

(1996) 10 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : L.P.ANo.112 of 1994

State	Vs	APPELLANT
J & K Subordinate Judicial Process Servers Welfare Association		RESPONDENT

Date of Decision : 31-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 39

Citation : (1997) SriLJ 139

Hon'ble Judges : Bhawani Singh, J and M.Y.Kawoosa, J

Bench : Division Bench

Judgement

Bhawani Singh, Judge.

1. This Letters Patent Appeal is directed against the judgment of Single Judge dated August 30, 1994 in SWP No. 1683/1992. Before dealing with

the grievance of appellant against the judgment, narration of material facts of the case may be given.

2. Members of Jammu and Kashmir Subordinate Judicial Process Servers have preferred this petition through their Association seeking payment

of salary at par with Process Servers in the Excise Department invoking doctrine of equal pay for equal work. It is submitted that they have been

subjected to invidious and hostile discrimination in the payment of salary as compared to Process Servers of Excise Department although they are

performing similar function with responsibilities if not more. Consequently, all considerations being equal, different treatment, being extended to

them in the matter of pay scale, is clearly violative of Articles 14, 16 and 39 (d) of Constitution of India applicable to the State of Jammu and

Kashmir.

3. According to the petitioner, Process Servers of Excise Department are working in the pay scale of Rs. 410625 revised to Rs. 7751025

whereas members of petitioner have been allowed pay scale of Rs. 345435 revised to Rs. 750940. This classification is without any basis. It is

patently unconstitutional since payment of different wages to persons doing similar [SIC] more so when performance of duties in the administration

of justice are more onerous and arduous as compared to the Excise Department.

4. Petitioners further submit that numerous representations were made to the respondent for removal of this invidious and hostile discrimination

through the Registrar

of this Court, who had recommended the ""4Cfte vide Communication No. 3923/SY dated 29061988, which is being quoted as under:

Sub: Representation of process servers of the Judicial Department for parity in pay scales.

Sir,

The Process Servers of the Judicial Department have represented that they are (not) being treated fairly in the matter of pay scales because while

the pay scales of the process servers falling under Common category of posts as per schedule 2 of the revised pay rules, 1982 is Rs. 390500, the

process servers of the Excise Department as per Schedule 22 are placed in the pay scales of Rs. 410700. However, the pay scale of Judicial

Deptt. as per schedule 41 is Rs. 345460. This disparity in the pay scales of common category service cannot be explained, as it amounts to

differential treatment, between identical services, even though the Departments may be different. Even workwise, process servers working in the

subordinates courts are to perform more arduous duties as compared to other process serving Agencies working in any other Government

Departments.

The process Servers of the Judicial Department, therefore, ought to have been treated fairly and if not paid higher emoluments atleast should be

equated with the process Servers of the Excise Department.

I am, therefore, desired to say that this difference in the pay scales be removed by placing the process servers of the Judicial Department in the pay

scale of Rs. 410700, as in case of process Servers of Excise Deptt.

Yours faithfully

Sd/

(O.P. Sharma)

Registrar

5. From the counter affidavit, it is pointed out that employees of different Departments constitute different classes. On the same analogy, Process

Servers of Excise Department constitute a separate class from the Process Servers of Judicial Department. Besides, rule of equal pay applies

where equal quantity of work is rendered and functions, duties and responsibilities are same under the same Department. The work being

performed by Process Servers of Excise Department and Judicial Department is not factually, legally and logically equal and same. The pay scale

of Process Servers of Judicial Department has been revised from time to time strictly on grade to grade basis. All along, the Process Servers of

Judicial Department have been treated ""orderlies"" like some other Departments carrying dak and the Third Pay Commission allowed them

conveyance allowance of Rs. 15/ per month .vide Government Order No. 940LD (A) of 1983 dated 31121983. Since the members of the

petitioner joined the Judicial Department and accepted the duties of ""orderlies"" in the pay scale with conveyance allowance of Rs. 15/per month,

no further grievance can be made by them and their pay scales have been revised on the principle of grade to grade basis. Before 1987, the

Process Servers of Excise Department were in the pay scale of Rs. 410700, Thereafter it was revised to Rs. 8001500 and in 1992, it was revised

to Rs. 9501500. The Process Servers of Judicial Department were in the pay scale of Rs. 345460 which was revised to Rs. 630940 and

subsequently to Rs. 750940.

