

(2012) 09 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 7800 of 1993

Gujarat State Textile Corpn. and Officers and Techn. Union
and Others

APPELLANT

Vs

Gujarat State Textile Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 226

Citation : (2013) LabIC 1141

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Mukul Sinha, for the Appellant; P.J. Davawala, K.N. Raval and J.K. Shah, A.G.P., for the Respondent

Judgement

K.S. Jhaveri, J.—Is the act of Gujarat State Textile Corporation Limited (Wound-up in pursuance of the order passed by this Court in Company petition No. 205/1996 dated 6.2.1997 of denying the benefits of Third, Fourth and Fifth Pay Commissions to the members of petitioner No. 1-Union violative of Articles 14 and 16 of the Constitution of India, is the question that has come up for consideration of this Court in the present petition. The Government of Gujarat enacted The Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986 for acquisition and transfer of closed textile undertakings and for ascertainment of right, title and interest of the owners in respect of such undertakings in order to re-organise and re-construct such undertakings into viable units. According to Section 3(1) of the Act, every specified textile undertaking and the right, title and interest of the owner in relation to every such textile undertaking, shall stand transferred and vested absolutely in the State Government and according to Section 3(2), the specified textile undertakings, which stood vested in the State Government by virtue of Section 3(1) shall, immediately, after it has so vested, stand transferred to and vested in the respondent-Corporation.

2. The eleven specified textile mills that stood transferred and vested in the

respondent-Corporation are:

- (i) New Swadeshi Mills, Ahmedabad
- (ii) Manjushree Textiles, Ahmedabad
- (iii) Sarangpur Cotton Mills, Ahmedabad
- (iv) Monogram Mills, Ahmedabad
- (v) Ahmedabad Cotton Mills, Ahmedabad
- (vi) Silver Cotton Mills, Ahmedabad
- (vii) Sahyog Textiles, Ahmedabad
- (viii) Subhlaxmi Mills, Khambhat
- (ix) Priyalaxmi Mills, Vadodara
- (x) Kanti Cotton Mills, Surendranagar
- (xi) Jahangir Vakil Mills, Bhavnagar

3. The employees of the aforementioned eleven specified textile mills are members of petitioner No. 1, which is a registered Trade Union. The petitioner No. 1-Union has around 800 members, who worked in different cadres, in the aforementioned specified textile mills. The respondent No. 1 herein is a statutory Corporation established by respondent No. 3 and is, therefore, a "State" within the meaning of Article 12 of the Constitution of India.

4. The grievance voiced in this petition is that the respondent-Corporation has framed Rules governing the service conditions of employees working at the Head Office of the respondent-Corporation. They have also been given benefits of the Third and Fourth Pay Commissions. However, the employees working in the aforementioned eleven specified textile mills are neither governed by such service Rules nor have they been given benefits of the Pay Commissions.

5. In the year 1993, the respondent-Corporation made a reference to the Board for Industrial and Financial Reconstruction (B.I.F.R.) in pursuance of which the B.I.F.R. passed an order recommending the winding-up of the respondent-Corporation. Subsequently, a decision was taken by the respondent-Corporation to close down the Mills and an Agreement dated 31.8.1996 was entered into and signed between the representative-Union, namely, "Majoor Mahajan Sangh" and the respondent-Corporation. A Scheme purported to be a Voluntary Retirement Scheme (V.R.S.) was formulated on 3.9.1996, which was converted into an award by the Industrial Court. Ultimately, the respondent-Corporation was ordered to be wound up by an order of this Court passed in Company petition No. 205 of 1996 dated 6.2.1997.

6. It is the case of the petitioner-Union that after the respondent-Corporation was ordered to be wound-up by order dated 6.2.1997 passed by this Court, the

Government of Gujarat accepted the recommendations of the Fifth Pay Commission and extended the benefits of the same to the employees of different State Public Sector Undertakings with effect from 1.1.1996, including the employees of the respondent-Corporation. However, the members of the petitioner-Union have not been granted benefits of the Fifth Pay Commission as well.

7. Being aggrieved by the above actions of the respondents, the petitioners have preferred the present petition.

8. Dr. Mukul Sinha learned counsel appearing on behalf of the petitioners submitted that members of the petitioner-Union are employees of the eleven specified textile mills, which stood transferred and vested in the respondent-Corporation, pursuant to the enactment of The Gujarat Closed Textile Undertakings (Nationalization) Act, 1986. Therefore, the respondent-Corporation is the real owner of all the eleven specified textile mills.

