

UNION TERRITORY ADMINISTRATION, CHANDIGARH &
ORS.

v.

MRS. MANJU MATHUR & ANR.
(Civil Appeal No. 2823 of 2009)

JANUARY 14, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Service Law – Payscale – Dietician and Senior Dietician under the Director Health Services, Chandigarh Administration – Claim of, for pay scales at par with their counterparts under the Government of Punjab – Held: Claim not justified – The nature and quantum of duties and responsibilities of the Dietician and Senior Dietician under the Director Health Services, Chandigarh Administration were not comparable or equivalent in any way with their counterparts under the Government of Punjab – Doctrine of equal pay for equal work could not be invoked since the two sets of employees were not similarly situated – Doctrines – Doctrine of equal pay for equal work – Inapplicability of.

The President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution made the Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992 with retrospective effect from 01.04.1991. The proviso to Rule 2 of these Rules empowered the Administrator to revise the scales of pay of persons appointed to the services and posts under the administrative control of the Administrator, Chandigarh, so as to bring them at par with the scales of pay which may be sanctioned by the Government of Punjab from time to time to the corresponding categories of employees.

The Administrator, Union Territory, Chandigarh,

A notified the revised scales for the posts carrying existing scales in all classes of service by notification dated 03.01.1992 and soon thereafter, the Finance and Planning Officer, Chandigarh Administration, issued a Circular dated 08.01.1992 to all the Heads of Departments/Officers in Chandigarh Administration informing them that the revised pay scales of various posts of their respective departments mentioned in the notification have been revised on the basis of corresponding posts which also exist in the State of Punjab.

C Respondent nos. 1 and 2, who were then working as Senior Dietician and Dietician posted in the General Hospital, Chandigarh under the Union Territory Administration, Chandigarh, made a representation to the Finance Secretary of the Union Territory Administration, Chandigarh, that the pay scales of Senior Dietician and Dietician have been revised to Rs.1500 - Rs.2540 and Rs.1350 - Rs.2400 respectively which were not at par with the revised pay scales of Rs.2200-Rs.4000 and Rs.1500-Rs.2640 of the corresponding posts of Dietician and Assistant Dietician respectively under the Government of Punjab. Respondents, however, were informed that they have been allowed revised pay scales as per the conversion technique.

F Aggrieved, the respondents filed O.A. before the Central Administrative Tribunal. The Tribunal dismissed the O.A. holding that the claim on the basis of equal pay for equal work is not all pervasive as distinctions have to be made on the basis of number of factors as per the law laid down by this Court and if these factors are taken into consideration, the claim of the respondents for parity in pay scales with their counterparts in the State of Punjab was not justified.

H The respondents then challenged the order of the Tribunal before the High Court in a petition under Articles

226/227 of the Constitution. The High Court held in the impugned judgment that the Dietician and Senior Dietician working in the Union Territory Administration, Chandigarh, were entitled to pay scales at par with their counterparts in the State of Punjab and accordingly issued a mandamus to the appellants to grant pay scales of Dietician (Gazetted) of the Directorate of Research and Medical Education, Punjab, to the Senior Dietician in the Union Territory Administration, Chandigarh, and to give pay scales of Dietician (Non-Gazetted) of the Directorate of Research and Medical Education, Punjab, to the Dietician in the Union Territory Administration, Chandigarh.

Allowing the appeal, the Court

HELD:1.1. When the matter was listed before this Court, this Court granted leave and pending hearing and final disposal of the Civil Appeal directed the Union Territory Administration, Chandigarh, to appoint a High Level Equivalence Committee to examine the nature of duties and responsibilities of Senior Dietician working under the Union Territory Administration, Chandigarh *vis-à-vis* Dietician (Gazetted) under the State of Punjab and also to examine the nature of duties and responsibilities of Dietician working under the Union Territory Administration, Chandigarh, *vis-à-vis* the Dietician (Non-Gazetted) working under the State of Punjab and to submit a report to the Court. Pursuant to these directions, a High Level Equivalence Committee comprising the Director, Health and Family Welfare, Finance and Planning Officer, Joint Secretary (Finance) and Joint Secretary (Personnel) met and after examining the nature and quantum of duties and responsibilities of the posts of Senior Dietician and Dietician in the Health Department of the Union Territory, Chandigarh, *vis-à-vis* posts of Senior Dietician and Dietician (Non-Gazetted) in the State

A of Punjab and submitted a report. [Paras 4, 5] [890-B-H; 891-A]