6. Therefore, the representations of the petitioner could not be accepted and in case their claim is allowed, that would result in resentment in other

categories of employees, who are equated with the members of petitioner in the matter of pay scale. The State has its own policy with regard to

the service conditions of its employees and is not governed by a decision or pay scale of the Central Government.

7. After hearing the parties and examining their contentions, learned Single Judge has allowed the claim of the petitioner by the impugned judgment.

Learned Single Judge found that Process Servers in Subordinate Judiciary and Excise Department have been described similarly except as to pay

scales since Process Servers of Excise Department have been shown in higher pay scale and Process Servers of Subordinate Judiciary in lower

pay scale. Merely saying that they constitute different classes for performing their functions by belonging to different Departments is not sufficient.

The respondents are required to show that their work is not equal. In ordinary course, Process Servers of Subordinate Judiciary are required to

serve summons, warrants and other orders issued by various Courts on persons as in the case of Excise Department. Jobs being performed by the

two categories of Process Servers are in substance equal, namely, serving of process though,, as a matter of fact, job of Process Servers in

subordinate Judiciary is much more arduous and onerous since they have to cater to the requirement of the whole judicial organisation. Contention

that Process Servers in the Judiciary are as a matter of fact, 'orderlies' have been rejected and its has been held that all of them have been declared

as Process Servers by the Chief Justice. Payment of conveyance allowance is for visiting farflung areas to execute Courts, processes and they have

to meet the traveling expenses from their own pocket, apart from meeting other requirements during the course of executing Courts summons,

warrants and orders. Simply because the Commission had categorised a separate category with different pay scale, does not mean that they are

not entitled to invoke principle of 'equal pay for equal work' when they can justifiably do so.

8. All the above conclusions of learned Single Judge was challenged by the respondent during the course of hearing of this Appeal. It was

contended that members of petitioner and other Process Servers form two different categories with different work, responsibilities and pay scales,

and there is no violation of Articles 14, 16 and 39 (d) of the Constitution. Right from the beginning, Process Servers of Judiciary have been placed

in lower scale of pay as compared to Process Servers of Excise Department. Once the pay scales have been fixed by the Pay commission,

interference by the Court is not permissible unless violation of Article 14 is established in support of these contentions, reliance was placed on,

State of Madhya Pradesh and Another Vs. Pramode Bhartiya and Others (AIR 1993 Supreme Court 286); State of W.B. and others Vs. Hari

Narayan Bhowal and others (1994 (4) SCC 78} and State of U.P. and Others Vs. UP. Madhyamik Shisha Parishad Shramik Sangh and Another (AIR 1996 Supreme Court 708).

9. Shri R.A.Jan, learned counsel for the petitioner, vehemently assailed the submissions of the Appellant and submitted that impugned judgment is absolutely correct. Before allowing the claim of the petitioner, learned Single Judge examined the matter quite seriously and comprehensively.

There being no infirmity in the judgment, appeal deserves to be dismissed.

