
(1987) 07 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 5368 of 1985

Baij Nath Gupta and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-07-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 39

Citation : (1988) 36 BLJR 211 : (1988) PLJR 15

Hon'ble Judges : S.S. Sandhawalia, C.J;Ashwini Kumar Sinha, J

Bench : Division Bench

Judgement

Ashwini Kumar Sinha, J.—The grievance of the petitioners (67), in this writ case, is that the equality doctrine embodied in the Constitution of India has been attempted to be flouted by the Rajendra Agricultural University Authorities (Respondents 2 and 3) by the impugned order annexure 5 dated 3-9-85, under the cover of artificial divisions, dividing persons doing the same work into the groups without any justifications and denying to one group (the petitioners) by way of pay what the other group sets.

The petitioners claim for the grant of the same pay scale of Rs. 730-1080/- subsequently upgraded to the scale of 785-1210/- as is being paid to the clerks of the Respondent University at the Headquarter (Pusa) and they have also prayed for a writ of mandamus commanding the respondents to grant them the aforesaid scale of pay on the doctrine of "Equal pay for equal work".

The petitioners are in the scale of pay of Rs. 580-860/-

The petitioners, thus, complain of the violation of articles 14 and 16 of the Constitution of India and also violation of the principle of "Equal pay for equal work".

(1-A), Before dealing with the theory of "Equal pay for Equal work", I first deal with the other important aspect of the matter i.e., whether the Respondent University has committed any illegality in asking the petitioners (the

deputationists to resign first from the Government service and opt for University service before they are allowed to avail the scale of pay as claimed.

2. The petitioners were initially appointed as clerks in the different Agricultural Colleges and Research Institutes then under the Department of Agriculture, Government of Bihar in other words, basically they are government employees. Later on, all the petitioners were transferred in the constituent units of the Rajendra Agricultural University, in other words all the petitioners are "deputationists" at their own places,

3. Thus, in short, the point involved is whether the petitioners who are clerks and are "deputationists" in the Constituent Units are entitled to get the same scale of pay (as referred to above) as the other clerks of the Respondent University at the Head Quarter ?

4. By Rajendra Agricultural University Ordinance, 1971 the Rajendra Agriculture University was established and by Notification dated 21 January, 1971, 1-2-71 was fixed as the date with effect from which the Agricultural Research Institute of the Department of Agriculture stood transferred to the Rajendra Agriculture University established under the aforesaid Ordinance. Subsequently, the ordinance was passed into an Act and the same was numbered as Act VII of 1971.

5. Rajendra Agricultural University, so established, has its Headquarter at Pusa and the Constituent Units were Bihar Agricultural Research Institute, Sabour ; Bihar Agricultural College, Sabour ; Sugar Cane of Agriculture, Dholi ; Agricultural College, Kanchi ; Agricultural Research Institute, Ranchi ; Agricultural Research Unit, Patna ; Bihar Veterinary College, Patna and Veterinary College, Ranchi.

Out of the aforesaid Constituent Units, at the Agricultural Research Institute and Agricultural College, Ranchi were formed into Birsa Agricultural University in 1981. Similarly the Agricultural College and Research Institute at Dholi and Sabour were merged into two separate Units.

6. The petitioners are all working in the Constituent Unit of the aforesaid Rajendra Agricultural University (hereinafter referred to as the "University" and, as already stated above, they are all "deputationists".

The "petitioners" case was that the assistants/clerks at the Head Quarter of the University and the Petitioners the deputationists working in Constituent Units had different scale of pay even though they discharged the same duties and functions. Further case of the petitioners was that even in the Constituent Units there are other assistants either directly recruited or who have resigned from the Government service who performed the same functions and duties as the petitioners (the deputationists) but were getting the aforesaid scale of pay i. e. Rs. 730-1080/- Rs. 785-1210/- but the petitioners (the deputationists) were being denied that scale of pay.

Thus, on petitioners own case, only such assistants working in the constituent Units who are either directly recruited or who have resigned from the government services are getting the aforesaid scale of pay ; in other words, according to the petitioners own case, such government servants who opted for the University service had to resign first to avail the aforesaid scale of pay.