B 1.2. From the report of the High Level Equivalence
C Committee, it is clear that the Directorate of Research and
D Medical Education, Punjab, is a teaching institution in
E which the Dietician has to perform multifarious duties
F such as teaching the probationary nurses in subjects of
G nutrition dietaries, control and management of the
kitchen, etc., whereas, the main duties of the Dietician
and Senior Dietician in the Government multi specialty
hospital in the Union Territory Chandigarh are only to
check the quality of food being provided to the patients
and to manage the kitchen. Also from the report of the
High Level Equivalence Committee it is found that after
considering all aspects of the matter, the High Level
Equivalence Committee was of the opinion that the
nature and quantum of duties and responsibilities of the
post of Senior Dietician in the Health Department of
Union Territory Chandigarh are not comparable or
equivalent in any way with the post of Dietician (Gazetted)
in the Directorate of Research and Medical Education,
Punjab and similarly the nature and quantum of duties
and responsibilities of the post of Dietician in the Health
Department of Union Territory Chandigarh are not
comparable or equivalent in any way with the post of
Dietician (Non-Gazetted) in the Directorate of Research
and Medical Education, Punjab. Considering this report
of the Equivalence Committee, the respondents are not
entitled to the same pay scale as that of Dietician
(Gazetted) and Dietician (Non-Gazetted) in the Directorate
of Research and Medical Education, Punjab, as held by
the High Court in the impugned judgment. [Paras 6, 7]
[892-C-H]

H 2. In a recent case, the Supreme Court has held that
the doctrine of equal pay for equal work can be invoked

only when the employees are similarly situated and that similarity of the designation or nature or quantum of work is not determinative of equality in the matter of pay scales and that the Court has to consider several factors and only if there was wholesale identity between the holders of the two posts, equality clause can be invoked, not otherwise. In another case, this Court has held that normally the applicability of principle of equal pay for equal work must be left to be evaluated and determined by an expert body and these are not matters where a writ court can lightly interfere. This Court has further held in this decision that it is only when the High Court is convinced on the basis of material placed before it that there was equal work and of equal quality and that all other relevant factors were fulfilled, it may direct payment of equal pay from the date of filing of the respective writ petition. In the present case, the appellants had seriously disputed the equivalence between the posts held by the respondents and those held by the Dietician (Gazetted) and Dietician (Non-Gazetted) under the Government of Punjab and the High Court instead of referring this dispute regarding parity of posts under the Union Territory Administration, Chandigarh, with the posts under the Government of Punjab to an expert body has erroneously equated the posts under the Union Territory Administration, Chandigarh, with the posts under the Government of Punjab on the basis of the pleadings of the respondents and issued the direction to grant pay scales to the respondents equal to pay scales of Dietician (Gazetted) and Dietician (Non-Gazetted) under the Directorate of Research and Medical Education, Government of Punjab. The impugned judgment is therefore set aside and the order of the Central Administrative Tribunal is sustained. [Para 7, 8] [892-G-H; 893-A-H]

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A *Bajpai [(2009) 13 SCC 635]; State of Haryana & Others v. Charanjit Singh [(2006) 9 SCC 321] – referred to.*

Case law Reference:

B (2009) 13 SCC 635 referred to Para 7
(2006) 9 SCC 321 referred to Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2823 of 2009.

C From the Judgment & Order dated 16.5.2007 of the High Court of Punjab & Haryana at Chandigarh in C.W.P. No. 17144-CAT of 2001.

Kamini Jaiswal for the Appellants.

D Rajinder Mathur, Nidhi Bisaria, Madhu Sikri for the Respondents.

The Judgment of the Court was delivered by

E A. K. PATNAIK, J. 1. This is an appeal against the order dated 16.05.2007 of the High Court of Punjab & Haryana in C.W.P. No. 17144-CAT of 2001 holding that the respondents, who were working as Senior Dietician and Dietician under the Director Health Services, Chandigarh Administration, are entitled to pay scales at par with their counterparts under the Government of Punjab and directing the appellants to give the pay scales accordingly to the respondents.