8.1 Learned counsel Dr. Sinha submitted that the employees of the eleven specified textile mills have been meted out a differential treatment at the hands of the respondent-Corporation. He submitted that a different set of Rules govern the service conditions of the employees seated at the Head Office of the respondent-Corporation and the employees working in the eleven specified textile mills. When the respondent-Corporation is the owner of the mills, it ought to have applied the same set of Rules on the employees working at the Head Office and the employees of the eleven specified textile mills.

8.2 Learned counsel Dr. Sinha further submitted that the State Government extended the benefits of Third, Fourth and Fifth Pay Commissions to the State Public Sector Undertakings. However, the respondent-Corporation extended the benefits only to the employees working at its Head Office and not to the employees working in the eleven specified textile mills. He submitted that the respondent-Corporation, being the owner of all the eleven specified textile mills, could, not have meted a differential treatment to the employees of the petitioner-Union by granting the benefits of Pay Commissions only to the employees of its Head Office and not to the employees of the eleven specified textile mills. The respondent-Corporation does not have any legally justifiable reason for denying the benefits of Pay Commissions to the members of the petitioner-Union when the nature of work of the employees at the Head Office of the respondent-Corporation and the employees of the specified mills are similar in all respects.

8.3 Learned counsel Dr. Sinha stated that huge amount has been received from the sale proceeds of the respondent-Corporation. He submitted that even if all the outstanding dues of the respondent-Corporation and the monetary benefits claimed in this petition are paid up, the respondent-Corporation shall still have a huge amount at their disposal. He categorically stated that the petitioners are ready to give an Undertaking to the effect that if the funds available with the respondents are not sufficient to meet with the demands of the petitioners, then

the petitioners shall not claim the same from the State Exchequer.

9. In support of his submissions, Dr. Sinha has placed reliance upon the following decisions:

1. In *Randhir Singh Vs. Union of India (UOI) and Others*, , the Apex Court in Paras 7 to 9 observed as under:

7. Our attention was drawn to *Binoy Kumar Mukerjee v. Union of India*, *Makhan Singh v. Union of India & Ors.* where reference was made to the observations of this Court in *Kishori Mohanlal Bakshi Vs. Union of India*, describing the principle of equal pay for equal work as an abstract doctrine which had nothing to do with Art. 14. We shall presently point out how the principle, "equal pay for equal work" is not an abstract doctrine but one of substance. *Kishori Mohanlal Bakshi v. Union of India* is not itself of any real assistance to us since what was decided there was that there could be different scales of pay for different grades of a service. It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them.

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 goal. Art. 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 everyone 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. Art. 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under 305 the State. These equality clauses of the Constitution must mean some thing 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. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular Governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like,

mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word "Socialist" must mean something. Even if it does not mean "To each according to his need", it must at least mean "equal pay for equal work". The principle of "equal pay for equal work" is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance (vide: International Labour Law by Istvan Szaszy p. 265). The preamble of the Constitution of the International Labour Organisation recognizes the principle of "equal remuneration for work of equal value" as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled". Construing Articles 14 and 16 in the light of the Preamble and Art. 39(d) we are of the view that the principle "Equal pay for Equal work" is deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do identical work under the same employer.

9. There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the "powers, functions and privileges of a police officer", their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver-constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the Courts may recognise and act upon. We have shown that the answer is unsound. The clarification is irrational. We, therefore, allow the Writ Petition and direct the respondents to fix the scale of pay of the petitioner and the drivers-constables of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from 1st January,

1973, the date from which the recommendations of the Pay Commission were given effect.

2. In *Union of India (UOI) and Others Vs. Dineshan K.K.*, , the Apex Court observed in Paras 12,13 and 16 thus:

12. The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the directive principles of the State policy in Article 39(d) of the Constitution. In *Randhir Singh v. Union of India* a Bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Articles 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in *D.S. Nakara v. Union of India*. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed status of a fundamental right.

13. Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realizing its cascading effect on other cadres, in subsequent decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well. (Vide: *Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others*, and *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, . Nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of the appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is ex facie irrational, arbitrary or unjust, it is open to the Court to intervene.