7. By the impugned annexure 5 dated 3-9-545, the petitioner's request for grant of the upgraded pay scale of Rs. 730-1080/- Rs 785-1210/- has been refused to be acceded to unless the petitioners (the deputationists) tendered resignation from government service and opted for the University service.

At this stage it would be most pertinent to mention that a supplementary affidavit on behalf of the petitioners was filed in which the petitioners have annexed extract of the resolution dated 26-8-86 (marked as annexure-10) of the Board of management of the respondent University. It would be pertinent to quote the extract of the aforesaid resolution (Annexure 10)

Extract of the Board of Management of the respondent University dated 26 8-86.

XVI (1) All these staff members who have already been given the scale of Rs 730-1080/- either Head Quarters or at the constituent units be given revised scale of Rs. 785-1210/- with effect from the due date because the Board Members were convinced that it is not at this stage possible to reduce the scale of Rs. 730-1080/- already given to employees of the constituent units after obtaining their resignation and option nor it is possible to resist the grade of Rs. 785-1210/- scale because after revision the scale of Rs. 730-1083/- ceases to exist for Asstts. at Head Quarters and constituent units.

(2) As regards employees who have not opted "and resigned and have gone to the Court of Law, they may be advised to withdraw the case within 3 months and they should opt and resign and if they do so, they be given the scale of Rs. 780-1080-785-1210 from the due date as given to the employees of constituent units.

Thus from the above it is obvious that the respondent University has agreed to grant the petitioners (the deputationists) the same scale of pay from the due date as given to the other employees as of the constituent Units provided they withdraw their writ case and resign from the government services and opt for the service under the University.

The learned counsel for the petitioners has submitted that the factum of resignation had no bearing on the equality in the nature of their work and consequent equality in the pay scale as contemplated under articles 14 15 and 39 of the Constitution of India and has submitted that the denial of the aforesaid pay scale was patently arbitrary and illegal.

8. At this state itself it is relevant to state that in the rejoinder filed on behalf of the respondent University to the reply of the petitioners to the counter affidavit of the respondent University it has been categorically stated in paragraph 9 that

petitioner No. 6 (Raghunath Sharma) has already resigned from the government service on 27-12-1983 and opted for the University service in the scale of Rs. 730-1080/- (which has later been upgraded) and the University, in its turn, accordingly has already issued orders granting him that scale of pay i.e. Rs. 730-1080 (the order has been marked as annexure G to the rejoinder).

This is again most pertinent to state that in this rejoinder (filed by the respondent University) it has further been categorically stated in paragraph 11 that a large number of petitioners (1 to 8, 10, 11, 13 and 15 to 17) have also exercised their options in favour of reversion to their parent department i.e. Department of Agriculture in which department they hold lien and their options have also been duly forwarded to the Government vide Rajendra Agricultural University Memo No. 3036 dated 31-7-1978.

It has further been stated in paragraph 12 of that rejoinder that similarly many other clerks working in the constituent units and the University, from amongst them are many petitioners, have also exercised their options for reversion to their parent departments or their respective substantive posts and their options, too, have also been forwarded by the University.

9. The petitioners (the deputationists) filed their reply to the aforesaid rejoinder (filed by the respondent University) and in paragraph 5 of their reply they have stated that under the Rajendra Agriculture University Act it was not incumbent upon a confirmed government servant- transferred to the University service to give his option for reversion to the government service ; rather such an exercise of option was meant only for the temporary government servants. It was further stated that, however, the respondent University in utter disregard to the provision of law regarding the exercise of option and with a view to harass and victimise the permanent government employees transferred to the University service illegally obtained options from them. However, it was further stated that even though those options were sent in the year 1978-79, the petitioners had not been reverted and the options exercised by the petitioners (who opted) could not be pleaded against them.

Thus, on petitioners own showing, petitioner No. 6 has already resigned from the government service and opted for the service under the University in question and a few other petitioners (1 to 8, 10, 11, 13 & 15 to ! 7) have already opted for reversion on their respective substantive posts in their respective parent departments/offices in the State of Bihar.

