

A HARYANA STATE ELECTRICITY BOARD & ANR.

v.

GULSHAN LAL AND ORS.
(Civil Appeal No. 3336 of 2009)

MAY 06, 2009

B

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Service Law:

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Equal pay for equal work – Public employment – Held: For holding public office, employee must possess requisite prescribed qualification, in absence whereof additional reliefs cannot be granted to him on basis of judgment passed in earlier cases – Relief granted by competent court is binding on the employer, but, when in a subsequent litigation the absurd result emanating from cascading effect thereof becomes apparent before another court and and it is found that the said judgment is illegal, by application of Article 14 alone, similar relief cannot be granted – Constitution of India, 1950 – Article 14.

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Promotion – Entitlement to – Held: Promotion cannot be claimed as a matter of right – If employee while working in a particular grade does not acquire experience of working therein, he cannot be promoted to the next higher grade when experience in the immediately below post forms part of essential qualification.

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Doctrines – Doctrine of 'equal pay for equal work' – Applicability of – Held: Same or similar nature of work, by itself, does not entitle an employee to invoke the doctrine of equal pay for equal work – Qualification, experience etc. would be relevant for the said purpose.

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*Maxims – Maxim “actus curiae neminem gravabit” – A
Nobody should suffer owing to mistake on part of Court.*

Appellant has two thermal power plants, one at Faridabad and the other at Panipat. In view of alleged discrepancies in the scale of pay payable to holders of the same post at the two plants, some employees at the Faridabad plant viz. *Anil Kapoor and others*, filed suit claiming higher pay scale as paid to their counterparts in the Panipat plant. The suit was decreed. B

After passing of the decree in the suit filed by *Anil Kapoor and others*, Respondents prayed for entitlement to higher pay scales, on the ground that they were senior to *Anil Kapoor and others* in rank/designation. The prayer was allowed by the courts below. Hence the present appeal. C D

Allowing the appeals, the Court

HELD: 1. Appellant is a State within the meaning of Article 12 of the Constitution. For holding a public office, an employee must possess the requisite prescribed qualification, in absence whereof the additional reliefs could not have been granted to them relying on or on the basis of the judgment passed in the earlier cases. F
Conditions of service of the employees of the appellants are governed by the statutory rules. Violation thereof is impermissible in law. Whereas the appellants are bound by the doctrine of equality as envisaged under Article 14 of the Constitution, it is also well-settled that unequals cannot be treated as equals. Herein, equality doctrine has been invoked only on the basis of relief granted in the case of *Anil Kapoor*. In *Anil Kapoor's* case, a writ petition G

A was also filed for the purpose of grant of designation. The
same has rightly or wrongly been allowed. That would
not mean that equality can be claimed on the basis
thereof which would lead to a wholly anomalous
situation. Decree granted by a competent court of law is
B no doubt binding on the employer. But, when in a
subsequent litigation the absurd result emanating from
the cascading effect thereof becomes apparent before
another court and it is found that the said judgment is
C illegal, it is well-settled, that by application of Article 14
of the Constitution alone, similar relief should not be
granted. In the present case, the cascading effect was that
for all intent and purport, those who were above Anil
Kapoor and others in the seniority list derived benefit
D irrespective of the fact as whether they were qualified to
hold the post and/or otherwise gained sufficient
experience for promotion to the post. [Para 27] [972-E-H;
973-A-E]

E 2. It cannot be said that the right to obtain same
remuneration would carry with it the designation also.
Promotion to a higher post cannot be claimed as a matter
of right. Before a person claims promotion, subject of
course to just exceptions, the prevailing rules must be
F followed. If the employee concerned while working in a
particular grade does not acquire experience of working
therein, he cannot be promoted to the next higher grade
although experience in the immediately below post forms
part of an essential qualification. A person, thus, who is
G ineligible to hold the post cannot be directed to be
promoted thereto only on the ground of so called equality
doctrine or otherwise. In the present case, the Trial Judge
following the case of Anil Kapoor and Kashmir Singh had
evidently not only directed grant of scale of pay but also
H an additional relief viz. designation. It was also wholly

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impermissible in law. [Paras 28 and 30] [973-E-H; 974-B-C]

3. It is one thing to say that having regard to the provisions contained in Article 39(d) of the Constitution read with Article 14 thereof, a court invokes the doctrine of equal pay for equal work but the same would not mean that a person is not only granted the same relief but also granted a higher status to which he was not otherwise entitled to. [Para 31] [974-C-D]

4. The doctrine of equal pay for equal work cannot be applied automatically. Application of the said doctrine involves several factors. Same or similar nature of work, by itself, does not entitle an employee to invoke the doctrine of equal pay for equal work. Qualification, experience and other factors would be relevant for the said purpose. [Paras 32 and 34] [974-F-G; 975-D]

Deb Narayan Shyam v. State of W.B. (2005) 2 SCC 286 and Union of India v. Mahajabeen Akhtar (2008) 1 SCC 368, referred to.

