to the State Government for taking over of the proprietary school is concerned, that cannot be issued because the proprietary school as defined under section 2(d) read with Section 19 of the Act will have to make a request to the State of Jharkhand that they will bear all the financial responsibilities. If the Managing Committee makes a request B to this effect to the State of Jharkhand, then the Government may consider but at present there is no such offer by the Managing Committee and as such no direction can be given to the State of Jharkhand to grant recognition to proprietary school because nobody is prepared to take the financial responsibilities of the management of the school. Hence, no direction can be C issued to the State Government to take over the management of the School.

7. In this view of the matter, we are of opinion that the view taken by learned Single Judge of the High Court of Jharkhand appears to be correct and there is no ground to interfere with the impugned order. Consequently, the Civil Appeal is dismissed with no order as to costs.

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C.A.No.6595 , C.A.Nos. 6602-6603 and C.A.No.6601 of 2005.

8. All these appeals involve common question of law, therefore, they are disposed of by this common judgment. For the sake of convenient disposal of these appeals, the facts stated in C.A.No.6595 of 2005 are taken into E consideration.

9. The writ petitioner-appellants prayed before the High Court of Jharkhand by filing writ petition that direction and order may be given to the respondents to fix their pay scale at par with the pay scale of Government Secondary School teachers or at par with Grade I and II Clerks of the F respondent-company. They also prayed that the facilities such as, provident fund, gratuity, pension and other retrial benefits should also be made available to them and it was further prayed that the State Government should take over the management of Ram Kanali School under the provisions of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) G Act, 1981 (hereinafter to be referred to as the 'Act'). A counter affidavit was filed by the Bharat Coking Coal Limited (hereinafter to be referred to as BCCL) that the present Ram Kanali School was not owned by the said BCCL and the school was run by the Managing Committee and the writ petitioners were never appointed by the BCCL and therefore, they were not the employees of BCCL. It was also submitted that BCCL used to release non-recurring grants H to the privately managed schools on the recommendation of the Welfare

Committee. But this release of grant was subject to certain conditions. This non-recurring grant-n-aid did not make the school a part of the management of BCCL and therefore any teacher in such privately managed school cannot be said to be the employee of BCCL thereby entitling him all benefits as are available to the regular employees of BCCL. It was also pointed out that the managing committee of Ram Kalai school was given grant-in-aid but that has been stopped and they totally disowned the responsibilities for any benefits whatsoever. However, learned Single Judge allowed the writ petition and directed that these teachers who were working in the school were entitled to the pay scale given to the clerks working in BCCL with effect from the date of the judgment with all consequential benefits such as provident fund, gratuity and other service benefits available to the employees of BCCL. So far as taking over of the school by the State of Jharkhand was concerned, no direction was given by learned Single Judge. Aggrieved against this order passed by the learned Single Judge, appeal was prepared and along with this appeal two more appeals were filed by the BCCL before the Division Bench. Therefore, all these three appeals were taken up by the Division Bench together and the same were disposed of by the common order. The Division Bench examined the matter at a greater detail and came to the conclusion that the incumbents were not entitled to the pay scale of the employees of BCCL or equivalent to the Government employees and accordingly set aside the order of learned Single Judge by order dated 21.1.2004. Hence, aggrieved against this order, all these three appeals have been preferred by the private respondents.

10. We have heard learned counsel for the parties and perused the records. The Division Bench after considering the matter came to the conclusion that from the record available the existence of relationship of employer and employee between the management of BCCL and the teachers working the school could not be established. The Division Bench further held that BCCL is not an instrumentality of the State as per section 617 of the Companies Act as its dominant function is to raise coal and sell and imparting education is not its dominant function. The Division Bench further held that the plea that a direction may be issued to the State Government in terms of the Act to take over the school in question was totally misconceived. As such, the Division Bench set aside the order of learned Single Judge and dismissed the writ petitions.

11. After going through the order of the Division Bench we are of opinion that the view taken by the Division Bench of the High Court is

A correct. Firstly, the school is not being managed by the BCCL as from the facts it is more than clear that the BCCL was only extending financial assistance from time to time. By that it cannot be saddled with the liability to pay these teachers of the school as being paid to the clerks working with BCCL or in the Government of Jharkhand. It is essentially a school managed by a body independent of the management of BCCL. Therefore, BCCL cannot be saddled B with the responsibilities of granting the teachers the salaries equated to that of the clerks working in BCCL.

