

(2026) 03 SHI CK 0714
In the High Court Of Himachal Pradesh
Case No : CWPOA No.172 Of 2019

Roshan Lal And Others

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 17-03-2026

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 39(d), 226

Citation : (2026) 03 SHI CK 0714

Hon'ble Judges : Jiya Lal Bhardwaj, J

Bench : Single Bench

Advocate : Sneh Bhimta, Shreya Chauhan, Amit Kumar Chaudhary

Final Decision : Allowed

Judgement

Jiya Lal Bhardwaj, J

1.The petitioners, by way of present petition, have prayed for the following substantive reliefs:

“(i) That the respondents may be directed to pay to the applicants salary in the scale of Rs.4400-7000 w.e.f. 01.01.1996 and Rs.1350- 2400 w.e.f. 01.01.1986 with all consequential benefits.

(ii) That the respondents may also be directed to pay to the applicants the arrears due and admissible to them as a result of the relief at Sr. No.(i) above. They may also be directed to pay interest @18% per annum on the arrears of salary.”

2. The petitioners have averred in the petition that they are working as Laboratory Attendants with the respondents and are presently working at Government High Schools/Government Senior Secondary Schools/Government Colleges in the respondent Department. The post of Laboratory Attendant was re-designated as Senior Laboratory Attendant when the pay scales of Laboratory Attendants were revised on the Punjab pattern, and they were given the scale of

Rs.950-1800 w.e.f. 01.01.1986. Further, the scale was revised to Rs.3120-5160 w.e.f. 01.01.1996 and, at present, they are getting the salary in the said pay scale.

3. Vide memo dated 01.01.1990, respondent No.2 wrote a letter to all the Principals of Government Colleges seeking clarification regarding duties and responsibilities of Laboratory Staff in the Colleges. It has been mentioned in the said letter that a confusion has been created in some Colleges in respect of the responsibilities and duties as per the duty norms and it is clarified in the said letter that there is no change in the nature of duties as already defined in spite of change in classification of certain categories of employees. Vide this letter, suggestions were also sought for modification, if any. Communication dated 30.10.1964, whereby the norms were formulated is also annexed with this letter. As per the norms dated 30.10.1964, the duties of Junior Lecturer Assistant and Laboratory Attendant are as under:

"Duties of the Junior Lecturer Assistant:

1. He will be personally responsible for the Laboratory, its equipment and its general upkeep.
2. He will personally look after the maintenance of expensive App. (requiring technical care) in particular and ordinary apparatus in general.
3. He will be responsible for the lying of equipment in the Labs. Or in the fields or trips. In case of Music Deptt. he will keep all the instruments turned and in perfect order before every practical.
4. He will arrange the apparatus etc. needed for the lecture work.
5. He will assist the Senior Lecturer Assistant in annual stock checking and in work regarding purchase of Apparatus locally or otherwise.
6. He will see that the electric fans and lights, water taps and gas taps are not used necessarily and wastefully in the rooms and labs. under.

Duties of Lab. Attendant:

2. He will dust the Labs, Museums Lecture rooms and other rooms in the Department concerned and shall personally clean sinks, Brasswares windowpane etc. In case of Zoology Deptt. the Lab. Attendant will chloroform and remove the dissected animals, when asked.
3. He will clean Glassware and ordinary equipment.
3. He will assist the Junior Lecturer Assistant in carrying the Apparatus etc. required for the lecture work and practical work."
4. Thereafter, another communication dated 01.12.1993 was issued by respondent No.2 forwarding decision of the Government regarding the duties of Laboratory Attendants to all the Principals of Government Senior Secondary

Schools and requested that the duties be implemented strictly. As per the decision, the Laboratory Attendants working in the Government Senior Secondary Schools were assigned specific duties, and as per the procedure, the Laboratory Attendants working in the Schools and Colleges are inter-transferable and carry the same pay scales. The duties assigned as per communication dated 01.12.1993, are as under:

"Duties of Attendants working in Govt. Senior Secondary Schools.