5. From the averments made in the plaint, it is evident that the premise on which the Respondents could claim a higher designation had not been specified. Furthermore, neither the Trial Judges nor the High Court considered the effect of abolition of certain posts as also re-designation thereof. [Paras 35 and 36] [975-E-F]

6. One is not oblivious of the fact that anomalous situation would be created in the sense that juniors of the respondents may be getting a higher pay but things as they stand cannot be allowed to continue. It has a cascading effect, viz., those employees who are junior to

- A the respondents and/ or even Anil Kapoor and others would be entitled to claim parity in the scale of pay as also in designation. However, nobody should suffer owing to the mistake on the part of the court in view of the maxim *actus curiae neminem gravabit*. [Paras 39 and 40] [978-
B C-E]

Coromandel Fertilizers Ltd. v. Union of India and Others
1984 (Supp) SCC 457, referred to.

C Case Law Reference:

(2005) 2 SCC 286 referred to Para 33

(2008) 1 SCC 368 referred to Para 33

- D (1984) SUPP SCC 457 referred to Para 38

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
3336 of 2009.

- E From the Judgment & Order dated 24.04.2006 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 12819 of 2003.

With

- F C.A. No. 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3372 and 3373 of 2009.

- G Paramjit Singh Patwalia, Salman Khurshid, Mahabir Singh, Arunabh Chowdhury, Aman Preet Singh Rahi, Arijit Bhaumik, (Ruby Singh Ahuja) Rishi Malhotra, Prem Malhotra, M.P. Jha, Ram Ekbal Roy, Harshvardhan Jha and Rakesh Dahiya (for D. Mahesh Babu) for the appearing parties.

The Judgment of the Court was delivered by

- H S.B. SINHA, J. 1. Leave granted.

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2. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 24.04.2006 passed by a Division Bench of the Punjab and Haryana High Court in several writ petitions filed by the respondents herein allowing their writ petitions.

3. Appellant is constituted and registered under the Electricity (Supply) Act, 1948. It is engaged in generation and supply of electrical energy in the State of Haryana. It generates thermal power at two places, viz., Panipat and Faridabad. Both the said plants appear to have different cadre strength. For better appreciation of designations of different cadres carried out in the said two thermal power plants, we may notice the following chart :

Thermal Power Station at Panipat			Thermal Power Station at Faridabad		
Scale w.e.f.	Name of Post	Pay Scale	Scale w.e.f.	Name of Post	Pay Scale
01.04.79	Sr. Technician Technician	700-1250 600-1100	01.04.79	Sr. Technician (Instrumentation) Technician (Instrumentation)	450/760 400/700
01.01.86	Sr. Technician (Re-designated as Foreman Gr.-I as on 15.01.86) Technician (Re-designated as Foreman Gr. - II)	1600-2600 1400-2600	01.01.86	Sr. Technician (Instrumentation) (Re-designated as Technician Gr. - I as on 15.01.86) Technician (Instrumentation) (Re-designated as Technician Gr. - II as on 15.01.86)	1200-2040 950-1500
15.01.86	Foreman Gr. I	1640-2900			

A	01.05.90	Foreman Gr. I	1800-3105	01.05.90	Technician Gr. I	1350-2200
		Foreman Gr. II	1400-2600			Technician Gr. II
B	01.01.96	Foreman Gr. I	6000-9500	01.01.96	Technician Gr. I	4500-7000
		Foreman Gr. II	5000-8000			Technician Gr. II

4. One Anil Kapoor and others who were working at the Faridabad Thermal Power Station in view of the discrepancies in the scale of pay of Senior Technicians and Technicians vis-à-vis the scale of pay payable to the holders of the same post at Panipat, filed a suit relying on or on the basis of the doctrine of 'equal pay for equal work'. Plaintiffs of the said suit had joined their respective services prior to 1.01.1986. In the said suit, it was averred:

"3. That the defendant No. 1&2 ever since the date of appointment of plaintiffs in Thermal Power House at Faridabad are giving them the following pay scales:

- (i) Plaintiffs Nos. 1 to 11 who are Senior Technicians are getting pay scale: Rs. 450-760/-
- (ii) Plaintiffs Nos. 12 to 16 who are Technicians are getting pay scales: Rs. 400-700/-

The above scales of the plaintiffs were made effective w.e.f. 1.4.1979.

4. That on the other hand the counter parts of plaintiffs who are working as Senior Technicians and Technicians at Thermal Power House, HSEB Panipat were given the following initials pay scales, made effective from 1.4.1979

- (a) Senior Technicians : Rs. 700-1250/-

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(b) Technicians . Rs. 600-1100/-" A

One of the contentions raised in the said suit by the appellant – Board was that the educational qualification prescribed for the said posts at Panipat and Faridabad was different which having not been proved, the said suit was decreed. An appeal preferred thereagainst was dismissed. Appellant filed a Second Appeal before the High Court which was marked as RSA No. 800 of 1992. After the passing of the decree in Anil Kapoor's suit, several other suits claiming similar reliefs were filed. B C

5. Gulshan Lal and Others filed Civil Suit No. 180 of 1999 praying inter alia for the following reliefs:

"(a) a decree of declaration in favour of plaintiffs and against the defendants, declaring the plaintiffs entitled to receive the said higher pay scales of Rs. 1400-2600 w.e.f. 24.10.1991 and of Rs. 5000-150-8000/- w.e.f. 1.1.1996 along till actual payment, as mentioned in para No. 2 above of the plaint on the basis of principle of 'equal pay for equal work'. D E