10. In order to establish the charge of discrimination, it is incumbent on the petitioner to show that equals have been treated unequally. The short question arising for determination is whether the members of the petitioner are performing similar functions being performed by Process Servers of

Excise Departments of the State Government? It is true that the pay scales of these two categories been different from the beginning. Process

Servers of Excise Department are enjoying higher pay scale as compared to the Process Servers of the Subordinate Judiciary. This kind of

disparity in pay scales has been maintained in the Pay Commission Report and allowed as such by the respondents, but that is not the end of the

matter. Such kind of anomalies in pay scales of employees have existed form time to time in Pay Commissioner's recommendations. Assuming that

in the field of granting pay scales to different categories of employees, the recommendations of Expert Bodies, like Pay Commissions, should be

accepted, but glaring anomaly committed by the Commission and the State in the grant of pay scale resulting in invidious discrimination to one

category of employees as against the other cannot be tolerated. Such a complaint is open to judicial review so that the charge of equals being

treated unequally is appropriately examined within the spirit of Articles 14,16 and 39 (d) of the Constitution of India. Supreme Court of India and

various High Courts in the country have occasion to consider the principle of 'equal wage for equal work' from time to time. With a view to sustain

the claim for pay parity with Process Servers of Excise Department. Shri R.A. Jan placed reliance on decisions like: Kesavandanda Bharati Vs.

State of Kerala (AIR 1973 Supreme Court 1461); Randhir Singh Vs. Union of India and Others (AIR 1982 Supreme Court 879); Smt. P.Grover

Vs. State of Haryana and Another (AIR 1983 Supreme Court 1960); Surinder

Singh Vs. EngineerinChief. CPWD (AIR 1986 Supreme Court 584); Bhagwan Dass Vs. State of Haryana (AIR 1987 Supreme Court 2049); R.D. Gupta Vs. Lt. Governor, Delhi Administration (AIR 1987 Supreme Court 2086); Daily Rated Casual Labour Employed under P&T Department through Dak Tar Mazdoor Manch Vs. Union of India (AIR 1987 Supreme Court 2342); Jaipal Vs. State of Haryana (AIR 1988 Supreme Court 1504); State of U.P Vs. J.P. Charuasia (AIR 1989 Supreme Court 19); The Dharwal Distt. P.W.D, Literate Daily Wagers Employees Association and Others etc., Vs. State of Karnataka and Others (AIR 1990 Supreme Court 883); Doordarshan Cameramen's Welfare Associateion (Regd.) Vs. Union of India (AIR 1990 Supreme Court 1387); Satish Khajuria Vs. Municipality Jammu and Others (S.L.J. 1991J&K409); GrihKalyan Kendra Workers Union Vs. Union of India and Others (AIR 1991 Supreme Court 1173); and Ram Narayan Yadav Vs. State of Haryana and Others (AIR 1993 Supreme Court 1170).

11. We do not propose to refer to all the above decisions since a common thread runs through all of them. However, we would like to seek

assistance from some of them to answer the question raised before us.

12. In Randhir Singh Vs. Union of India and Others 1982 (1) SCC 618= AIR 1982 SC 879), the petitioner was a driverconstable in Delhi Police

Force under the Delhi Administration. He claimed the same pay scale which other drivers in the service of Delhi Administration were receiving. The

scale of pay of a driver constable in the Delhi Police Force was Rs. 210270 in the case of nonmatriculates and Rs. 225308 in the case of

matriculates. The scale of pay of a driver in the nonSecretariat offices in Delhi was Rs. 2606290EB63268366EB8839010400. The scale of pay of

drivers in the office of the Language Commission was Rs. 260350. The pay scale of drivers of heavy vehicles in the Fire Brigade and the

Department of Lighthouse was Rs. 330480. The case of the petitioner was that he discharged the same duties as the rest of the drivers under the

other officers, in fact he was discharging more onerous duties than the others. His complaint was that, there was no reason whatsoever to

discriminate him against other drivers merely because he happened to be described as constable which they were bound to be so described as

they belonged to the Police Force.