1. He will be incharge of store of concerned department.
2. To maintain the stock register with the assistance of Senior Lecturer of his department.
3. He will also verify every year the material/apparatus as per stock register with the assistance of concerned Lecturers of his department.
4. He will take care of cleanliness of laboratory room and concerned rooms of other departments.
5. He will also look after electric fans, electricity, taps, gas plant etc. to see that these are not used wrongly.
6. He will also arrange for apparatus/instruments to be used by lower classes (6th to 10th) when required with the assistance of concerned Lecturer.
7. In case it is possible he will also undertake minor repair of instruments of laboratory with the assistance of concerned Lecturer.
8. He will also correspond with the firm for purchase of laboratory equipment etc. with the assistance of concerned Lecturer.
9. He will not go on leave without recommendations of the concerned Lecturer. In case he is to go on leave, he will hand over the keys to the Senior Lecturer of his department.
10. Annual confidential reports of Laboratory Attendants will be written by the Principal of the School.
11. Laboratory Attendants of class IV cadre will be exempted from the work.
12. When required the work of Laboratory Attendants can be inter-changed so that the work of School could go on smoothly.
13. When required he will be responsible for arrangement of water in the laboratory.
14. When required he will make local purchase for the School."

5. The petitioners have also placed on record the office order dated 17.08.1990, whereby one Sh. Jia Lal, Lab. Attendant, working in Government College, Rampur Bushahr, was relieved of his duties on his transfer to Government Senior

Secondary School, Shimla-1, and vide another office order dated 23.11.2000, one Sh. Budhi Chand, Lab Attendant of the same college, was relieved of his duties and was directed to report for duty to the Principal, Government Senior Secondary School, Rampur Bushahr.

6. The petitioners have placed on record the tentative seniority list of Laboratory Attendants as issued by the respondent Department in December 1988, wherein even the persons, who are working as Laboratory Attendants in Colleges, have been shown, since there is a common cadre of Laboratory Attendants working in Government High School and Government Senior Secondary Schools.

7. The promotional post from the feeder category of Laboratory Assistant is Junior Lecturer Assistant and the same is made on the basis of the seniority list of Laboratory Attendants irrespective of whether they are working in Colleges or Schools. The petitioners have placed on record office order dated 11.12.1998 (Annexure A-5), whereby the Laboratory Attendants working in Schools have been promoted as Junior Lecturer Assistants.

8. The petitioners have submitted that there are no posts of Junior Lecturer Assistants in the Schools, though the persons who are working as Laboratory Attendants in the Schools are performing identical duties as were performed by Junior Lecturer Assistants, as per Annexures A-1 and A-2, where the duties of Laboratory Attendants have been prescribed. It has been averred that as per the norms fixed, the Lab Attendants will assist the Junior Lecturer Assistants in carrying the apparatus etc. required for lecture and practical work. Since there are no posts of Junior Lecturer Assistants, the persons who are working as Laboratory Attendants in the schools are performing the duties, which are otherwise to be discharged by the Junior Lecturer Assistants and thus, they are entitled to the same salary or pay scale. It has also been pleaded that though the petitioners have been designated as Laboratory Attendants (now Senior Laboratory Attendants), but they are performing the duties of Junior Lecturer Assistants and thus they are entitled to the same pay scale as granted to the Junior Lecturer Assistants on the principle of "equal pay for equal work."

9. The respondents filed reply to the petition and averred that the petition is not maintainable, because as per the R&P Rules notified by the Government vide notification dated 03.08.2000, the pay scale of Laboratory Attendant has been prescribed as Rs.3120-5160 and the qualification for the same has been prescribed as Matriculation or its equivalent examination with Science from a recognized Board/University, whereas, as per notification dated 04 October 1999, Junior Lecturer Assistants/Laboratory Assistants (College Cadre) have been granted a pay scale of Rs.4400-7000. Further, the post of Junior Lecturer Assistant is filled up from amongst the eligible Laboratory Attendants working in Government Senior Secondary Schools/High Schools. Thus, the claim of the petitioners for the grant of pay scale of Rs.4400-7000 is not at all maintainable as nothing can be granted contrary to the provisions of the R&P Rules.

10. The respondents have admitted that the post of Laboratory Attendant has been re-designated as Senior Laboratory Attendant. As far as the issue regarding the transfer of Sh. Jia Lal and Budhi Chand is concerned, they had been transferred on the same post and, by their transfer, there was neither any change in their duties nor in their pay scale, and they have not claimed anything in that regard. It has been admitted that there is no post of Junior Lecturer Assistant/Laboratory Assistant in the Government Senior Secondary Schools and the said posts are sanctioned only for Colleges. Annexure A-5 appended with the petition shows that the Laboratory Attendants working in the Schools are promoted as Junior Lecturer Assistants and posted in Government Colleges. Since the petitioners are performing the duties of Laboratory Attendants for which a pay scale of Rs.3120-5160 has been prescribed, the petitioners cannot claim parity with pay scale of Rs.4400-7000.