(b) a decree of mandatory injunction in favour of plaintiffs and against the defendants, directing the defendants to release/ pay to the plaintiffs the said higher pay scales of Rs. 1400-2600 w.e.f. 24.10.1991 and of Rs. 5000-150-8000 w.e.f. 1.1.96 along with interest @ 18% p.a. from the date of due till actual payment forthwith; F

(c) Any other relief to which the plaintiffs are found entitled to in the circumstances of the case and in the eyes of law, may also be awarded to the plaintiffs and against the defendants with costs of suit;" G

6. Kashmir Singh and Others also filed a suit which was marked as Civil Suit No. 324 of 1993. Similar reliefs were H

A prayed for in the said suit also.

In the said suits, the anomaly in the scale of pay of two thermal power stations under the Board was pointed out.

B 7. Whereas Anil Kapoor was in the grade of Senior Technician, Gulshan Lal and Kashmir Singh were in the Technician Grade I. The said suits were decreed, subject to the decision of the aforementioned RSA No. 800 of 1992.

C 8. On or about 13.01.1986, for the purpose of implementing the staffing pattern vis-à-vis recruitment and promotion policy for thermal power plants of the Board, inter alia a decision was taken to re-designate the regular technical posts in the thermal organization of Faridabad with effect from 15.01.1986 in the respective trades; the relevant entries thereof are as under:

Sr. No.	Existing Designation	Scale	New Designation	Scale
E 5.	Special Foreman/ Inst. Mechanic	700-1250	Foreman – Gr. I	700-1250
6.	Foreman	700-1150	Foreman – Gr. I	700-1150
10.	Assistant Foreman Welder	570-1020	F.M. Grade – III	570-1020
F 14.	Electrician, Plumber-cum- Fitter	450-760	Tech. Grade –	450-760
G 16.	Fitter, Carpenter, Tel. Mechanic, Boiler Mech. Turbine Mech. Blacksmith, Moulder, Masson, Pattern Maker, Turner, Assistant Welder	400-700	Technician Grade – II	400-700

H 9. Kashmir Singh and Others were redesignated from

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Assistant Foreman Welder to Foreman Grade-III whereas Gulshan Lal and Others were redesignated as Technician Grade II. Those who were in Item Nos. 14 and 16, as noticed hereinbefore, also filed a suit inter alia for grant of mandatory injunction.

10. The note appended to the said order specifying re-designation is as under:

"1. Due to change in designations as indicated above, no financial benefits will be admissible to any category of staff."

11. So far as thermal plant at Panipat is concerned, similar office order was issued on 17.01.1986, redesignating the relevant posts, which are as under:

Sr. No.	Existing Designation	Scale	New Designation	Scale
3(iv)	Sr. Technician	700/1250	Foreman – Gr. I	700/1250
7.	Carpenter	400/700	Tech. Grade – II (Car)	400/700
8.	Fitter	400/700	Tech. Grade – II Plant Attendant Grade – II	400/700

12. Whereas at Faridabad, the post of Foreman was sub-divided in several grades, viz., Foreman Grade – I, II and III, the post of technician was sub-divided into two grades only, viz., Technician Grade – I and II, at Panipat, the post of Technician was abolished, as would appear from the office order dated 10.12.1987, the relevant portion whereof reads as under:

"1. The Board vide Office Order No. 2843/Cadre dated 22.5.85 and Office Order No. 2897 Cadre dated 27.8.85 etc. introduced "Staffing Pattern" in respect of Thermal

A Power Stations at Faridabad/ Panipat. Consequent upon
 the introduction of this "Staffing Pattern" the names of some
 of the posts have been re-designated and some posts
 have been dropped. In order to keep the record straight
 and avoid confusion, the Board had decided that the posts
 B mentioned in Annexure 'A' annexed with this order be
 deleted, posts as per Annexure 'B' be added and posts
 as per Annexure 'C' be re-named. Accordingly, necessary
 C deletion/ addition/ corrections may be made in Board's
 Office Order No. 384/Finance dated 19.8.87 and Office
 Order No. 391/F dated 2.11.87, notifying the revised pay
 scales for the employees in the Board with effect from
 1.1.1986.

D 2. The Board is further pleased to order that the deletion
 of posts as shown in the aforesaid Annexure 'A' shall take
 effect from 1.1.86 (date on which the revised pay scales
 were introduced in the Board) or from the date of Staffing
 Pattern was adopted at Thermal Plants, whichever is later."

E Annexure 'A' appended thereto specified various types of
 posts in respect whereof scale of pay was revised. We hereat
 are concerned with Group – X, which reads as under:

"Sr. No. of the group"	Name of the Post	Pre-revised scale	Revised scale
5.	Sr. Technician	700-1250	1600-2660
7.	Electrical Winder	700-1250	1600-2660
8.	Fitter Instructor	700-1250	1600-2660
9.	Welder Instructor	700-1250	1600-2660
19.	Control Room	700-1250	1600-2660"
	Operator		

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13. With the aforementioned backdrop of events in mind, we may have a look at the contentions raised by Gulshan Lal and Others in their suit which was filed in 1999. They had been working as Technician Grade – II and not as Senior Technician. They were appointed during the period 15.01.1986 and 30.11.1988. All of them were, thus, appointed after 1.01.1986. They could not, thus, have claimed parity with Anil Kapoor. Their scales of pay were also different.