10. In the counter affidavit filed on behalf of the respondent University it has been stated that the University was not the master of its own so far as the finance was concerned. Several agencies finance the University for meeting its expenses including the funds for payment of salaries and allowances of its employees and the State Government is the principal financing authorities. According to the statutory provisions (Statute 12.1):

The pay scale of its employees of the University other than the Vice-Chancellor,

shall be as prescribed by the syndicate with prior approval of the state Government and various financing agencies involved.

It was further stated that the University was being almost entirely financed by the State Government and hence it was obligatory on the part of the University to abide by the instructions of the Government.

It has further been stated that the State Government vide its resolution issued with memo No. 6499 dated the 5th May, 1984, constituted a High Powered Committee comprising of the Agricultural Production Commissioner, Finance Commissioner, Bihar, Animal Husbandry Commissioner, Bihar, Vice-Chancellor for, Rajendra Agricultural University and Vice-Chancellor, Birsa Agricultural University to review the expenditure on officers and staff of the two Agricultural Universities and to suggest suitable and Practical measures to get the University out of financial crisis and the said High Powered Committee after thorough consideration of that financial aspects and the prevailing financial crisis in the Agricultural Universities took exception to the up-gradation of pay scales of all the clerks and Head Clerks of different Units and their being placed in the scale of Assistants and Head Clerks and objected to the excess amount paid by way of salary as a result of upgradation of scale in Constituent Units and refused to allocate further funds to meet the expenditure over the payment of up-graded pay scale of pay to clerks at par with the scale of Assistants at Head Quarter and also cut down budgetary allocations to that extent.

Extract of the High powered Committee's report has been marked as annexure C to the counter affidavit.

11. In the light of the aforesaid decision of the Government, the University re-considered the entire decisions taken earlier by the Syndicate of the University regarding implementation of up-graded pay scale of different Units of the University at par with the University Head Quarters and decided that several vacancies in the scale of Rs. 730-1080, which were existing in the Head quarters of the University should be filled up by transferring such Clerks of different Units of the University who had been admitted to the pay scale of Assistants i. e. 730.1080/ and it was further decided to fill up the resulting vacancies in different Units in the old scales of pay of clerks i. e. Rs. 580-860. In the said decision, all such clerks of different units, who were placed in the scale of Rs. 730-1080/- were given a chance either to get transferred to the vacancies at the Head quarters and avail the scale of Rs. 730-1080/- or in the alternative if they did not wish to be posted in the University Head quarters to remain in the Units i. e. in the old scale of pay of Rs. 580-860. This decision was taken by the Vice-Chancellor on 58-1985 and in pursuance of the said orders of the Vice-Chancellor, the Director of Administration issued an order contained in Memo No. 1655 dated 3-9-85.

A copy of the aforesaid memo dated 3-9-85 has been marked as Annexure 5 to the counter affidavit.

Thus in view of the decision of the Syndicate on the report of the High Powered Committee as contained in Annexure C to the counter affidavit) the stand of the University was that it was now not possible to grant the up-graded pay scale to the clerks of the Constituent Units.

It has also been stated in the counter affidavit that in pursuance of the earlier decision of the Syndicate dated 4-9-82 pay scale of Rs. 730-1080/- was granted to the clerks working in different Units who were either appointed by the University or transferred government servants who had resigned and had opted for the University service but in view of the decision taken in pursuance of the government decision (as already stated above), no clerk assistant in the Units was now to remain in the pay scale of Rs. 730-1080/- and all such staff who were given the pay scale of the University were to avail the pay scale only if they chose to remain in the University Headquarters against the vacant posts of assistants in the pay scale of Rs. 730-1080/-; in the alternative, if they did not wish to be posted in the University Headquarters, and desire to remain in the Units itself they were to get the old pay scale of Rs. 580-860/-

Thus, according to the stand of the University in the counter affidavit, one who remained in the Unit was to get the pay scale of Rs. 580-860/-.