11. I have heard the learned counsel for the parties and also perused the case file carefully.

12. It is not in dispute that there are no posts of Junior Lecturer Assistants in the Schools. The duties being performed by the petitioners in the Schools are also the same, since as per the decision regarding the duties of Laboratory Attendants, it has been mentioned that the Laboratory Attendant will assist the Junior Lecturer Assistant in carrying the apparatus etc. as required for lecture and practical work. Thereafter vide communication dated 01.12.1993, the decision of the Government dated 20.08.1993 prescribing the norms was conveyed to all the Principals, Government Senior Secondary Schools and as per the same, the Laboratory Attendants were made incharge of store of concerned department and to maintain the register with the assistance of Senior Lecturer of the Department, which too, are the duties of the Junior Lecturer Assistant. Once there are no posts of Junior Lecturer Assistants in the Schools, the job which is to be performed by them is being performed by the petitioners, who are working as Laboratory Attendants. The duties being performed by the petitioners are also not disputed.

13. No doubt, so far as prescribing the pay scale of a post is concerned, it is a policy decision to be taken by the State Government and the role of the Courts is very limited. However, when it comes to the notice of the Court that the nature of duties and functions performed by an employee is similar to those being discharged by another category of employees, it is the duty of the Court to seek parity of pay under Article 39(d) of the Constitution of India.

14. A perusal of the documents placed on record reveals that there is no dispute regarding the duties, responsibilities, and work being performed by the petitioners as Laboratory Attendants, and the same work, which is being performed by the Junior Lecturer Assistants. Thus, the petitioners cannot be denied the same pay scale as granted to the Junior Lecturer Assistants working in the Colleges.

15. It is also not in dispute that there is a common seniority list of Laboratory Attendants in the Schools and Colleges, whose designation has now been changed to Senior Laboratory Attendant, and thus the petitioners cannot be denied the same pay scale of Rs.4400-7000, as is being given to the Junior Lecturer Assistants.

16. A three-Judge Bench of the Hon'ble Supreme Court in *Randhir Singh vs. Union of India*, (1982) 1 SCC 618, has held that the principle of "equal pay for equal work" is not a mere doctrine slogan, but a constitutional goal, capable of being attained through constitutional remedies, and this principle has to be read with Articles 14 and 16 of the Constitution of India. This decision was affirmed by the Constitution Bench of the Hon'ble Supreme Court in *D.S. Nakara and others vs. Union of India*, (1983) 1 SCC 305.

17. The learned counsel for the respondents-State vehemently argued that the fixation of pay and parity and assigning the duties is the function of the executive and depends upon the financial capacity of the Government and the priority is given to different types of posts under the policy decision of the State Government, and this Court cannot compare the posts or venture into the aspect of granting the same pay scale. No doubt, the scope of this Court in such matters is very limited, as propounded by the Hon'ble Supreme Court in *K.T. Veerappa and others vs. State of Karnataka and others*, (2006) 9 SCC 406. However, it has also been held that the Courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such decisions to be unreasonable, unjust, and prejudicial to a section of employees and taken in ignorance of material and relevant factors. The relevant para of the judgment is reproduced as under:-

"13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. And Union of India v. S.B. Vohra*. There is no dispute nor can there be any to the principle as settled in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors."

18. The Hon'ble Supreme Court in *Haryana State Minor Irrigation Tubewells Corporation and others vs. G.S. Uppal and others* (along with connected matters), (2008) 7 SCC 375, has again reiterated that the judicial review in matters of fixation of pay and determination of parity is limited, but again reiterated that the Court would be justified in interfering with the pay fixation if it

finds such a decision to be unreasonable, unjust and prejudicial to a section of employees. The relevant paragraphs of the judgment are reproduced hereunder:

"21. There is no dispute nor can there be any to the principle as settled in the above-cited decisions of this Court that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well-settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. [see K.T. Veerappa & Ors. v. State of Karnataka & Ors. (2006) 9 SCC 406]."

22. Mr. M.N. Krishnamani, learned senior counsel assisted by Shri Raj Kumar Gupta and Shri A.N. Bardiya appearing for respondents in C.A. Nos. 9244/03 and 9248/03; Mr. Rishi Malhotra, Advocate appearing for respondents in C.A. 9239/2003, in support of the judgment of the Division Bench, contended that no exceptions can be taken to the well-reasoned judgment recorded by the Division Bench of the High Court. They submitted that the Division Bench has analysed in great detail the factual situation and legal proposition covering the field of controversy, therefore, there is apparently no infirmity or perversity in the judgment impugned in these appeals inviting interference by this Court.