13. Third Pay Commission considered the claims of all drivers as a common category under the head "The pay scales appropriate for drivers of motor vehicles operating on roads..." After considering the qualifications etc. possessed by drivers, the Commission proposed pay scales for various categories of drivers like drivers of light motor vehicles, drivers of heavy motor vehicles, drivers employed in organisations with large fleet of vehicles, drivers of staff cars etc. The pay scales were professed to be fixed with reference to the qualifications for driving, the nature and the arduousness of the duties and responsibilities the nonavailability of promotional avenues and such other usual considerations. However, while considering the question of scales of pay of drivers, it separated the case of driverconstables on the ground that their case would be considered alongwith the cases of other police personnel. Grievance of the petitioner was that while doing so, the pay Commission failed to consider the drivers as a separate category and ignored the special consideration which prevailed in the case of drivers in other departments which should have been applied in the case of driverconstables were not only required to possess heavy transport driving licenses, but they were further required to undergo test of proficiency before they were appointed as driverconstables in Police Force. Their duties were no less arduous and their responsibilities no less heavy than the duties and responsibilities of drivers in other departments. Their hours of work were long and inconvenient and there was constant exposure to security risk. The petitioner and other driverconstables represented to the authorities that their case was omitted to be considered separately by the Pay Commission and that their scale of pay should be same as the drivers of heavy vehicles in other Departments. Since their claim for better scale of pay did not meet with any success, the matter was agitated through a writ under Article 32 of the Constitution. Respondents contended that petitioner was no more and no less than a constable of Delhi Police Force where there was no such category of drivers. There was no comparison between different departments of the Government of India for the purpose of fixation of pay scale which is fixed upon consideration of various factors. The pay scales of drivers of Delhi Police Force had been fixed after duly considering all the circumstances. The drivers in other departments were not similarly situated as the petitioner and there was no question of any hostile discrimination

etc. etc. The claim of respondents was rejected by the Court. Shri Chinnappa Reddy. J, speaking for the Court, said in para 1 of the judgment

that;

Equal pay for equal work¹ is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional rights. So the

petitioner claims; so the petitioner asserts. Article 39 (d) of the Constitution proclaims, as a Directive Principle, the constitutional goal of 'equal pay

for equal work for both men and women'. Articles 14 and 19 guarantee respectively the fundamental rights to equality before the law and equality

of opportunity in the matter of public employment and Article 32 provides the remedy for the enforcement of the fundamental rights. So the

petitioner has invoked the jurisdiction of this Court under Article 32 and has asked us to direct the respondents to give him his due, the same as

they have given others like him. True, he is the meet microbe in the mighty organism of the State, a little clog in a giant wheel. But, the glory of our

Constitution is that it enables him to directly approach the highest court in the land for redress. It is a matter of no little pride and satisfaction to so

that he has done so. Hitherto the equality clauses of the Constitution, as other articles of the Constitution, as other articles of the Constitution

guaranteeing fundamental and other rights, were most often invoked by the privileged classes for their protection and advancement and for a "'fair

and satisfactory' distribution of the buttered loaves amongst themselves. Now, thanks to the rising social and political consciousness and the

expectations roused as a consequence, and the forwardlooking posture for this Court, the underprivileged also are glamouring for their rights and

are seeking the intervention of the court with touching faith and confidence in the court. The judges of the court have a duty to redeem their

constitutional oath and do justice no less to the payment dweller than to the quest of the five star hotel.

14. While dealing with the duties and responsibilities of drivers in Delhi Police Force, Delhi Administration and Central Government, the Court held

in Para 9 that:

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 'power' 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 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 driverconstables of the Delhi Police

Force at least on a par with that of the drivers of Railway Protection Force. The scale of pay shall be effective from January 1, 1973, the date from

which the recommendations of the Pay Commission were given effect.

15. Again in *Surinder Singh Vs. EngineerinChief, CPWD* {AIR 1986 Supreme Court 584}, the same learned Judge speaking for the Court said

that

In these two writ petitions, the petitioners who are employed by the Central Public Works Department on a daily wage basis and who have been

so working for several years, demand that they should be paid the same wages as permanent employees employed to do identical work. They state

that even if it is not possible to employ them on regular and permanent basis for want of a suitable number of posts, there is no reasons whatsoever

why they should be denied "'equal pay for equal work'.

16. Continuing to deal with the matter, the learned Judge pointed out; (at p. 585 of

AIR):

One would have thought that the judgment in the *Nehru Yuvak Kendras* case (19861 SCC 637) concluded further argument on the question.