However, as already stated above, a supplementary affidavit on behalf of the petitioners has been filed (already referred to above) and the extract of the Resolution dated 26-8-86 of the Board of Management of the respondent University has been marked as Annexure-10 and fully quoted in the earlier part of this judgment and the latest position on the basis of Annexure-10, is that all the staff members who have already been given the pay scale of Rs. 730-1080/- either at the Head Quarters or at the Constituent Units were to get the revised scale of Rs. 785-1210/- with effect from the due date as the Board members were convinced that it was not at this stage possible to reduce the pay scale of Rs. 730-1080/- already given to the employees of the Constituent Unit after obtaining their resignation and options nor was it possible to resist the grade of Rs. 785-1210/- scale because after revision the scale of Rs. 730-1080/- ceases to exist for assistants at Head quaters and at Constituent Units.

Under Annexure-10 referred to above and quoted in the earlier part of this judgment the University has agreed to pay the petitioners the pay scale as prayed for provided they resign from the government service and opt for the service under the University and that, too, from the due date as given to the employees of the Constituent Unit.

12. Thus the position becomes like this-the respondent University agrees for the grant of pay scale to the petitioners (the deputationists) as claimed provided they resign from the government service and opt for the University service ; WHEREAS the petitioners (the deputationists) claim the pay scale while retaining their status as government servants and holding lien on their respective substantive posts in their parent department/under the State of Bihar.

The question is whether such a claim on the part of the petitioners can be granted ?

In this connection a few provisions in the Rajendra Agricultural University Act, 1971 (hereinafter referred to as the Act) may be looked into and the relevant provisions for the purpose are Sub-sections 4 (a), 6 (a), 7, 15 and 19 to 24 of Section 39 of the Act. In order to test the legality or otherwise of the impugned annexure 5 dated 3-9-85, the aforesaid subsections of Section 39 of the Act need to be quoted :

4 (a). All permanent employees of the College, Research Institute and other offices and institutions of the Department of Agriculture and Animal Husbandry whose services have been transferred to the University or such other permanent employees whose services are transferred by the State Government to the University from time to time, will be deemed to be transferred employees of the Government. These employees shall retain their lien on the permanent posts that they held in Government service on a substantive basis and their service conditions will be subject to the provisions of the Bihar Service Code and other Government Rules, Regulations and Orders in force or that may be framed or issued by the State Government from time to time.

6 (a) The transferred officers of the Bihar Agriculture service shall remain in the cadre of the Bihar Agriculture Service on posts held by them on substantive capacity until their death, retirement, resignation or promotion to a higher post.

(7) When a transferred employee has to be confirmed in a post against a cadre post under the Government, the University shall not put into effect any order of such confirmation without obtaining the orders of the Government, regarding the confirmation in accordance with the prescribed procedure for the confirmation of Government employees of that category.

(15) The transferred Government servants shall draw pay and allowance from the University from the date their services are lent to the University. It will not be necessary for Government to be consulted in respect of the payment of any additional emoluments by the University to the transferred Government servants provided that such additional emoluments are not unduly excessive. Promotions to higher posts under the University will also be made by the University.

(16) If the University decides to alter the scales of pay and allowances, such alterations will not have the effect of reducing the scales of pay and allowances of the transferred Government servants and will not affect or increase the liability of the State Government regarding the transferred employees.

(17) Transit pay and allowances to a transferred employee at the time of joining University service or reverting to Government service shall be borne by the University.

(19) Such Government servants who chose to resign Government service and enter the service of the University shall be considered for compensation,

proportionate pension, provided that no such compensation, proportionate pension shall be allowed to any employee, who resigns in spite of being required by Government to service on some other post, under the Government carrying emoluments not less than his pay at the time of such resignation.

(20) A transferred employee shall retire from Government service on such day as applies to other Government servants. He shall not be given extension of service without the concurrence of the State Government. In the matter of re-employment by the University upto the age of 60 years, the transferred Government employees shall be treated on the same footing as the employees of the University in other colleges and shall be subject to the same terms and conditions as will be applicable to others, with the concurrence of the State Government. If the University decides to re-employ such retired Officers, such re-employment will be like any other fresh employment in the University service and will not affect the pension and leave account of the employee with the Government, such an employee on re-employment should draw the initial pay of the post in which he is re-employed unless the University sanctions advance increments, provided always that if the sum total of the pay plus pension and pension equivalent to D. C. R. Gratuity does not exceed the pay last drawn before retirement. In special cases in which in a Government servant is re-employed in posts involving the assumption of duties and responsibilities of greater importance than those attaching to the post which he was holding on the date of retirement the pay on re-employment plus pension may be allowed to exceed his last pay only with the prior consultation and concurrence of the State Government.

