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**(2015) 12 SHI CK 0099**  
**In the High Court Of Himachal Pradesh**  
**Case No : LPA No. 81 of 2012**

Kameshwar Gautam

APPELLANT

Vs

H.P. Horticultural Product, Marketing and Processing  
Corporation Ltd. and Others

RESPONDENT

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**Date of Decision :** 02-12-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 39(d)

**Citation :** (2015) 12 SHI CK 0099

**Hon'ble Judges :** Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

**Bench :** Division Bench

**Advocate :** Bhuvnesh Sharma, Advocate, for the Appellant; Avneesh Bhardwaj, Advocate, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Mansoor Ahmad Mir, C.J.

1. This Letters Patent Appeal is directed against the judgment and order dated 10.10.2011, made by the learned Single Judge of this Court in CWP No. 1133/2010, titled Kameshwar Gautam versus H.P. Horticultural Product & others, whereby the writ petition filed by the petitioner came to be dismissed, for short "the impugned judgment", on the grounds taken in the memo of appeal.

2. The petitioner had filed the writ petition, seeking following relief's, on the grounds taken in the memo of the writ petition:

(i) That the communication dated 24.7.2009 at Annexure P14 whereby the claim of the petitioner for the grant of revised pay scale of Rs. 1800-3200 with initial start of Rs. 1920 has been denied may very kindly be quashed and set aside and the respondents No. 1 and 2 may further be directed to grant the revised pay scale of Rs. 1800-3200 with initial start of Rs. 1920 at par w.e.f. 1.1.1986 in favour of the petitioner with his counter parts in HP. Secretariat with all consequential benefits.

(ii) that the respondents No. 1 and 2 may further kindly be directed to re-fix the pay of the petitioner after the aforesaid revised pay scale of Rs. 1800-3200 with initial pay of Rs. 1920 w.e.f. 1.1.1986 and pay the arrears in favour of the petitioner with interest accrued thereon."

3. Respondents have filed the reply.

4. The Writ Court, after examining the pleadings, dismissed the writ petition, on the ground that petitioner had no case.

5. The appellant/writ petitioner is virtually seeking pay parity on the analogy of his counterparts in HP. Secretariat on the pattern of pay scales vide Annexure P7, dated 4th November, 1992, appended with the writ petition.

6. The writ petitioner has not given details as to how he is entitled to the said pay scales and whether duties and responsibilities discharged by the petitioner are similar to that of his counterparts, in order to determine the claim of parity.

7. The Apex Court in *Hukum Chand Gupta Vs. Director General, ICAR and Others*, held as to how parity can be claimed or granted. It is apt to reproduce relevant portion of para 20 of the judgment herein:

20..... There cannot be straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a writ court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the writ court would lack the necessary expertise to undertake the complex exercise of equation of posts or the pay scales."

8. The Apex Court in another case titled as *State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai*, held that the Court has to consider factors like the source and mode of recruitment/appointment, qualifications, nature of work, value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. It is apt to reproduce para 15 of the judgment herein:

"15. In our view, the approach adopted by the learned Single Judge and the Division Bench is clearly erroneous. It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of quality in the matter of pay scales. The court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the quality clause can be

invoked in the matter of pay scales only when there is wholesale identity between the holds of two posts."

9. The Apex Court in the case titled as Steel Authority of India Ltd. and Others Vs. Dibyendu Bhattacharya, , has discussed the development of law and the judgments made by the Apex Court right from the year 1968, in paras 18 to 29 of the judgment. It is apt to reproduce paras 30, 31 and 33 of the judgment herein:

30. In view of the above, the law on the issue can be summarised to the effect 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 concerned posts. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.

31. The onus to establish the discrimination by the employer lies on the person claiming the parity of pay. The expert committee has to decide such issues, as the fixation of pay scales etc. falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible for administration i.e. service conditions etc., is found to be bona fide, reasonable, and on intelligible criteria which has a rational nexus of objective of differentiation, such differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just or prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesale/wholesome identity between the two posts they should not be treated as equivalent and the Court should avoid applying the principle of equal pay for equal work.