23. In order to appreciate the rival contentions of the learned counsel for the parties, we have scrutinized the judgment of the Division Bench of the High Court in the backdrop of the factual situation of the case as well as in the light of the principle enunciated in the above-cited decisions.

24. It is well-settled that the State can make reasonable classification if it has a nexus with the object sought to be achieved. It is admitted position in the present case that posts of SDOs/SDEs/AEs can be filled up by the Corporation by any one of the three known methods, namely, direct recruitment, on promotion or by transfer/deputation. Once a person is appointed to a post in a particular cadre, the source of his recruitment or the method of his appointment becomes irrelevant. The Corporation has framed its Service Bye-Laws and by virtue of Rule 5.1 of Part-V of the Service Bye-Laws, each post in the Corporation will carry a time scale of pay; the present pay scale being indicated in Appendix-II and further that the pay scale is subject to revision by the Board, which will, however, generally follow the pattern adopted by the Government of Haryana from time to time.

25. The employees of the Corporation, since its inception in 1970, had been getting the same pay scales as that of the employees of the Haryana Government and the Board of Directors having already equated the pay scales of the Engineers of the Corporation commensurate to the pay scales of the Government employees, but the State Government has not concurred with the decision of the Board of Directors.

26. By virtue of Clause 81(v) of the Memorandum of Association of the Corporation, the Directors of the Corporation in their discretion have powers to appoint, remove or suspend such Managers, Secretaries, Officers, Clerks, Agents and Servants of permanent, temporary or special services, as they may from time to time think fit, and to determine their powers and duties and fix their salaries or emoluments and to require security of such amount as they think fit in such instances. The power to fix the salaries or emoluments of the employees of the Corporation, thus, specifically rests with the Directors of the Corporation and by virtue of Rule 5.1 of Part-V of the Service Bye-Laws, as mentioned in the earlier part of the judgment, the Corporation had favourably considered the claim of the respondents by recommending the same scales for them, as were being given to their counterparts in the service of the Government Departments.

27. The proposal of the Board of Directors of the Corporation for revision of pay scales to its employees came up before the Standing Committee in its meeting held on 28.05.1992 and the Standing Committee approved the pay scales in a selective manner. The revision in pay scales of the Superintending Engineers, Accounts Officers, Circle Head Draftsmen, Divisional Head Draftsmen, etc. were approved, whereas the revision of pay scales of the respondents, who are AEs/SDOs/SDEs, was postponed and it was decided that the matter would be examined separately by the Finance Department.

28. The State of Haryana in its written statement filed before the High Court admitted that although the technical qualifications of incumbents on the posts of AEs/SDOs/SDEs in various Government Departments, Boards and Corporations are identical, yet the nature of duties and responsibilities, quantum of workload and level of technical expertise involved do vary from organization to organization depending upon the nature of activities undertaken by the respective organizations. It is further contended that the salary and allowances of the deputationists of the Corporation are governed by the terms and conditions of their deputation as decided by the Government from time to time. Therefore, the respondents cannot be treated and equated at par with the similar categories of employees of the State Government.

29. The learned Single Judge of the High Court as also the learned Judges of the Division Bench have considered the controversy in detail in their judgments holding the respondents entitled for the revision of pay scales on a par with their counter-parts working in the State of Haryana.

30. It is not in dispute that a deputationist holds the post in a particular cadre office for the duration he remains on deputation and is a part of that cadre. No material has been placed on record by the appellants to show that the deputationists are appointed against only certain particular posts or that they cannot be posted or transferred to the posts held by the respondents. In fact, it is an admitted position that the posts are mutually inter- changeable. In this situation, it is reasonable to infer that a deputationist performs the same duties as those performed by other persons working in the cadre. It is also an admitted

position that the qualifications laid down for recruitment in the Corporation are identical to those prescribed in the Departments of the Government. It is further clear that the respondents have continued to work in the pay scale of Rs.2000-3500 w.e.f. 01.01.1986. As against this, their counter-parts in the Government and also the persons, who are posted in the Corporation by way of deputation, would get the scale of Rs.3000-4500 on completion of five years of service and are placed in the scale of Rs.4100-5300 (to the extent of 20% of the posts) on completion of 12 years of service. The respondents were obviously placed at a disadvantageous position. The decision of the Government in rejecting the proposal of the Board of Directors suffers from the vice of invidious discrimination and cannot be sustained because the very same decision of the Board with regard to all other employees has since been accepted and approved by the State Government. On the scrutiny of the material on record, it is clear that the appellants did not produce any evidence on record to establish that the working conditions, responsibilities and nature of duties, etc. of the respondents are different from their counter-parts working in the same categories in the State Government, Boards and other Corporations, etc. and also the persons who are working with the Corporation on deputation.