(21) A transferred employee will be allowed by the University to request the Government for recall to the Government service to any specific post of vacancy available for being filled up. In the event of no vacancy, the Government servant will concerned be liable to be discharged on payment of compensation Pension.

(22) Notwithstanding the loan of the service of the Government officers under the relevant section of the Act, it will be open to the State Government to recall any such officer to Government service without assigning any reason therefor.

(23) The facilities for medical treatment available to Government servants shall continue to be enjoyed by the Government servants transferred to the University and they shall continue to be governed by rules made by the Government for Government servants of the corresponding classes from time to time in this behalf.

(24) Any transferred Government servant may at any time after the transfer of his service, request Government through the University for permission to resign from Government service in order to join University service on any terms as may be fixed between him and the University : provided that Government may not grant such permission if they wish to recall such officer to Government services or if the service of such officer are required in public interest.

A perusal of the aforesaid provisions in the Act makes it clear that the petitioners (the deputationists) own lien over the respective substantive posts in the Government in their parent department of agriculture. A careful scrutiny of the aforesaid provisions also makes it abundantly manifest and clear that the petitioners (the deputationists) are all permanent Government servants availing all the benefits of Government service and subject to the provisions of Bihar Service Code and other Government rules, regulations and conditions of Government service, Sub-Section 16 of Section 39 of the Act as quoted above makes it also abundantly clear that if the University decided to alter the scale of pay and allowances of its own employees such alterations will not have the effect of reducing the scales of pay and allowances of the transferred Government servants and further that the alterations in the pay shall not affect and increase the liability of the Government regarding the transferred employees.

The transferred Government employees like the petitioners have been given the choice (Sub-section 19) to resign from the Government service and enter the service of the University and only then their cases will be considered for proportionate pension and compensation but that again is denied to such transferred Government servants (Like the petitioners) who resign in spite of being required by Government to serve on some other posts under the Government carrying emoluments not less than his pay at the such resignation. Again such transferred Government servants (like the petitioners) on deputation to the University, have to retire from Government service on such day as applies to other Government servants. Again a transferred employee may request the Government for recall to the Government service to any specific post of vacancy available for being filled up. Such a request has to be allowed by the University and in the event of no vacancy the Government servant concerned is liable to be discharged on payment of compensation pension. What seems to be more significant is that under Sub-section 32 notwithstanding the Joan of the service of the Government officers under the relevant section of the Act, it is always open to the State Government to recall any such officers to Government service without assigning any reason therefor. Then again under Sub-section 24 any transferred Government servant (like the petitioners) may at any time after the transfer of his service, request to Government through the University for permission to resign from Government service in order to join University service on any terms as may be fixed between him and the University. Such is the choice given to transferred Government servants (like the petitioners) but at the same the Government may not grant such permission if the Government so choose to recall such officer to Government service or if the service of such officer is required in public interest.

13. This being the position under the Act, as explained above, it is manifestly clear that the petitioners (the deputationists), in my opinion, can not retain their status as Government servants holding lien on their respective substantive posts in their parent department under the State of Bihar and at the same time claim the same pay scale as the other clerks of the respondent University at the Head

Quarter are getting.

On a careful reading of the aforesaid provisions of the Act (quoted above), I further hold that there is no substance in the submission advanced by the learned counsel for the petitioners that the impugned Annexure 5 is in violation of Sub-section 15 and 19 of Section 39 of the Act,

14. I have already indicated in the earlier part of the judgment that, whatever may have been the position earlier, the respondent University by Annexure-10 (quoted in extenso earlier) now has agreed to pay the pay scale, as claimed, to the petitioners provided they resign from the Government service and opt for the University service.