16. Yet again in a recent decision in *State of Haryana and Others Vs. Charanjit Singh and Others*, etc. etc., , a Bench of three learned Judges, while affirming the view taken by this Court in the cases of *State of Haryana Vs. Jasmer Singh and others*, , *State of Haryana and Another Vs. Tilak Raj and Others*, , Orissa

University of Agriculture and Technology and Another Vs. Manoj K. Mohanty, and Government of W.B. v. Tarun Roy & Ors. has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a Court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the Court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work and equal quality and all other relevant factors are fulfilled.

3. In Chairman-cum-Managing Director, National Textiles Corporation Ltd. and Others Vs. N.T.C. (WBAB and O) Ltd. Employees Union and Others, , the Apex Court in Paras 7, 9 and 10 observed thus:

7. The plea of discrimination in the matter of revision of pay scales between staff working in the corporate offices/headquarters and the staff working in the Mills is sought to be met by contending that office staff is governed by the CDA pattern while Mills staff is governed by the IDA pattern.

9. In view of the fact that the nature of duties of the staff in the two categories has been found to be not at par, parity in pay scales may not be possible. Yet there can be no case for total denial of revision of pay to the staff/sub-staff working in the mills.

10. Discrimination between the two categories of staff cannot be justified on the basis of applicability of the CDA pattern and the IDA pattern to the respective categories of staff. The IDA pattern cannot be taken to debar any revision of pay scales. The Central Government has to act as a model employer and such specious pleas on its part are highly improper and unjustified.

10. Ms. P.J. Davawala learned counsel appearing on behalf of the respondent-Corporation submitted that the nature of work carried out at the Head Officer and the nature of work carried by the staff/sub-staff at the Mills are completely different and there cannot be any parity between the two. Therefore, there is no breach of Article 14 of the Constitution. She submitted that the issue regarding parity is a disputed question of fact, which this Court may not be able to decide in proceeding under Article 226 of the Constitution.

10.1 Ms. Davawala submitted that the staff/sub-staff working in the Mills are governed by the Rules prevailing in the Mills and not by the Rules of the

respondent-Corporation and the Court does not have the power to fix the pay-scales of the employees working in the Mills. She submitted that the principle of "equal pay for equal work" shall not apply in the present case since there is no parity between the employees working at the Head Officer of the respondent-Corporation and the employees working in the Mills. She also submitted that the employees of the Mills had already accepted the Voluntary Retirement Scheme and therefore, it is not open to them to re-agitate the issue. She, therefore, submitted that the present petition deserves to be dismissed.

11. In support of her submissions, Ms. Davawala has placed reliance upon the following decisions:

1. In *State Bank of India and Another Vs. M.R. Ganesh Babu and Others*, , the Apex Court held that the applicability of the principle of "equal pay for equal work" depends upon the nature of work and not merely on the volume of work and that even where functions are the same, the degree of responsibility and reliability expected might be different.

2. In *A.K. Bindal and Another Vs. Union of India (UOI) and Others*, , the Apex Court held that financial capacity of a Public Sector Enterprise is an important consideration and that employees of a sick Government company cannot claim that their pay must be revised and that Government should meet the additional expenditure incurred due to such revision. It was also held that in absence of relevant material showing the existing pay to be inadequate to lead a life with human dignity, non-revision cannot be held to be violative of Article 21 of the Constitution.

3. In *Officers and Supervisors of I.D.P.L. Vs. Chairman and M.D. I.D.P.L. and Others*, , the Apex Court held that employees of a sick public sector enterprise continuously sustaining losses cannot claim that their pay-scales be revised and additional expenditure involved due to revision be met by the Government and also that employees do not have the right to seek pay revision after having already opted for the Voluntary Retirement Scheme.

4. In *State of U.P. and Another Vs. UPTRON Employees Union, CMD and Others*, , the Apex Court held that powers of B.I.F.R. do not extend to directing payment of wages to the workers of sick industrial company and that even if it was a subsidiary of a Government company, no direction can be given to Government to pay the wages or wage arrears.

5. In *State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc.*, , the Apex Court held that normally, a party claiming equal pay for equal work is required to raise a dispute in this regard and in any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof.