31. A careful examination shows that the issue was not really about grant of pay scales to Corporation Engineers on par with PWD Engineers. When the pay revision took place, the revised pay scales that were given to Engineers of the State Government were also given to the engineers of the Corporation with effect from 1.1.1986 thereby maintaining the parity. What was not extended to the Corporation employees, which is the subject matter of the grievance, is the further revision by way of "removal of anomaly in pay scales" given to AEE/AE/SDO/SDE of the State Government with effect from 1.5.1989 vide circular dated 2.6.1989 of the Finance Commissioner. The real question would be whether what is given by way of anomaly removal in the case of Engineers of the State Government, should automatically be extended to the corresponding categories of engineers of the Corporation.

32. When, after a pay revision, an anomaly is found in the pay scale given to a class of Government servants and such anomaly is rectified, it is not a new pay revision but a correction of the original pay revision, or an amendment to the pay scale that has already been granted. Therefore, where the pay revision extended to the government servants has already been extended to the employees of the Corporation also, it follows that any correction of anomaly in the revised pay scale given to the government servants should also be made in the case of those who were earlier given parity by extending the pay scale which is the subject matter of the correction. It should be borne in mind that the question whether Corporation engineers were on par with PWD Engineers and should be given parity in pay scales was already decided when the pay scale revision granted to Government (PWD) engineers was extended to the corporation Engineers also with effect from 1.1.1986. That question did not again arise when the anomaly in the pay revision was rectified with reference to the Government engineers. When

the anomaly in the pay scale of Government engineers was rectified, the rectification should apply to Corporation engineers also to maintain the parity.

33. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in *M.M.R. Khan v. Union of India* [1990 Supp. SCC 191] and *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union* [(2000) 4 SCC 245]. However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events, discussed above, clearly shows that the employees of the Corporation have been treated at par with those in Government at the time of revision of scales of pay on every occasion."

19. The Hon'ble Supreme Court in *Union of India vs. Dineshan K.K.*, (2008) 1 SCC 586, has held that the principle of "equal pay for equal work" has assumed the status of a fundamental right.

20. No doubt, it is the task of expert bodies like the Pay Commission to determine the pay structure, yet judicial review is not altogether excluded. It has been held that in cases where there is no dispute with regard to the qualifications, duties and responsibilities of persons holding identical posts or ranks, but they are treated differently, merely because they belong to different departments, or where the basis of qualification for a post is *ex facie* irrational, the Court can interfere.

21. Again, the Hon'ble Supreme Court in *Punjab State Power Corporation Limited vs. Rajesh Kumar Jindal and others*, (2019) 3 SCC 547, has held that it is the duty of the employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he has been discriminated against, as the question of parity has to be decided after consideration of various factors. The relevant paragraphs of the judgment are reproduced hereunder:

14. "Ordinarily, the courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission etc. The aggrieved employees claiming parity must establish that they are unjustly treated by arbitrary action or discriminated. In *Kshetriya Kisan Gramin Bank v. D.B. Sharma and Others* (2001) 1 SCC 353, this Court held as under:- (SCC p.363, Para 7).

7. The next question that arises for consideration is, as to what extent the High Court would be justified in exercise of its extraordinary jurisdiction under Article

226 to interfere with the findings of an expert body like the Equation Committee. In *State of U.P. and Others v. J.P. Chaurasia and Others* (1989) 1 SCC 121, this Court unequivocally held that in the matter of equation of posts or equation of pay, the same should be left to the Executive Government, who can get it determined by expert bodies like the Pay Commission, and such expert body would be the best judge to evaluate the nature of duties and responsibilities of the posts and when such determination by a commission or committee is made, the court should normally accept it and should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

15. In *S.C. Chandra and Others v. State of Jharkhand and Others* (2007) 8 SCC 279, this Court held as under:-

33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd.* (2007) 1 SCC 408.