15. For the reasons aforesaid I hold that no illegality has been committed by the Respondent University in asking the petitioners (the deputationists) to resign first from the Government service (where they hold lien) and opt for University service before they are allowed to avail the scale of pay, as claimed. Thus, I hold that the impugned Annexure-5 is a valid and legal order and suffers of no illegality, whatsoever, similarly, Annexure-10, too, does not suffer of any illegality or infirmity or arbitrariness, whatsoever.

16. It needs also to be mentioned that the petitioners, by their supplementary affidavit, have stated that during the pendency of the writ case the Rajendra Agricultural University Act, 1971 has been repealed by an ordinance called "the Bihar Agricultural University Ordinance, 1986" and that it has come into force as well but at the same time by their reply to the counter affidavit filed by the Respondent University have said that the provisions of the Act and the statutes framed thereunder are applicable to the petitioners. They further say in their supplementary affidavit that the ordinance incorporates all the provisions of the Act. In other words, their stand is that the promulgation of the ordinance (referred to above) during the pendency of the writ case does not change the situation.

On the other hand in the rejoinder filed by the Respondent University to the supplementary affidavit (filed by the petitioners) it has been categorically stated that the reference of the ordinance was wholly irrelevant since all the decisions had been taken by the University under the provisions of the Act and statutes prior to the promulgation of the said ordinance and the provisions of the Act and statutes will form part of the ordinance. This averment in the rejoinder filed by the Respondent University has not been controverted by the petitioners.

Thus, the promulgation of the ordinance during the pendency of the writ case does not, in any manner, change the legal aspect of the matter and the ordinance only needed to be referred to.

17. Now, I take up the theory of "Equal pay for Equal work".

As indicated in the very first paragraph of the judgment, the learned counsel for the petitioners submitted that the equality doctrine (referred to above) embodied

in the Constitution of India has been attempted to be flouted by the University by passing the impugned order in Annexure-5 dated 3-9-1985 under the cover of artificial divisions, dividing persons doing the same work into two groups without any justification and denying to one group (the petitioners) by way of pay what the other group gets.

The learned counsel for the petitioners has submitted that the denial of the pay scale, as claimed by the petitioner, was illegal being in violation of Articles 14 and 16 of the Constitution of India and in violation of the principle of "Equal pay for Equal Work".

18. I have already stated above that the petitioners are transferred Government employees ; in other words, they are "deputationists" and are working in the Constituent Unit of the University. Their case is that their counter parts i. e. , the assistants at the Headquarter of the University, are getting the scale of pay 730-1080/- /785-1210/- with the petitioners are being denied even though they (the petitioners) were similarly placed so far as the nature functions and duties of the job were concerned. In short, the case was that the assistants in the Constituent Unit and the Headquarter of the University discharge the same duties and functions yet the transferred employees (the petitioners/deputationists) were being arbitrarily discriminated against the denied the higher pay scale (as indicated above).

At this stage it would also be relevant to mention that the petitioners have alleged that the clerks similarly situate as the petitioners in the other College in another University i. e., (in Ranchi Rajendra Agricultural College the under Birs University) were also being paid the aforesaid scale of pay.

The petitioners assert that the clerks at the Head quarter of the University and at the Units form one class and in that view of the matter, in view of Article 39(d) read with Articles 14 and 16 of the Constitution of India, all clerks in the office of the respondent University are to be given the same scale of pay and for getting the same scale of pay as the clerks at the Head Quarter of the University, it was not necessary for the petitioners (the deputationists) to resign from the Government service.

19. On the other band the positive and categorical stand of the respondent University (as in their rejoinder to the petitioners" reply to the counter affidavit of the respondent University) was that the nature, functions and duties of the job of the clerks of the Constituent Units and Headquarter were not identical and similar. There was vast difference between the duties and functions of the clerks of the Constituent Units and those of the assistant of the Headquarter.

It is not correct on the part of the petitioners to state that the respondent University admits that the nature of the job of the clerks posted at the Headquarter and the Constituent Unit is identical.