They prayed for a decree for declaration for their entitlement to higher pay scales as also grant of a decree for mandatory injunction.

A bare perusal of the averments made in the plaint would clearly go to show that no foundational fact as regards basis of their entitlement was laid. The entire claim proceeded on the basis that they were senior to Anil Kapoor and Others.

14. So far as suit filed by Kashmir Singh and Others is concerned, we may notice that, according to them, they had been working as Foreman Grade – III. In the said suit, the following reliefs were prayed for:

“(a) A decree of declaration in favour of plaintiffs and against the defendants, declaring the plaintiffs supervisory staff entitled to get and receive from the defendants, more pay/ higher grades, and arrears from the date of anomalies/ discrimination and from which the plaintiffs are legally entitled, than that their junior/ subordinates, the view of their length of service, more and higher responsibilities, much more experience, qualification and designations,

(b) A decree of mandatory injunction as a consequential relief in favour of plaintiffs and against the defendants directing the defendants to pay to the plaintiffs forthwith their higher grades and arrears of such higher grade, pay scales from the date of anomalies/ discrimination alongwith applicable interest, if any, that of their juniors and superiors

A and keep on paying the higher grades in future continuously than that of their subordinates.”

In both the suits, the basis for their claim was stated to be as under:

B “3. That the plaintiffs have felt great humiliation and embarrassment and disappointment when they came to know, that the official working under them in the capacity of Senior Technicians who were and are juniors to the plaintiffs in rank and job/ designations have been given
C more pay and allowances in a higher grade than the plaintiffs. The plaintiffs are supervisors whereas the Technicians are working under the control and supervision of the plaintiffs...”

D 15. Indisputably, in the case of Gulshan Lal and Others, both the writ petition and suit were allowed subject to the decision of the High Court in Anil Kapoor's RSA No. 800 of 1992. The said second appeal was dismissed by the High Court on 9.10.2001. A special leave petition filed thereagainst
E had been dismissed. A review application filed has also been dismissed.

16. In Kashmir Singh's case, the writ petition was allowed, stating:

F “Mr. Arora states that the judgment, Annexure P-3 has attained finality as the SLP filed against the said judgment has been dismissed on 30.1.2003. He further states that RSA No. 281 of 2001 arising out of the same matter has also been dismissed by this Court on 4.2.2004. We
G accordingly, direct that the petitioners be given the benefits as laid in Annexure P-3 within a period of six months from the date a certified copy of this order is received by the respondents.”

H 17. A civil suit being RBT No. 324/93/98 was decreed on 20.09.1999 holding that the plaintiffs had been in service for a

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long time and had been placed on a lower scale of pay than their counter-parts. Opining that it was established that the plaintiffs had been doing the same nature of job which eleven other co-employees mentioned in paragraph 4 of the plaint had been doing and relying on or on the basis of the decision in Anil Kapoor's case, it was held:

"10. In rebuttal DW1 Sh. T.R. Diwakar Superintendent admitted those seniority list Ex. P3 are correct. But he admitted that the grade of Foreman – III is more than Technicians. He further admitted that Anil Kapoor and etc. are receiving more pay scales than the plaintiffs as per the order of the court but RSA is pending in the High Court. He further admitted that appointing authority of the plaintiffs and on these 11 co-employees is same and all these persons are working under the same Board. The plaintiffs are working under the same Board. The plaintiffs have proved legal notice served by them through their counsel as Ex. P2."

The Appellate Court dismissed the appeal preferred by the appellants holding:

"11. I have considered the above referred authorities. The plaintiffs have neither pleaded nor proved that the cadre of the plaintiffs and that of these 11 persons who have been granted the scales equivalent to that of senior technicians of Thermal Power Plant Panipat are in the same cadre. It is their case that they being senior in the same status and rank cannot be paid less than their subordinates. In fact it is a case on the basis of discrimination and this aspect could effectively be looked into by the Hon'ble High Court and by Hon'ble Supreme Court under Article 226 and Article 32 of the Constitution of India. Because it is a violation of fundamental rights. However, in the present case, if the appeal is allowed and the suit is dismissed, then an anomaly may accrue that the juniors may continue to get more pay than the seniors in

A the Board. Thus, in these circumstances, it cannot be said
that the finding recorded by the learned trial court is
improper. The appeal as such fails. However, it is ordered
B that the benefits granted to the plaintiff as ordered by the
trial court would be subject to the decision of the appeal
of other 11 employees who have been granted the scale
as per direction of the Hon'ble High court. It will be
immaterial whether the Board files appeal against this
C judgment or not, because the findings in that appeal would
be binding on the present plaintiffs too. With this
clarification the appeal fails and I dismiss it with no order
as to costs. Lower court file be sent back and appeal file
be consigned to records."