12. Learned counsel for the appellants have relied on Article 39 (d) of the Constitution. Article 39 (d) does not mean that all the teachers working C in the school should be equated with the clerks in the BCCL or Government of Jharkhand. For application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of the BCCL. The question of application of Article 39(d) of the Constitution has recently D been interpreted by this Court in *State of Haryana & Ors.* v. *Charanjit Singh & Ors.*, [2006] 9 SCC 321 wherein their Lordships have put the entire controversy to rest and held that the principle, 'equal pay for equal work' must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their E Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in *Charanjit Singh* (supra) all these cases have been reviewed F by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL.

13. Hence, as a result of our above discussion, we do not find any merit in these appeals and the same are dismissed with no order as to costs.

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MARKANDEY KATJU, J. 1. The facts of the case have been stated in the judgment of my learned brother Hon'ble A.K. Mathur, J. which I have perused. I respectfully agree with him that these appeals deserve to be dismissed. However, I am writing a separate concurrent judgment since I am H of the view that the principle of equal pay for equal work needs to be clarified.

2. The principle of equal pay for equal work was propounded by this Court in certain decisions in the 1980s, e.g. *Dhirendra Chamoli and Anr.* v. *State of U.P.* [1986] 1 SCC 637, *Surinder Singh* v. *Engineer-in-Chief, C.P.W.D.*, [1986] 1 SCC 639, *Randhir Singh* v. *Union of India,* [1982] 1 SCC 618 etc. This was done by applying Articles 14 and 39(d) of the Constitution. Thus, in *Dhirendra Chamoli's* case (supra) this Court granted to the casual, daily rated employees the same pay scale as regular employees.

3. It appears that subsequently it was realized 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.

4. 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.

5. Thus, in *State of Haryana* v. *Tilak Raj,* [2003] 6 SCC 123, 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.

6. In *State of Haryana and Ors.* v. *Charanjit Singh and Ors.,* [2006] 9 SCC 321, 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

A equal pay for equal work and this principle has hardly been ever applied in recent decisions.

7. In *State of Haryana & Anr.* v. *Tilak Raj & Ors.*, [2003] 6 SCC 123, 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 B series of earlier decisions the Supreme Court observed:

> "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 C 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 duties of either D categories and it is not possible to hold that the principle of 'equal pay for equal work' is an abstract one.
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> '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 E employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula".
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> (Emphasis supplied)

F 8. In *State of U.P. and Ors.* v. *Ministerial Karamchari Sangh,* 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 G application of the principle of equal pay for equal work.

9. In *State of Haryana* v. *Jasmer Singh and Ors.,* 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 organizations. Persons H

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.

10. In *Federation of All India Customs and Excise Stenographers (Recognized) and Ors.* v. *Union of India and Ors.*, AIR (1988) SC 1291, this Court observed :

> "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".

11. 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 and Pharmaceuticals Ltd.*, [2007] 1 SCC 408.

12. 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 Jammu and Kashmir*, AIR (1989) SC 1899 a three Judge bench of this Court observed (*vide* paragraphs 17 to 19) :

> "17. Before adverting to the controversy directly involved in these appeals we may have a fresh look on the *inter se* functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State.

A 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* (1958) 356 US 86 observed as under :

"All power is, in Madison's phrase, "of an encroaching nature". Judicial powers 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 authorized the judges to sit in judgment on the wisdom of what Congress and the

Executive Branch do." A

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 B 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 sermonize qua any C 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)

13. In our opinion fixing pay scales by Courts by applying the principle D of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State. Realizing 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 E committee appointed by the Government instead of the Court itself granting higher pay).

14. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay F for equal work cannot apply *vide Government of West Bengal* v. *Tarun K. Roy and Ors.*, [2004] 1 SCC 347.

15. Similarly, in *State of Haryana and Anr.* v. *Haryana Civil Secretariat Personal Staff Association,* [2002] 6 SCC 72, the principle of equal pay for equal work was considered in great detail. In paragraphs 9 and 10 of the said G judgment the Supreme Court observed that *equation of posts and salary is a complex matter which should be left to an expert body.* The Courts must realize that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex H

A matter *which is for the executive to discharge.* Granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences *vide Union of India and Ors.* v. *Pradip Kumar Dey,* [2000] 8 SCC 580.

16. In view of the above, I concur with the conclusion arrived at by my B learned brother Hon'ble A.K. Mathur, J. that the appeals preferred by the appellants deserve to be dismissed. Ordered accordingly.

B.B.B. Appeals dismissed.