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UNION OF INDIA & ORS.

v.

RAJESH KUMAR GOND

(Special Leave Petition (Civil) No. 17419/2009)

B

JULY 25, 2013

[H.L. GOKHALE AND J. CHELAMESWAR, JJ.]

C

Service Law - Equal pay for equal work - Respondent, a Junior Hindi Translator under the Commerce Ministry - He sought parity of pay with Junior Translators in the Central Secretariat Official Language Service (CSOLS) - Plea of respondent not accepted - He filed application in the Administrative Tribunal on the basis of 'equal pay for equal work' - Application opposed by the petitioners who stated that

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the Fifth Central Pay Commission had recommended that the pay-scales of Junior Hindi Translators for the Central Secretariat (CSOLS) may be applied to all subordinate offices subject to their functional requirement - However, no material placed before the Tribunal to show as to how the functional

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requirement of the concerned job in the Commerce Ministry was different from that in the Central Secretariat - Tribunal held in favour of respondent stating that there was no reason to deny parity in pay - Order challenged - Held: Since no material was placed before the Tribunal about the functional

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distinction, the order of the Tribunal cannot be faulted - Though principle of 'equal pay for equal work' is not expressly declared by the Constitution to be a fundamental right, but it certainly is a constitutional right - Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy - To the

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vast majority of the people, equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get - To them the equality clauses will have some substance if equal work means equal

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pay - Constitution of India, 1950 - Articles 14, 16 and 39(d). A

Randhir Singh vs. Union of India and Ors. (1982) 1 SCC 618: 1982 (3) SCR 298 - relied on.

Case Law Reference:

1982 (3) SCR 298 relied on **Para 6, 8** B

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 17419 of 2009.

From the Judgment and Order dated 09.07.2008 of the High Court at Calcutta in Writ Petition CT No. 632 of 2007. C

WITH

C.A. No. 1119 of 2013 & SLP (C) No. 37255 of 2012. D

P.P. Malhotra, ASG, Ashok Kumar Panda, Yasir Rauf, Lingaraj Sarangi, Arvind Kumar Sharma R. Balasubramanian, Gunwant Dara, Aditya Singla (for B.V. Balaram Das), Anil Katiyar, Subodh Kr. Pathak, Shashi Ranjat (for Dharmendra Kumar Sinha), Pragati Neekhra, Parth Tiwari for the appearing Parties. E

The following order of the Court was delivered by

O R D E R

S.L.P.(C) No. 17419/2009 F

1. Delay condoned.

2. Heard Mr. P.P. Malhotra, learned Additional Solicitor General in support of this special leave petition and Mr. Subodh Kr. Pathak, learned counsel appearing for the respondent. G

3. This special leave petition seeks to challenge the judgment and order dated 9.7.2008 passed by the High Court H

A of Calcutta in Writ Petition No.632 of 2007 which confirmed the judgment dated 9.11.2006 passed by the Central Administrative Tribunal, Calcutta Bench in O.A. No.939 of 2004.

B 4. The respondent is a Junior Hindi Translator working in the office of Director General of Commercial Intelligence & Statistics under the Commerce Ministry and he sought parity of pay with the Junior Translators who were working in the Central Secretariat Official Language Service (CSOLS). The Home Ministry had issued Office Memorandum dated 9.2.2003, upgrading the pay-scales of Junior Hindi Translators from Rs.5000-1050-8000 to Rs.5500-175-9000, which were made applicable from 11.2.2003. The respondent sought the same pay-scale but it was denied to him. It is, therefore, that he filed an application in the Central Administrative Tribunal on the basis of 'equal pay for equal work'. The application filed by the respondent was opposed by the petitioners by filing a counter, wherein amongst other things, in paragraph 9 they stated that the Fifth Central Pay Commission had recommended that the pay-scales of Junior Hindi Translators for the Central Secretariat (CSOLS) may be applied to all subordinate offices subject to their functional requirement. However, no material whatsoever was placed before the Tribunal to show as to how the functional requirement of the concerned job in the Commerce Ministry was different from that in the Central Secretariat. Both the posts required the work of translation to be done and, therefore, the Tribunal came to the conclusion that there was no reason to deny parity in pay. The Tribunal relied upon the judgment of a Bench of three Judges of this Court in *Randhir Singh Vs. Union of India and Ors.*, (1982) 1 SCC 618, which is a judgment granting equal pay to the drivers in Delhi Police Force as available to those in the Central Government and Delhi Administration. The petitioners herein challenged the order of the Tribunal by approaching the Calcutta High Court which dismissed the writ petition and therefore, this special leave petition.

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5. Mr. Malhotra, learned Additional Solicitor General appearing for the Union of India submitted that the two posts cannot be equated but having noted that when no material was placed before the Tribunal about the functional distinction, in our view, the order of the Tribunal could not be faulted. The High Court was, therefore, right in dismissing the writ petition.

6. Before we conclude, we may profitably refer to the observations of Chinnappa Reddy, J., in paragraph 8 of the judgment in *Randhir Singh* (supra) which reads as follows:

"8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional right. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for every one and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay....."

7. This special leave petition is, therefore, dismissed.

A S.L.P.(C) No.37255/2012:

B 1. The respondents herein were working as Senior Translators/Assistant Directors in the offices under the Ministry of Defence. They also sought parity with the translators in the Central Secretariat which has been granted by the Central Administrative Tribunal, Chandigarh by its judgment dated 18.5.2009. That judgment is left undisturbed by the Punjab and Haryana High Court in C.W.P. No.23126 of 2010 by its order dated 23.3.2011.

C 2. Mr. Balasubramanian, learned counsel appearing for the appellants submitted that their source of recruitment was different. However, having noted that no functional difference was shown in their work, we cannot find any fault with the judgments of the Tribunal and the High Court for the reasons stated in the earlier special leave petition. The special leave petition is, therefore, dismissed. There will be no order as to costs.

CIVIL APPEAL NO. 1119 OF 2013:

E The respondent in this appeal was working as a Junior Hindi Translator in the office of the Commissioner of Central Excise-I, Kolkata. He claimed parity of pay with the Junior Translators who were working in the Central Secretariat. In his case also, what we find is that there is no functional distinction as far as the work of these translators is concerned. Therefore, we do not take a different view. The civil appeal is dismissed. There will be no order as to costs. Interim orders will stand vacated.

B.B.B.

Appeal dismissed.