The High Court in the case of Gulshan Lal inter alia on the
premise that the respondents are similarly situated to Anil
D Kapoor held as under:

"We are not impressed by the arguments raised on behalf
of the Respondents that the Petitioners cannot derive any
benefit from judgment date 9.10.2001 rendered in RSA
E No.800 of 1992 and CWP No. 1632 of 1999, in so much
as from a perusal of the Trial Court judgment passed in
the case of the Petitioners, the stand taken by the
Respondents was that the matter was sub-judice on
account of pendency of Anil Kapoor's case. The
F Respondents went to the extent of objecting to the
maintainability of the suit pleading that the matter was sub-
judice (on account of pendency of Anil Kapoor's case). It
therefore follows that the Respondents relied on the
adjudication of Regular Second Appeal No.800 of 1992
G in the High Court to controvert the plea taken by the
Petitioners-plaintiffs in the civil suit. It was on this count that
the Petitioners were not being granted the relief and
maintainability of the suit itself was being questioned.
While deciding Issue Nos. 1 and 2 i.e. relevant issues, the
H Trial Court vide judgment dated 17.11.2000 decided the

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issues in favour of the plaintiff-Petitioners in this petition holding them entitled to receive pay scale of Rs.1400-2600 with effect from 24.10.1991 and Rs. 5000-8000 with effect from 1.1.1996 subject to the decision of RSA No.800 of 1992. Therefore, the arguments of the Respondents in these regards have to be rejected. It is not disputed that Judgment dated 17.11.2000 rendered in civil suit has attained finality. Further, judgment dated 9.10.2001 rendered in RSA No.800 of 1992 titled Haryana State Electricity Board & another's versus Anil Kapoor & others and CWP No. 1632 of 1999 titled Anil Kapoor & others Versus Haryana Power General corporation has also attained finality. Once the appeal filed on behalf of the Respondents in the Supreme Court has been dismissed, the lis stands finally settled. We therefore can safely rely on the findings recorded in the judgment dated 9.10.2001 appended with the writ petition as Annexure P-2. It is not in dispute that Anil Kapoor & others were on equal pedestal as the Petitioners. The only issue sought to be raised by the Respondents is that the qualifications in the Panipat Thermal Power Station were different from those in the Faridabad Thermal Power Station.”

The Court noticed the directions issued in Anil Kapoor's case, which are as under:

“Prior to 1.1.1986, the units were independent but with effect from 1.1.1986 and on account of the circular dated 19.8.1987, all the thermal plants in Haryana have been brought under one employer. The recruitment and promotion policies are now governed by the same set or rules whether the employees are at Faridabad or at Panipat. In these circumstances, I am of the considered opinion that the plaintiffs are entitled to the same pay scales as were given to their counter parts working at Panipat but in the cadre of senior technicians and technicians, both the courts have rightly held that the

A principle of equal pay for equal work is applicable in the present case and the plaintiffs could not be discriminated.

Resultantly, I hold that the plaintiffs Nos. 1 to 11 are entitled to the pay scale of Rs.700-1250 w.e.f.01.04.1979. Thus they are entitled to the grade of Rs.1600-2600 as senior technician w.e.f.01.01.1986. Similarly, plaintiff Nos. 12 to 16 are entitled to the pay scale of Rs.600-1100 with effect from 01.04.1979 and further they are entitled to the pay scale of Rs.1400-2600 w.e.f.01.01.1986 as technician.

C Further, I give the declaration of the plaintiffs that all the Petitioners are entitled to the grade of Rs.1640-2900 w.e.f.15.01.1986 and the grade of Rs.1800-3105 w.e.f. 01.05.1990. They shall also be entitled to the standard scale after 10 years regular service of Rs.2100-3315 as per the recommendation of the 4th Pay Commission. Further they shall be entitled to the grade of Rs.6500-9900 w.e.f.1st January, 1996 as per the recommendation of the 5th Pay Commission.

E I further give declaration that all the Petitioners shall be designated as Foreman Grade-I w.e.f. 15-01-1986 so that they may be able to claim the grade which I have awarded to them.

F The net result is that Appeal No.800 of 1992 falls and the same is hereby dismissed, while C.W.P. No. 1632 of 1999 is hereby allowed. The parties shall bear their own costs."

G Opining that they are similarly situated to *Anil Kapoor* and others, it was held:

H "In our considered opinion, the afore-reproduced portion of the judgment rendered in *Anil Kapoor's* case (supra) would be applicable to the case of the Petitioners. The department cannot be allowed to treat two sets of equal employees unequally. Further, sequence of facts of the

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petition show that in the civil suit instituted by the Petitioners, the defence taken was that the issues are common and relevant as in Anil Kapoor's case, therefore, neither the department had taken any decision nor the suit would be maintainable. The department cannot be allowed to reprobate at subsequent stage when faced with the contentions raised in the writ petition, to contend that *Anil Kapoor's* case being a different litigation would not be applicable to the present case and the relief allowed to the employees equally situated involved in Anil Kapoor's case cannot be allowed to the Petitioners in the present petitions. Some sense of responsibility is expected of the instrumentalities of the state and they cannot be allowed to behave like an ordinary litigant taking technical objections particularly when fundamental principles like "equal pay for equal work" are involved.