35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

36. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide *Govt. of W.B. v. Tarun K. Roy and Others* (2004) 1 SCC 347." The same view was reiterated in *Union Territory Administration, Chandigarh and Others v. Manju Mathur and Another* (2011) 2 SCC 452; *State of Haryana and Others v. Charanjit Singh and Others* (2006) 9 SCC 321 and in *Hukum Chand Gupta v. Director General, Indian Council of Agricultural Research and Others* (2012) 12 SCC 666.

16. Observing that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts, in *Steel Authority of India Limited and Others v. Dibyendu Bhattacharya* (2011) 11 SCC 122, this Court held as under:-

"30. 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 posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.”

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Burden of proof on the person claiming parity of pay scale:-

20. Ordinarily, the scale of pay is fixed keeping in view the several factors i.e.

- (i) method of recruitment;
- (ii) level at which recruitment is made;
- (iii) the hierarchy of service in a given cadre;
- (iv) minimum educational/technical qualifications required;
- (v) avenues of promotion;
- (vi) the nature of duties and responsibilities; and
- (vii) employer's capacity to pay, etc.

21. It is well settled that for considering the equation of posts and the issue of equivalence of posts, the following factors had been held to be determinative:-

- (i) The nature and duties of a post;
- (ii) The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;
- (iii) The minimum qualifications, if any, prescribed for recruitment to the post; and
- (iv) The salary of the post (vide Union of India and Another v. P.K. Roy and Others AIR 1968 SC 850).

22. After referring to P.K. Roy's case, this Court, in SAIL, held as under:-

“25. In State of Maharashtra and Another v. Chandrakant Anant Kulkarni and Others (1981) 4 SCC 130 and Vice Chancellor, L.N.Mithila University v. Dayanand Jha (1986) 3 SCC 7, a similar view has been reiterated observing that equal status and nature and responsibilities of the duties attached to the two posts have to be taken into consideration for equivalence of the post. Similar view has been reiterated in E.P. Royappa v. State of T.N. and Another (1974) 4 SCC 3 and Sub Inspector Rooplal and Another v. Lt. Governor Through Chief Secretary,

Delhi and Others (2000) 1 SCC 644, wherein this Court following the earlier judgment in P.K. Roy AIR 1968 SC 850 held that the salary of the post alone may not be a determining factor, the other three criterion should also be fulfilled.”

23. The burden of proof in establishing parity in pay scales and the nature of duties and responsibilities is on the person claiming such right. The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they are entitled to parity of pay scales. After referring to number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court, in SAIL, held as under:-

“22. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of “equal pay for equal work” as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. 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. (Vide U.P. State Sugar Corpn. Ltd. and Another v. Sant Raj Singh and Others (2006) 9 SCC 82, Union of India and Another v. Mahajabeen Akhtar (2008) 1 SCC 368, Union of India v. Dineshan K.K (2008) 1 SCC 586, Union of India and Others v. Hiranmoy Sen and Others (2008) 1 SCC 630, Official Liquidator v. Dayanand and Others (2008) 10 SCC 1, U.P. SEB and Another v. Aziz Ahmad (2009) 2 SCC 606 and State of M.P. and Others v. Ramesh Chandra Bajpai (2009) 13 SCC 635)”

22. In the present case, as noted above, there are no posts of Junior Lecturer Assistants in the Schools and the petitioners, who are posted as Senior Laboratory Attendants, have been discharging duties of the same nature, therefore, the petitioners cannot be denied the pay scale of Rs.4400- 7000. The action on the part of the respondents-State to deny the petitioners the pay scale of Junior Lecturer Assistant though they are discharging similar duties as Junior Lab Attendants is unreasonable, unjust and violative of Article 14 of the Constitution of India.

23. The respondents have not disputed that the petitioners are performing the same duties as were performed by Junior Lecturer Assistants, and thus the petitioners are held entitled to the pay scale of Rs.4400-7000.

24. Consequently, in view of the detailed discussion made hereinabove as well as the law propounded by the Hon’ble Supreme Court, this Court finds merit in the

present petition and the same is accordingly allowed. The respondents are directed to grant the pay scale of Rs.4400- 7000 to the petitioners w.e.f. 01.01.1996 on notional basis, and actual monetary benefits be given to them three years prior to the date of filing the present petition. Since the petitioners are agitating the matter since long, the arrears shall be paid to them, within a period of three months from today. The petition is accordingly disposed of. However, there shall be no order as to costs.

25. Pending miscellaneous application(s), if any, shall also stand disposed of.