20. The petitioners are transferred Government employees (the deputationists)

and all hold lien over their respective substantive posts in the Government in their parent department of agriculture. Notwithstanding the loan of the service of the petitioners it is always open to the State Government to recall any such officer to the Government service without assigning any reason therefor. Their service conditions are yet subject to the provisions of the Bihar Service Code and other Government rules, regulations and orders in force and that may be framed or issued by the State Government from time to time, The petitioners still remain in the cadre of the Bihar Agriculture service on posts held by them on substantive capacity until death, retirement, resignation or promotion to a higher post. If the University decides to alter the scale of pay and allowances, such alterations will not have the effect of reducing the scales of pay and allowances of the transferred Government servants and can not affect or increase the liability of the State Government regarding the transferred employees (like the petitioners). The transferred employees (like the petitioners) have to retire from the Government service on such day as applies to other Government servants and can not be given extension of service by the University without the concurrence of the State Government. Even the pension and leave account of such transferred employees after re-employment by the University (up to the age of 60 years) can not be affected after re-employment and last but not the least such transferred Government servants (like the petitioners) may at any time, after the transfer of their service request the Government through the University for permission to resign from the Government service in order to join the University on any terms as may be fixed between him and the University. Such a choice is under the Act itself yet the Government may not grant permission to resign from the Government service. If the Government so wishes to recall such officer to Government services or if the services of such officers are required in public interest.

The situations, as just mentioned above, are specifically embodied in the Act itself governing the petitioners. In such a situation can it be said that the petitioners (the transferred Government employees), though working as assistant in the Constituent Unit of the Respondent University form one class with the assistants of the University working at the Headquarter ? In my opinion, on the facts of this case, the obvious answer is in negative. This being so, the petitioners can not complain of the violation of the equality doctrine and the principle of "Equal pay for Equal work"? I hold that on the facts of the instant case, as discussed at length in the aforesaid paragraphs the petitioners (the transferred Government employees) do not form one class with the assistants of the University working at the Headquarter.

21. 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 goal

It is well settled that "Equal pay for Equal work" is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies,

by the enforcement of constitutional rights.

In the present case, so the petitioners claim and so the petitioners assert. Article 39(d) of the Constitution of India proclaims, as a Directive Principle, the constitutional goal of "Equal pay for Equal work" for both men and women and articles 14 and 19 guarantee respectively the fundamental rights to equality before the law and equality of opportunity in the matter of public employment.

It is also well settled that where all things are equal, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different department but if officers of the same rank perform dissimilar functions and the powers, duties and responsibility of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and nomenclature is the same.

It is also well settled by several decisions of the Supreme Court and other High Courts that in order to pass the test of permissible classification of persons belonging to the same class into groups for purposes of differential treatment to conditions must be fulfilled, namely, that the qualification must be founded on an intelligible different in which distinguishes persons who are grouped together from others left out of the group, and that differential must have a rational relation to the object sought to be achieved by the law which brings about the discrimination between the two groups.

These are well settled principles of law. The question is whether the petitioners, on the facts of the instant case, qualify for the equality doctrine.

22. The learned counsel for the petitioners has relied upon the Full Bench case of Kamla Kant Rai and Ors. v. The State of Bihar and Ors. 1985 P.L.J.R. 77 also on the case of M.P. Singh and Others Vs. Union of India (UOI) and Others, also on the case of P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, and also on the case of Randhir Singh Vs. Union of India (UOI) and Others, .

In my opinion, the reliance places by the learned counsel for the petitioners upon these cases is under misconception. In the case of Kamla Kant Rai and Ors. v. The State of Bihar and Ors. (supra) the question of "Equal pay for Equal work" was not there. In that case the question was whether Assistant Research Officers were University teachers within the ambit of Section 2 (25) and (26) of the Rajendra Agricultural University Act, 1971 and if so whether they were entitled to the University Gram Commissions' new revised scale of pay for all the University teachers of the Agricultural University. Thus, neither of the two questions involved in this case included the doctrine of "Equal pay for Equal work" and thus the facts of that case are clearly distinguishable and hence the ratio decided in that case can not be pressed into service by the petitioners. Similarly in the case of M. P. Singh v. The Union of India and Ors. (supra) the facts are again distinguishable. It is true that the tie was between non-deputationists and