It was furthermore held:

"The Respondents have not been able to show from any material that the employees in Anil Kapoor's case were differently situated than the Petitioners in this writ petition. It thus follows that the employees in Anil Kapoor's case are placed at equal pedestal with the Petitioners in this writ petition and the law laid down in Anil Kapoor's case has to be applied and followed by the Respondents."

However, the arrears were restricted to three years and two months.

18. Whereas in Kashmir Singh's case, the writ petition was allowed, it appears that the second appeal filed by the appellant was dismissed on the ground of their non-appearance before the High Court. The writ petition of the respondents was allowed on the premise that the judgment passed in CWP No. 7620 of 2002 (Anil Kapoor's case) had attained finality as the Special Leave Petition preferred thereagainst had been dismissed. It

A was furthermore brought to the notice of the court that RSA No. 281 of 2001 was also dismissed on 4.02.2004.”

B 19. We may place on record that on an application filed by the appellant, RSA No. 281 of 2001 was restored. By an order dated 23.04.2004, a review application was filed for review of the order dated 19.02.2004 on 15.07.2004, which was marked as Review Application No. 286 of 2004. The C
aforementioned RSA No. 281 of 2001 was directed to be admitted for regular hearing by an order dated 29.09.2004. The review application was dismissed by an order dated 1.10.2004.

20. Appellant filed special leave petition thereagainst, which was marked as SLP (C) No. 11980 of 2004. By reason of an order dated 20.01.2005, this Court dismissed the said application, stating:

D “There is no proper explanation for the inordinate delay of 196 days in filing the Special Leave Petition against the order dated 19.2.2004. Application for condition of delay is dismissed. Accordingly, the Special Leave Petition is dismissed.
E

F The Review application has been rightly dismissed because no ground for review had been made out. We, therefore, see no reason to interfere. The Special Leave Petition against the order dated 1.10.2004 is also dismissed.”

G 21. By an order dated 8.05.2007, the said RSA No. 281 of 2001 was dismissed opining that the said appeal being RSA No. 800 of 1992 was pending which having been dismissed and affirmed by this Court, there was no ground to interfere with the concurrent findings of the courts below.

H 22. Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the appellant, would submit:

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- (i) The suits and writ petitions in the instant cases have been decreed/ allowed by the civil courts/ High Court on a wholly wrong premise, viz., that the plaintiffs/writ petitioners were similarly situated to *Anil Kapoor and others*. A
- (ii) The post of 'Technician' having been abolished at Panipat Thermal Power Station and a new post of Foreman having been created at Faridabad Thermal Power Station and moreover in view of the fact that the respondents having been appointed after 1.01.1986 could not be said to be similarly situated to *Anil Kapoor and others*. B
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- (iii) The judgments and orders passed in the suit both by the civil courts as also the High Court have a cascading effect, viz., those who had been working on a post of Foreman Grade – III at Faridabad and Technician Grade – II at Panipat would also claim their designation as Foreman although they could not have been promoted to the said post in regular course. D
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- (iv) For the purpose of appointment to the post of Foreman Grade – I, the qualifications and experience being different, by following a wrong order of redesignating Anil Kapoor and Others as Foreman, others also could not have given the same benefit particularly in view of the redesignation of the posts vis-à-vis the revision in the scale of pay. F
- (v) It is wholly impermissible in law to place the respondents in the supervisory category and that too for all intent and purport by granting them designation and scale of pay which is four grades above the posts which the respondents had been holding. G
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- A (vi) Although Article 14 of the Constitution of India forbids inequality, but, it is well-settled that equality cannot be claimed in illegality; but, as in this case, reliefs granted in the suit as also the writ petitions proceeded wholly on a wrong premise, viz.,
- B equivalence in the scale of pay vis-à-vis the persons similarly situated in both the thermal power stations, and, thus, the impugned judgment cannot be sustained.
- C (vii) The High Court has exceeded its jurisdiction in passing the impugned judgments insofar as not only higher scales of pay had been directed to be granted but also higher designations have been directed to be given which is wholly illegal.
- D (viii) Appellant although suffered orders of this Court in other writ petitions but keeping in view the fact that the correct factual aspects as also the circular letters containing providing for re-designation in the revised scale of pay could not be brought to its
- E notice, the same should not be held to have any binding effect on the appellants in all subsequent litigations.

F 23. Mr. Salman Khurshid, learned counsel appearing on behalf of the respondents, on the other hand, has placed before us a composite seniority list which is effective from 29.02.1988 to contend that whereas Anil Kapoor was placed therein at Serial No. 72, some of the respondents herein were placed at Serial Nos. 5, 7, 9, 10, 11, 12, etc. and, thus, there is absolutely

G no reason as to why the respondents herein shall be discriminated against vis-à-vis the said Anil Kapoor.