6. In *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and*

Pharmaceuticals Ltd., , the Apex Court held that functions relating to creation of posts, appointment to posts, regularization, fixation of pay scales, continuation in service, promotions, etc, are executive or legislative and that it is highly improper for Judges to step into this sphere except in a rare and exceptional case; the Court cannot issue directions to pay them salaries of regular employees as these are purely executive or legislative functions.

7. In *S.C. Chandra and Others Vs. State of Jharkhand and Others*, , the Apex Court held that fixation of pay scale is a delicate mechanism which requires various considerations, including financial capacity, responsibility, educational qualification, mode of appointment, etc. and that pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

8. In *Official Liquidator Vs. Dayanand and Others*, , the Apex Court in Paras 93, 94 and 100 observed as under:

93. The respondents' claim for fixation of pay in the regular scale and grant of other monetary benefits at par with those appointed against the sanctioned posts has been accepted by the High Courts on the premise that their duties and functions are similar to those performed by regular employees. In the opinion of the High Courts, similarity in the nature of work of the company paid staff on the one hand and regular employees on the other hand, is by itself sufficient for invoking the principle of equal pay for equal work, In our view, the approach adopted by the High Courts is clearly erroneous and directions given for bringing about parity between the company paid staff and regular employees in the matter of pay, allowances etc. are liable to be upset.

94. The principle of equal pay for equal work for men and women embodied in Article 39(d) was first considered in *Kishori Mohanlal Bakshi Vs. Union of India*, and it was held that the said principle is not capable of being enforced in a Court of law. After 36 years the issue was again considered in *Randhir Singh v. Union of India (supra)*, and it was unequivocally ruled that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India.

95. The ratio of *Randhir Singh Vs. Union of India (UOI) and Others*, was reiterated and applied in several cases *Dhirendra Chamoli and Another Vs. State of U.P.*, , *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, . *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, , *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, and *Jaipal and Others Vs. State of Haryana and Others*, and it was held that even a daily wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, , *Mewa Ram Kanojia v. A.I.I.M.S.*, 1989 (2) SCC 235), (1989

Lab IC 1348) , V. Markendeya and Others Vs. State of Andhra Pradesh and Others, , Harbans Lal and Others Vs. State of Himachal Pradesh and Others, , State of U.P. and Others Vs. J.P. Chaurasia and Others, , Grih Kalyan Kendra Workers" Union Vs. Union of India and others, , Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others, , State of Haryana and Others Vs. Jasmer Singh and Others, , State of Haryana Vs. Surinder Kumar and others, , Union of India (UOI) and Others Vs. K.V. Baby and Another, , State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., , Utkal University and Another Vs. Jyotirmayee Nayak and Others, , State of Haryana and Another Vs. Tilak Raj and Others, , Union of India (UOI) Vs. Tarit Ranjan Das, , Apangshu Mohan Lodh and Others Vs. State of Tripura and Others, , State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., , Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, , Union of India (UOI) and Another Vs. Tarsem Lal and Others, and Canteen Mazdoor Sabha Vs. Metallurgical Engg. Consultants (I) Ltd. and Others, , the Court consciously and repeatedly deviated from the ruling of Randhir Singh Vs. Union of India (UOI) and Others, and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc.

96. In State of Haryana Vs. Jasmer Singh and others, , the two-Judges Bench laid down the following principle:

8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted.

100. As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor they were paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the office of the Official

Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company paid staff in the regular pay scale from the Consolidate Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits at par with regular employees by applying the principle of equal pay for equal work.

9. In *U.P. State Electricity Board and Another Vs. Aziz Ahmad*, , the Apex Court in Para-20 has observed as under:

20. Being conscious of the aforesaid legal position we are of the considered opinion that the learned Industrial Tribunal committed a manifest error of law and of fact, initially, by placing the burden on the employer to prove and establish the job requirements of the said three posts and thereafter, again committed an error in coming to the conclusion that the posts are identical on the basis of the pleadings of the parties alone. Pleadings are required to be proved and so long evidence is not led in support of the pleadings, no reliance can be placed only on the pleadings without there being any cogent evidence in support of the pleadings. Pleadings are required to be proved by leading evidence. The Tribunal expressly stated in its findings that none of the parties have filed any objective data in regard to the work assessment of the posts of boiler overhauling mechanic, boiler mistry or fitter. In the absence of such evidence, the Tribunal was not justified in coming to a conclusion that the nature, duties and responsibilities of the three posts are identical and similar.