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33. By the impugned order, the respondent has not been granted the post in Grade E-1 but salary equivalent to that of Shri B.V. Prabhakar has been granted to the Respondent. The order itself is mutually inconsistent and contradictory. The representation of the respondent had been for waiving the criteria meaning thereby that the respondent sought a relaxation in the eligibility criteria for the post in Grade E-1. It is evident from the representation itself that the respondent never possessed the eligibility for the post of Grade E-1. The Law does not

prohibit an employer to have different grade of posts in two different units owned by him. Every unit is an independent entity for the purpose of making recruitment of most of its employees. The respondent had not been appointed in centralised services of the company.

10. The Apex Court in Union Territory Administration, Chandigarh and Others Vs. Mrs. Manju Mathur and Another, , held that similarity of designation or nature or quantum of work is not determinative of entitlement to equality in pay scales.

11. The Apex Court in the case titled as State of Punjab and Another Vs. Surjit Singh and Others, , has discussed the development of law right from the year 1960 till 2009. It is apt to reproduce para 30 of the judgment herein:

"30. Mr. Swamp may or may not be entirely correct in projecting three purported different views of this Court having regard to the accepted principle of law that ratio of a decision must be culled out from reading it in its entirety and not from a part thereof. It is no longer in doubt or dispute that grant of the benefit of the doctrine of "equal pay for equal work" depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity."

12. It would also be profitable to reproduce para 13 of the judgment rendered by the Apex Court in New Delhi Municipal Council Vs. Pan Singh and Others, , herein:

"13. They, thus, formed a class by themselves. A cut-off date having been fixed by the Tribunal, those who were thus not similarly situated, were to be treated to have formed a different class. They could not be treated alike with the others. The High Court, unfortunately, has not considered this aspect of the matter."

13. The Apex Court in a case titled as State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., , held that the principle of "equal pay for equal work" has no mechanical application in every case. It is apt to reproduce para 17 of the judgment herein:

"17. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for

lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" 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. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regards. 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. If the High Court, is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors."

14. A Division Bench of this Court in a case titled as Roshan Lal versus Hon"ble High Court of Himachal Pradesh and another, being CWP No. 873 of 1993, decided on 27th October, 1994, held that even if a post of one cadre is created in two departments and different pay scales are granted, that cannot be a ground to claim parity. In order to claim parity, the writ petitioners have to indicate that their jobs, duties, responsibilities and functions are similar. In this case, the Court has examined whether the post of Book Binder sanctioned in the High Court and Secretariat of the State Government and in other departments are entitled to same pay scale? No doubt, the post of Book Binder was created in all these departments, but it was held that it is for the writ petitioner to plead and prove that he was performing the same type of work and responsibilities and other factors are similar. This Court, after discussing all facts and factors, rejected the plea for grant of parity and the writ petition was dismissed. It is apt

to reproduce relevant portion of the judgment herein:

"Having heard the learned counsel for the petitioner, we find no justification in the submission. It is too much of the employee of the High Court to claim that the High Court should be equated with the Printing and Stationery Department of the State Government. Even on the basis of job, there would be no similarity. The Printing and Stationery Department would have continuous and different varieties of work needing a different type of Book-Binder than the Book-Binder in the High Court."

15. A similar question has also arisen in a recent case titled as Himachal Pradesh State Electricity Board versus Rajinder Upadhaya & others, being LPA No. 51 of 2009, decided on 11th September, 2014, and after discussing the law, it has been held by this Court that in order to claim parity, the writ petitioner has to indicate that their functions, responsibilities and the duties are similar. It is apt to reproduce para 30 of the judgment herein:

"30. It was for the writ petitioners to plead, marshal and prove that they were performing the similar duties as the Circle Scale Superintendent was performing and the duties, which are being performed by the Law Officer Grade-I are being performed by them also."

16. This Court in LPA No. 11 of 2012, titled as The Principal Secretary (Personnel) & another versus Pratap thakur, decided on 22nd September, 2014 and CWP No. 4184 of 2010 decided on 17.10.2014 titled Beli Ram versus Hon"ble High Court of Himachal Pradesh and another has laid down the similar principles.

17. A similar view has been taken by the apex Court in a latest judgment reported in 2014 AIR SCW 6581 titled State of Himachal Pradesh and another versus Tilaka Raj.

18. The Writ Court has also discussed other aspects and has rightly come to the conclusion.

19. Having said so, the Writ Court has passed a reasoned judgment, needs no interference.

20. Viewed thus, the LPA is dismissed and the impugned judgment is upheld.

21. Accordingly, the appeal is disposed of along with pending applications, if any.