However, *Shri V.C. Mahajan*, learned counsel for the Central Government, reiterated the same argument and also contended that the doctrine of

'equal pay for equal work' was a mere abstract doctrine and, that it was not capable of being enforced in a court of law. He referred us to the

observations of its Court in *Kishori Mohanlal Bakshi V. Union of India*, AIR 1962 SC 1139. We are not a little surprised that such an argument

should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Fortysecond

Amendment proclaiming India as a socialist republic. The Central Government like all organs of the State is committed to the Directive Principles

of State Policy and Article 39 enshrines the principle of equal pay for equal work. In *Randhir Singh V. Union of India* (AIR 1982 SC 879),

(Supra), this Court has occasion to explain the observations in *Kishori Mohanlal Bakshi V. Union of India* and to point out how the principle of

equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the world, partially by all

Socialist countries. For the benefit of those who do to seem to be aware of it, we may point out that the decision in *Randhir Singh Case* has been

followed in any number of cases by this Court and has been affirmed by a Constitution Bench of this Court in *D.S. Nakara V. Union of India*

(1983 2 SCR 165: (AIR 1983 SC 130). The Central Government, the State Governments and likewise, all public sector undertakings are

expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal

pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of the State and the State

undertakings.....

17. Thereafter, this principle was reiterated by the Apex Court in *R.D.Gupta Vs. Lt. Governor, Delhi Administration* {AIR 1987 Supreme Court

2086}; *Bhagwan Dass Vs. State of Haryana* (AIR 1987 Supreme Court 2049) and *Jaipal Vs. State of Haryana* (AIR 1988 Supreme Court

1504). In this last case, the Court stated that {at p. 1510):

Therefore, is no doubt that instructors and squad teachers are employees of the same employer doing work of similar nature in the same

department, therefore, the appointment on a temporary basis or on regular basis does not affect the doctrine of equal pay for equal work. Article

39 (d) contained in part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and

women. Though Article 39 is included in the chapter on Directive Principles of State Policy, but it is fundamental in nature. The purpose of the

Article is to fix certain social and economic goals for avoiding and discrimination

amongst the people doing similar work in matters relating to pay.

The doctrine of equal pay for equal work has been implemented by this Court in *Randhir Singh V. Union of India* (AIR 1982 SC 879); *Dhirendara*

Chamoli V. State of U.P (1986 1 SCC 637) and *Surinder Singh V. Engineer in Charge, CPWD* (AIR 1986 SC 584). In view of these authorities it is

too late in the day to disregard the doctrine of equal pay for equal work on the ground of the employment being temporary and the other being

permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent

employee.

18. In the case of *Daily Rates Casual Labour employed under P&T Department V. Union of India* (1988) 1 SCC 122: (AIR 1987 SC 2342), the

classification of casual labourers for purpose of different wages from regular workers was held unconstitutional. Court said ; (at pp. 2346-47):

""It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the

department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service which is

being rendered by the regular employees doing the same type of work. Clause (2) of Article 38 of the Constitution of India, which contains one of

the Directive Principles of State Policy, provides that 'the State shall, in particular, strive to minimise the inequalities in income and endeavor to

eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different

vocations'. Even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be

relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot

deny at least the minimum pay in the pay scales of regularly employed workmen even though the government may not be compelled to extend all

the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The government

cannot take advantage of its dominant position, and compel any worker to work even as a casual laborer on starvation wages. It may be that the

casual labourer has agreed to work on such low wages. That he has done

because he has no other choice. It is poverty that has driven him to that State. The government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employee for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest in rungs of the department where the pay scales are the lowest is not tenable.....

India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge right to work, the right to free choice of employment, the right to just and favourable conditions or work, the right to protection against unemployment, the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organisation engaged in production he will not put forward his best efforts to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reasons it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the governmental agencies in particular should not allow

workers to remain as casual an unreasonably long period of time.....