H It was furthermore submitted that all the respondents having requisite qualifications and/ or sufficient experience to hold a higher post, this Court should not interfere with the impugned

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judgment. It was urged that there does not exist any anomaly, as has been submitted on behalf of the appellants, with regard to pay scales so far as the Senior Technicians and Technicians of the Faridabad Plant are concerned vis-à-vis the Panipat Plant. A

In any view of the matter as either before the learned Trial Judge as also before the High Court no grievance had been raised to the effect that the respondents had not been holding sufficient qualification or experience nor having raised any other contention which have been raised before us for the first time, this Court may not permit the appellants to do the same. B C

24. The Board by an office order dated 27.05.1985 issued the following revised recruitment and promotion policy for the employees working in the Thermal Power Projects of the Board: D

8. Foreman Grade - I

(Scale Rs. 700/1250, SG 750/1450 for 20% posts) E

(i) 10% shall be filled up by direct recruitment by Matriculates with ITI two years course with eight years experience or 8th Class with ITI two years Course and eleven years experience. F

(ii) 90% shall be filled up by promotion from Foreman Gr-II with four years experience/ service as such."

99% of the respondents, we are informed, do not fulfill these basic/ essential qualifications. G

25. So far as the promotion to the posts of Foreman Grade II and III is concerned, the experience in the next below post was a requisite criterion but as would appear from the discussions made hereinafter none of the respondents had the experience H

A in the next below post.

For the purpose of proper appreciation of the question involved, we may notice the qualifications held by the respondents.

B In Civil Appeals arising out of SLP (C) No. 15718 of 2006 (Gulshan Lal's case) and SLP (C) No. 15758 of 2007 (Kashmir Singh's case), some of the respondents are not even matriculate. For example, qualification of some respondents is only 3rd class, 6th class etc..

C In Civil Appeal arising out of SLP (C) No. 20792 of 2006, most of the respondents are not having even the qualification of matric. Qualification of one of the respondents, viz., Chaman Lal is only 2nd Class. Similarly in other appeals also, some respondents are not even matriculates. Some have passed only 4th standard, 5th standard and 6th standard examinations.

26. The question, which, therefore, arises for consideration is as to whether such unusual two/three/four promotions in the hierarchy is permissible in law.

E Evidently, it is not.

27. Appellant is a State within the meaning of Article 12 of the Constitution of India. For holding a public office, an employee must possess the requisite prescribed qualification, in absence whereof the additional reliefs could not have been granted to them relying on or on the basis of the judgment passed in the earlier cases. Conditions of service of the employees of the appellants are governed by the statutory rules. Violation thereof is impermissible in law. Whereas the appellants are bound by the doctrine of equality as envisaged under Article 14 of the Constitution of India, it is also well-settled that unequals cannot be treated as equals. Herein, equality doctrine has been invoked only on the basis of relief granted in the case of Anil Kapoor. In Anil Kapoor's case, a writ petition

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was also filed for the purpose of grant of designation. The same has rightly or wrongly been allowed. That would not mean that equality can be claimed on the basis thereof which would lead to a wholly anomalous situation. Decree granted by a competent court of law is no doubt binding on the employer. But, when in a subsequent litigation the absurd result emanating from the cascading effect thereof becomes apparent before another court and it is found that the said judgment is illegal, it is well-settled, that by application of Article 14 of the Constitution of India alone, similar relief should not be granted. Equality clause carries with it a positive effect. It signifies treating persons equally who are situated similarly. Those who had been occupying the position of Foreman Grade – I and/ or Foreman Grade – II and other employees who were far below them either for the purpose of seniority or otherwise could not have been treated equally. The cascading effect thereof would be that for all intent and purport those who are in the joint seniority list being above Anil Kapoor and others in the seniority list would derive the same benefit irrespective of the fact as to whether they are qualified to hold the post of Foreman Grade – I and/ or otherwise gained sufficient experience therefor for promotion to that post.

28. Submission of Mr. Salman Khurshid that the right to obtain same remuneration would carry with it the designation also is not correct. Promotion to a higher post cannot be claimed as a matter of right. Before a person claims promotion, subject of course to just exceptions, the prevailing rules must be followed. If the employee concerned while working in a particular grade does not acquire experience of working therein, he cannot be promoted to the next higher grade although experience in the immediately below post forms part of an essential qualification.

A person, thus, who is ineligible to hold the post cannot be directed to be promoted thereto only on the ground of so called equality doctrine or otherwise.

A 29. We have noticed hereinbefore that even in Kashmir Singh's case, the High Court committed a serious illegality in treating the Senior Technicians and Technicians together. Similar reliefs were granted to both the categories of employees which was impermissible.

B 30. The basis on which the other judgments were passed, viz., the decision of the High Court in the second appeal is subject matter of one of the SLPs. The Trial Judge following the case of Anil Kapoor and Kashmir Singh had evidently not only directed grant of scale of pay but also an additional relief viz. designation. It was also, in our opinion, wholly impermissible in law.

C 31. It is one thing to say that having regard to the provisions contained in Article 39(d) of the Constitution of India read with D Article 14 thereof, a court invokes the doctrine of equal pay for equal work but the same would not mean that a person is not only granted the same relief but also granted a higher status to which he was not otherwise entitled to.

E 32. In these appeals, the legality or otherwise of the judgment of the High Court passed in Regular Second Appeal No. 281 of 2001 itself is in question. We have noticed hereinbefore that the High Court proceeded on the basis that the second appeal had been dismissed although the same was merely dismissed for default and which has since been restored. Merit of the matter was considered at a later stage. A decision rendered on merit by the High Court, being open to question, in our opinion, this Court is entitled to go thereinto.