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G 2. The President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution made the Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992 with retrospective from 01.04.1991. The proviso to Rule 2 of these Rules empowered the Administrator to revise the scales of pay of persons appointed to the services and posts under the administrative control of the

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Administrator, Chandigarh, so as to bring them at par with the scales of pay which may be sanctioned by the Government of Punjab from time to time to the corresponding categories of employees. The Administrator, Union Territory, Chandigarh, notified the revised scales for the posts carrying existing scales in all classes of service by notification dated 03.01.1992 and soon thereafter, the Finance and Planning Officer, Chandigarh Administration, issued a Circular dated 08.01.1992 to all the Heads of Departments/Officers in Chandigarh Administration informing them that the revised pay scales of various posts of their respective departments mentioned in the notification have been revised on the basis of corresponding posts which also exist in the State of Punjab. Respondent nos. 1 and 2, who were then working as Senior Dietician and Dietician posted in the General Hospital, Chandigarh under the Union Territory Administration, Chandigarh, made a representation dated 18.12.1992 to the Finance Secretary of the Union Territory Administration, Chandigarh, that the pay scales of Senior Dietician and Dietician have been revised to Rs.1500 - Rs.2540 and Rs.1350 - Rs.2400 respectively which were not at par with the revised pay scales of Rs.2200-Rs.4000 and Rs.1500-Rs.2640 of the corresponding posts of Dietician and Assistant Dietician respectively under the Government of Punjab. Respondents, however, were informed that they have been allowed revised pay scales as per the conversion technique.

3. Aggrieved, the respondents filed O.A. No. 1017-CH of 1993 before the Central Administrative Tribunal, Chandigarh. By order dated 20.04.2001, however, the Central Administrative Tribunal, Chandigarh Bench, dismissed the O.A. of the respondents after holding that the claim on the basis of equal pay for equal work is not all pervasive as distinctions have to be made on the basis of number of factors as per the law laid down by this Court and if these factors are taken into consideration, the claim of the respondents for parity in pay scales with their counterparts in the State of Punjab was not justified. The respondents then challenged the order dated

- A 20.04.2001 of the Central Administrative Tribunal, Chandigarh Bench, before the High Court of Punjab & Haryana in a petition under Articles 226/227 of the Constitution bearing no. C.W.P. 17144-CAT/2001 and the High Court held in the impugned judgment that the Dietician and Senior Dietician working in the
- B Union Territory Administration, Chandigarh, were entitled to pay scales at par with their counterparts in the State of Punjab and accordingly issued a mandamus to the appellants to grant pay scales of Dietician (Gazetted) of the Directorate of Research and Medical Education, Punjab, to the Senior Dietician in the
- C Union Territory Administration, Chandigarh, and to give pay scales of Dietician (Non-Gazetted) of the Directorate of Research and Medical Education, Punjab, to the Dietician in the Union Territory Administration, Chandigarh.

4. When this Special Leave Petition against the impugned
- D judgment and order of the High Court was listed before this Court on 24.04.2009, the Court granted leave and pending hearing and final disposal of the Civil Appeal directed the Union Territory Administration, Chandigarh, to appoint a High Level Equivalence Committee to examine the nature of duties and
- E responsibilities of Senior Dietician working under the Union Territory Administration, Chandigarh *vis-à-vis* Dietician (Gazetted) under the State of Punjab and also to examine the nature of duties and responsibilities of Dietician working under the Union Territory Administration, Chandigarh, *vis-à-vis* the
- F Dietician (Non-Gazetted) working under the State of Punjab and to submit a report to the Court.

5. Pursuant to these directions in the order dated 24.04.2009 of this Court, a High Level Equivalence Committee comprising the Director, Health and Family Welfare, Finance and Planning Officer, Joint Secretary (Finance) and Joint Secretary (Personnel) met on 17.07.2009 and after examining the nature and quantum of duties and responsibilities of the posts of Senior Dietician and Dietician in the Health Department of the Union Territory, Chandigarh, *vis-à-vis* posts
- G of Senior Dietician and Dietician (Non-Gazetted) in the State
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of Punjab and have submitted the following report:

"The Dietician (Gazetted) and Dietician (Non-Gazetted) in Directorate of Research & Medical Education (D.R.M.E.) Punjab are working in the Rajindera Hospital (Patiala) and Sh. Guru Teg Bahadur Hospital (Amritsar) having bed strength of 1009 and 951 respectively, whereas the Senior Dietician and Dietician in the U.T. Chandigarh are working in Govt. Multi Specialty Hospital Sector - 16 which is a 500 bedded hospital. The Directorate of Research & Medical Education Punjab is a teaching institution in which the Dietician has to perform the multifarious duties such as teaching the probationary nurses in the subjects of nutrition Dietaries, control and management of kitchen etc. Whereas the main duties of Dietician and Senior Dietician in Govt. Multi Specialty Hospital Sector -16, U.T. Chandigarh are only to check the quality of food being provided to the patients and management of the kitchen. The Health Department of U.T. Chandigarh follows the rules and regulations applicable to corresponding categories of employees in the Directorate of Health and Family Welfare, Punjab and not of the Directorate of Research and Medical Education, Punjab. In the Directorate of Health and Family Welfare, Punjab there are no posts of Senior Dietician and Dietician. The workload of the posts in D.R.M.E. Punjab is definitely more as compared to the posts in the Health Department U.T. Chandigarh. Besides, the teaching work, the incumbents in Punjab are required to look after the basic work of supervision of food etc. in respect of a larger number of persons as is reflective from the number of beds in the hospitals, as compared to U.T. Chandigarh.

The High Level Equivalence Committee has considered all aspects of the matter and is of the opinion that the nature and quantum of duties and responsibilities of the post of Senior Dietician in the Health Department of U.T. Chandigarh are not comparable or equivalent in any way

A with the post of Dietician (Gazetted) in the Directorate of
Research & Medical Education, Punjab. Similarly the
nature and quantum of duties and responsibilities of the
post of Dietician in the Health Department of U.T.
Chandigarh are not comparable or equivalent in any way
B with the Post of Dietician (Non-Gazetted) in the Directorate
of Research & Medical Education, Punjab.”

6. We have heard learned Counsel for the parties. We find
from the report of the High Level Equivalence Committee
extracted above that the Directorate of Research and Medical
C Education, Punjab, is a teaching institution in which the
Dietician has to perform multifarious duties such as teaching
the probationary nurses in subjects of nutrition dietaries, control
and management of the kitchen, etc., whereas, the main duties
D of the Dietician and Senior Dietician in the Government multi
specialty hospital in the Union Territory Chandigarh are only to
check the quality of food being provided to the patients and to
manage the kitchen. We also find from the report of the High
Level Equivalence Committee that after considering all aspects
of the matter, the Committee was of the opinion that the nature
E and quantum of duties and responsibilities of the post of Senior
Dietician in the Health Department of Union Territory
Chandigarh are not comparable or equivalent in any way with
the post of Dietician (Gazetted) in the Directorate of Research
and Medical Education, Punjab and similarly the nature and
F quantum of duties and responsibilities of the post of Dietician
in the Health Department of Union Territory Chandigarh are not
comparable or equivalent in any way with the post of Dietician
(Non-Gazetted) in the Directorate of Research and Medical
Education, Punjab.

G 7. Considering this report of the Equivalence Committee,
the respondents are not entitled to the same pay scale as that
of Dietician (Gazetted) and Dietician (Non-Gazetted) in the
Directorate of Research and Medical Education, Punjab, as
held by the High Court in the impugned judgment and order.
H This Court has held in a recent case *State of Madhya Pradesh*

& Others v. Ramesh Chandra Bajpai [(2009) 13 SCC 635] that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated and that similarity of the designation or nature or quantum of work is not determinative of equality in the matter of pay scales and that the Court has to consider several factors and only if there was wholesale identity between the holders of the two posts, equality clause can be invoked, not otherwise. This Court has also held in *State of Haryana & Others v. Charanjit Singh* [(2006) 9 SCC 321] that normally the applicability of principle of equal pay for equal work must be left to be evaluated and determined by an expert body and these are not matters where a writ court can lightly interfere. This Court has further held in this decision that it is only when the High Court is convinced on the basis of material placed before it that there was equal work and of equal quality and that all other relevant factors were fulfilled, it may direct payment of equal pay from the date of filing of the respective writ petition. In the present case, the appellants had seriously disputed the equivalence between the posts held by the respondents and those held by the Dietician (Gazetted) and Dietician (Non-Gazetted) under the Government of Punjab and the High Court instead of referring this dispute regarding parity of posts under the Union Territory Administration, Chandigarh, with the posts under the Government of Punjab to an expert body has erroneously equated the posts under the Union Territory Administration, Chandigarh, with the posts under the Government of Punjab on the basis of the pleadings of the respondents and issued the direction to grant pay scales to the respondents equal to pay scales of Dietician (Gazetted) and Dietician (Non-Gazetted) under the Directorate of Research and Medical Education, Government of Punjab.

8. We, therefore, set aside the impugned judgment and order of the High Court and sustain the order of the Central Administrative Tribunal, Chandigarh Bench, and allow this appeal with no order as to costs.