10. In *Steel Authority of India Ltd. and Others Vs. Dibyendu Bhattacharya*, , the Apex Court has held that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is only on the person claiming such right.

12. Learned AGP appearing on behalf of the respondent-State supported the

action of the respondent-Corporation and submitted that the petition, being devoid of merits, deserves to be rejected.

13. After the enactment of The Gujarat Closed Textile Undertakings (Nationalization) Act, 1986, every specified textile undertaking and the right, title and interest of the owner, in relation to every such textile undertaking, stood transferred and vested, absolutely in the State Government and consequently, stood transferred and vested in the respondent-Corporation. Therefore, indisputably, the eleven specified textile Mills, referred to herein above, functioned under the control and supervision of the respondent-Corporation.

14. The main grievance voiced in this petition is with respect to the disparity in Pay-scales of the employees serving at the Head Office of the respondent-Corporation and the employees serving in the eleven specified textile Mills. The members of the petitioner-Union are the employees working in the eleven specified textile Mills on different posts. There is no dispute that the employees working at the Head Office of the respondent-Corporation have been given the benefits of Third, Fourth and Fifth Pay Commissions whereas, the employees of the eleven specified textile Mills have been denied the said benefits. The justification given by the respondent-Corporation for denying benefits to the employees of the Mills is that the appointment of the employees working in the Mills was on the specific condition that they shall be governed by the terms and conditions and the staff rules and regulations of the Mills, which are prevalent from time to time. In other words, it is the say of the respondent-Corporation that the employees of the eleven specified textile Mills are not the employees of "Government" and therefore, they are not entitled to benefits, which are granted to the employees of the respondent-Corporation.

15. This Court is cautious of the fact that equal pay can only be given for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case and it requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job and it cannot be judged by the mere volume of work. Normally, the applicability of this principle is left to be evaluated and determined by an expert body and these are not matters where a Writ Court can lightly interfere. But, Courts also cannot keep a blind eye in a case where the staff/sub-staff working in the Mills have received a step-motherly treatment.

16. It is a settled proposition of law that burden is on the workman to prove and establish, by leading cogent and reliable evidence, that job requirements, nature and responsibilities of the posts are identical, if the principle of "equal pay for equal work" is to be invoked. In the present case, admittedly, the petitioner-Union has not produced cogent and reliable evidence to prove that the nature and responsibilities of the posts at the Head Office and in the Mills are identical. While the counterparts of the employees of the Mills working in the Head Office have been getting pay revisions in normal course, as and when it is allowed to other the employees of the respondent-Corporation, the staff working in the Mills

have been deprived of the said benefits.

17. It is submitted on behalf of the petitioner-Union that during the last two decades while the cost of living has gone up several times, the salary and allowances of the workers working in the Mills have remained stagnant. This Court can understand the situation of the members of the petitioner-Union. However, on account of the fact that no evidence has been produced on record by the petitioner-Union to establish that both the posts are identical the claim of the petitioner-Union, based on the principle of "equal pay for equal work", is not tenable. When the work is not equal, the question of equal pay does not arise. But, at the same time, this Court cannot ignore the fact that the staff/sub-staff working in the Mills have received a step-motherly treatment at the hands of the respondent-Corporation. They have not had a pay revision for years.

18. A strong plea has been raised by the respondent-Corporation that since the employees of the Mills are not "Corporation employees", they have absolutely no legal right to claim that the respondent-Corporation should pay them salary or that additional expenditure incurred on account of revision of Pay-scales should be met by the respondent-Corporation, particularly, when it has already been wound up. However, in my opinion, winding-up of a Company is not a sufficient ground to deny relief to the staff/sub-staff working in the Mills.

19. This Court is conscious about the principle laid down by the Apex Court in decisions relied upon by learned counsel Ms. Davawala where the Government Company has gone into liquidation. In the present case also, the respondent-Corporation has been wound-up by the orders of this Court. Before we proceed further, it may be noted that during the course of arguments, learned counsel Dr. Sinha had made a categorical statement that the members of the petitioner-Union may be granted the benefits so claimed, only after all the outstanding dues of the respondent-Corporation are paid-up from the sale proceeds of the respondent-Corporation and if, thereafter, the balance funds so available are insufficient to meet with the claims of the members of the petitioner-Union, then the petitioner-Union undertakes that its members shall not claim a single Rupee from the respondent-Corporation or shall not raise any claim against the State.