F It is a trite law that the doctrine of equal pay for equal work cannot be applied automatically. Application of the said doctrine involves several factors.

G 33. In *Deb Narayan Shyam v. State of W.B.* [(2005) 2 SCC 286], this Court held:

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"A 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 functions 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."

{See also *Union of India v. Mahajabeen Akhtar* [(2008) 1 SCC 368]}

34. Same or similar nature of work, by itself, does not entitle an employee to invoke the doctrine of equal pay for equal work. Qualification, experience and other factors would be relevant for the said purpose.

35. From the averments made in the plaint, it is evident that the premise on which they could claim a higher designation had not been specified. Respondents herein in their respective complaints admit that they have been working on a much lower grade than the post of Senior Technician or Technician.

36. Furthermore, neither the learned Trial Judges nor the High Court considered the effect of abolition of certain posts as also re-designation thereof. It is furthermore evident that Gulshan Lal and others having been working in Technician Grade – II could not have claimed parity with those who had been occupying the post of Senior Technician.

37. It may be true that this Court has dismissed the special leave petition on the ground of delay. The same, however, does not preclude us from considering the matter on merit. We would therefore assume that even no appeal was filed. Even in such a

A situation, this Court in *State of Maharashtra v. Digambar* [(1995) 4 SCC 683] considered the following contention:

B "9. Shri Ashok Desai, in his reply to the submissions made on behalf of the respondent and others who had obtained judgments in their favour from the High Court on the basis of the judgment impugned in this appeal, did not dispute the position that certain judgments of the High Court in similar matters had not been appealed against by the State in this Court. But, according to him such a thing had happened obviously under an impression that they were stray cases and not fit enough to be appealed against before this Court, having regard to smallness of the amounts involved. When the High Court allowed certain other writ petitions based on its earlier judgments in similar matters, the State, according to him, inevitably filed SLPs in this Court in respect of latter judgments, but, unfortunately those SLPs had come to be dismissed. But, when the High Court allowed the writ petition by the judgment under appeal and when that judgment was followed in allowing other 191 writ petitions and when innumerable persons were trying to take advantage of the said judgments of the High Court to file further writ petitions which was estimated to involve an expenditure of about 400 crores of rupees for the State of Maharashtra, there was no escape from filing the special leave petition out of which the present appeal has arisen and other SLP/SLPs to wriggle out of the unanticipated situation. It was his submission that in the peculiar facts and circumstances adverted to by him, the earlier non-questioning of certain judgments of the High Court in this Court and the dismissal of SLPs *in limine* by a Division Bench of this Court filed against a few judgments of the High Court, cannot be a bar against the State filing this appeal against the judgment concerned seeking a decision of this Court on merits, when the judgment impugned was wholly unsustainable and called for interference so that the State Government

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may be saved from the calamitous situation which it had to face otherwise on account of 191 judgments rendered by the High Court by following it and when innumerable persons were waiting to take advantage of the judgment by filing fresh writ petitions in the High Court."

The said contention was negatived, holding:

"Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter/s where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest."

It was observed :

"Therefore, the fact that the State has failed to file appeals in similar matters or this Court has rejected SLPs in similar matters, cannot be held to be a total bar or a fetter for this Court to entertain appeals under Article 136 of the Constitution against similar judgments of the High Court where need to entertain such appeals is found necessary to meet the ends of justice, in that, the ambit of power invested in this Court under Article 136 allows its exercise, wherever and whenever, justice of the matter demands it for redressal of manifest injustice."

38. Yet again in *Coromandel Fertilizers Ltd. v. Union of India and Others* [1984 (Supp) SCC 457], it was held:

"13. Mr Setalvad made a grievance that the authorities concerned had allowed the benefit of the notification under similar circumstances to a rival company. If the grievance of the appellant is true, the appellant may no doubt have

A reasons to feel sore about it. We have, however, to point
out that the grievance of the appellant even if it is well
founded, does not entitle the appellant to claim the benefit
of the notification. A wrong decision in favour of any
B particular party does not entitle any other party to claim the
benefit on the basis of the wrong decision. We are,
therefore, clearly of the opinion that the fertilizer
manufactured by the appellant in respect of which claim
for exemption under the notification is made is not a mixed
C fertilizer within the meaning and scope of the notification
and we have no hesitation in rejecting the case of the
appellant, expressing our agreement with the reasons
stated in the judgment of the High Court.”

39. We are not oblivious of the fact that anomalous
situation would be created in the sense that juniors of the
D respondents may be getting a higher pay but things as they
stand cannot be allowed to continue. It has a cascading effect,
viz., those employees who are junior to the respondents and/
or even Anil Kapoor and others would be entitled to claim parity
in the scale of pay as also in designation.

E 40. It is now a well-settled principle of law that nobody
should suffer owing to the mistake on the part of the court in
view of the maxim *actus curiae neminem gravabit*.

F 41. We, therefore, are of the opinion that the impugned
judgments cannot be sustained which are set aside accordingly.
The appeals are allowed. However, in the facts and
circumstances, there shall be no order as to costs.

B.B.B.

Appeals allowed.