deputationists in that case with regard to the grant of special pay. But in that case the Union of India admitted, as a fact, that the nature of the duties performed by the deputationists as Investigating Officers was the same as the nature of duties performed by the non deputationists and in that view of the matter it was held that the classification of the officers working in the said cadres into two groups, namely the deputationists and non-deputationists for paying different rates of special pay did not pass the test of classification permissible under Articles 14 and 15 of the Constitution of India. Hence this case, too, is distinguishable on the admitted facts of that case. Similarly the case of *P. Savita v. Union of India* (supra) is also distinguishable. Here the Draughtsmen in the Ministry of Defence were put into two groups-Senior Draughtsmen on the basis of seniority cum fitness and paid higher salary and the other group of Draughtsmen doing the same work were paid lesser salary.

It will be better to quote from the judgment itself "there is no denial anywhere that both these types of Draughtsmen do the same work and discharge the same function and duties." Thus, here, too, nature of work, function and duties being the same was an admitted position on the part of the Union of India and hence this case also is clearly distinguishable.

Then in the case of *Randhi Singh and Ors. v. Union of India* (supra) it was again admitted by the respondents (Union of India and others) that the duties of the driver constables of the Delhi Police Force were onerous and such a position being admitted by the Union of India. It was held that the qualification brought about by the Union of India was irrational.

Thus in all the cases relied upon by the learned counsel for the petitioners there was no denial that the nature, function and duties of the job were different and hence, in my opinion, the ratio decided upon facts of those cases can not be pressed into service in the instant case.

23. In the present case, at the cost of repetition, the respondent University has categorically and unequivocally stated that the nature, function and duties of the job of the clerks of the Constituent Units (including the petitioners) and the clerks at the Headquarters of the University are not identical and similar rather there was vast difference between their duties and functions. There is no reason to disbelieve this averment made in the rejoinder filed by the respondent University, Thus I hold that on the facts of the present case, the theory of "Equal pay for Equal work" is not applicable in the case of the petitioners,

24. Be that as it may, I have already stated above that by Annexure 10 dated 26-8-86 brought on the record by the petitioners themselves, the respondent University has now already agreed to pay to the petitioners the pay scale, as claimed. The respondent University has only asked the petitioners (the transferred Government employees) to resign first from the Government Service (where they still hold lien) and opt for University service before they are allowed to avail the pay scale as claimed. The respondent University, as appears from

Annexure 10 has also agreed to pay the pay scale to the petitioners as claimed from the due date as given to other employees of the Constituent Units.

Thus, there is no refusal now on the part of the respondent University to pay to the petitioners the pay scale as claimed (whatever may have been the position earlier provided they resign from the Government service first and opt for the University service. So far as this rider put in the way of the petitioners by the respondent University is concerned, I have already held above that there was no legal infirmity in it and the same was quite valid and legal.

25. For the aforesaid reasons I hold that the impugned Annexure 5 as also Annexure 10 are based upon intelligible differential not only based upon the relevant provisions of the Act (quoted earlier) but also upon the fact that the nature of duty function that the petitioners do (in the Constituent Unit) are different from those assistants who are working at the Headquarter of the University. Thus, I hold that they are not violative of articles 14 and 16 of the Constitution of India nor do they offend the provisions of Article 39(d) of the Constitution of India. I further hold that, on the facts of the present case, the theory of "Equal pay for Equal work" is not applicable in the petitioners' case,

26. Petitioner No. 6 (Raghunath Sharma), as already stated above has already resigned from the Government service and opted for the University service to avail the pay scale as claimed and the University, in its turn has already issued orders granting him that pay scale. Further petitioners No. 1 to 8, 10, 11, 13 and 16 to 17 also have already exercised their options in favour of reversion to their parent department in which they hold lien and their option have also been forwarded to the Government by the University. These facts have not been denied by the petitioners in their reply to the rejoinder rather they just say that the options have been illegally obtained and further say that even though the options were suit in the year 1978-79, the petitioners have not been reverted ; in other words, they are awaiting acceptance by the Government of their options.

27. In the result, the writ petition fails and is dismissed.

However, there will be no order as to costs.