20. It has also been contended on behalf of the respondent-Corporation that the members of the petitioner-Union have no right whatsoever to challenge the respondent's action of denial of equal treatment, after having accepted the Voluntary Retirement Scheme and in support thereof, reliance has been placed on the Scheme dated 31.8.1996. However, it appears from the record that pursuant to the introduction of the above Scheme dated 31.8.1996, the respondent-Corporation had circulated a Notice on 4.9.1996 whereby, the non-award staff was directed to resign or to face retrenchment. The non-award staffs, who were members of the petitioner-Union, were forced to submit their resignation but, they all did so by reserving their rights under the petition. Thus, the members had submitted the VRS Forms, by displaying their "objection", on the body of the said Forms. Therefore, it was not that the members of the

petitioner-Union had accepted the Voluntary Retirement Scheme wholeheartedly but, they had signed it under protest. Hence, the submission advanced on behalf of the respondent-Corporation is baseless and devoid of merits.

21. The staff working in the eleven specified textile Mills of the respondent-Corporation are also the staff of the parent body. If the respondent-Corporation had been incurring losses over a period of time, then the impact has to be on everyone connected with the Corporation, in whatever capacity. The respondent-Corporation cannot have double standards. It cannot give certain benefits to the employees of the Head Office and deny the same to the employees of the Mills, particularly, when they both belong to the parent body. When the respondent-Corporation had granted benefits of Third, Fourth and Fifth Pay Commissions to the employees of Head Office, was there no financial burden? It may be that the petitioner-Union has failed to establish that the nature of duties of the staff in the two categories is not on par and therefore, parity in pay-scales may not be possible. Yet, there can be no case for total denial of revision of pay to the staff/sub-staff working in the eleven specified textile Mills. In my opinion, a case for relief to the staff/sub-staff working in the Mills is definitely made out and the workers deserve some relief though not parity of pay-scales with the employees at the Head Office of the respondent-Corporation but, certainly on account of revision of pay scales/increase of DA or emoluments from time to time as and when fell due during the period of nearly three decades since when, no revision of their pay scale has been made.

22. In view of the above discussion and considering the principle rendered by the Apex Court in *Chairman-cum-Managing Director, National Textiles Corporation Ltd. and Others Vs. N.T.C. (WBAB and O) Ltd. Employees Union and Others*, I am of the view that the members of the petitioner-Union are required to be treated on par with the employees at the Head Office of the respondent-Corporation and hence, the petition deserves to be partly allowed. For the foregoing reasons, the petition is partly allowed:

(i) The respondent-Corporation is directed to treat the members of the petitioner-Union, who were the employees of the eleven specified textile Mills, at par with the employees working at the Head Office of the respondent-Corporation on the basis of their Pay-scales.

(ii) It is made clear that this Court has not directed to award similar pay-scales to the members of the petitioner-Union by invoking the principle of "equal pay for equal work" but, has directed to treat the members of the petitioner-Union at par with the employees working at the Head Office of the respondent-Corporation.

(iii) As recorded earlier, during the course of arguments, learned counsel Dr. Sinha had made a categorical statement that the members of the petitioner-Union may be given the benefits so claimed from the sale proceeds of the respondent-Corporation, only after the outstanding dues of all the creditors of

the erstwhile Corporation are met, since the petitioner-Union is of the firm belief that substantial funds from the sale proceeds shall still be available from which payments can be made to the members of the petitioner-Union. In view of the said statement, the benefits flowing from this judgment shall be released from the sale proceeds of the respondent-Corporation, after all the dues of the respondent-Corporation are paid up; and if the funds derived from the sale proceeds are insufficient to make payment to the members of the petitioner-Union, then no payment shall be made and the members of the petitioner-Union will not be entitled to claim any benefits from the State in view of their undertaking.

(iv) Payments may be adjusted against the claims of the employees and also proportionately on the basis of the funds available, within a period of SIX MONTHS from today.

(v) The petition stands disposed of accordingly. Rule is made absolute to the above extent with no order as to costs. The civil application stands disposed of in view of the disposal of the main matter.