19. Keeping these principles in view, the Court in the case of U.P. Incometax Department Contingent Paid Welfare Association V. Union of India

(AIR 1988 SC 517) indicated with emphasis that: (at p. 519):

We, accordingly, allow this writ petition and direct the respondents to pay wages to the workmen who are employed as the contingent paid staff

of the Incometax Department throughout India, doing the work of Class IV employees at the rates equivalent to the minimum pay in the pay of the

regularly employed workers in corresponding cadres.....

20. Then came the case of State of U.P. V. J.R Chaurasia (AIR 1989 SC 19) where two Judge Bench of the Court reiterated that; (at p. 26).

Equal pay for equal work for both men and women has been accepted as a constitutional goal capable of being achieved through constitutional

remedies."" ""On this occasion the authority of the larger Bench in Kesavananda Bharti V. State of Kerala (AIR 1973 SC 1461), where the court

said 'the dominant objective in view was to ameliorate and improve the lot of the common man and to bring about a socioeconomic justice', was

called in aid for the conclusion of the Court.

21. In Grih Kalyan Kendra Workers' Union Vs. Union of India and Others (AIR 1991 SC 1173), this principle was not only reiterated but

described a fundamental right. In this case, the petitioner asserted that;

The employees of the Kendra were being paid low wages and their salaries were far less than what was being paid to the employees doing similar

nature of work in the organisations like NDMC and other departments of Delhi Administration. It was further asserted that Kendra was a ""State'

within the meaning of Article 12 of the Constitution and therefore the respondents were under constitutional obligation to prescribe similar scales of

pay as applicable to the employees to NDMC and Delhi Administration and who were performing the same work as was performed by the

employees of the Kendra. Claim was resisted by the respondents asserting that the Kendra was started as a Welfare Society with the aim of

helping the needy government servants especially those belonging to lower income group by providing to their dependents opportunity to gainful

work, so that, they might supplement the meagre income to their family and at the same time gain skill and experience to improve their career

elsewhere. Kendra was expected to be a stepping stone for such dependents of poor servants and there was no intention to provide them with any

regular employment. They were expected to leave the organisations once they lost the status of dependents of low paid government employees.

They were not regular employees and the duties performed by them were not comparable to any of the employees working In NDMC or any

department of Delhi Administration or under the Union of India. The Kendra had a unique status where the work and duty performed by its

employees were quite different in nature than those performed by the employees of NDMC and Delhi Administration. Dealing with the question

posed before it, Shri K.N. Singh, J, speaking for the Court, said in paras 5 to 7 of the

judgment that:

Shri Govind Mukhoty learned Counsel for the petitioner contended that though the Grih Kalyan Kendras are managed by the Board as

contemplated by the Rules of the Registered Societies, the Union of India have the pervasive control over its functions, it is an instrumentality and

agency of the Union Government and therefore it is a State within the meaning of Article 12 of the Constitution. He placed reliance on decisions of

this Court in *Ramana Dayaram Shetty v. International Airport Authority of India* (AIR 1979 SC 1628); *P.K. Ramachandra Iyer v. Union of India*

(AIR 1984 SC 541); *B.S. Minhas v. Indian Statistical Institute* (AIR 1984 SC 363); *Bihar State Harijam Kalyan Parishad v. Union of India* (AIR

1985 SC 983); *Surya Narain Yadav v. Bihar State of Electricity Board* (AIR 1985 SC 941). We do not think it necessary to consider this

question in detail as in our opinion given on an assumption that the Grih Kalyan Kendra is an instrumentality of a State with the meaning of Article

12 of the Constitution and the petitioners are entitled to enforce their fundamental rights against it, it is difficult to uphold this contention that the

respondents have violated any of the fundamental rights of the petitioners. We accordingly proceed on the assumption that the Grih Kalyan Kendra

is a State for the purposes of Chapter IV of the Constitution and consequently this petition under Article 32 of the Constitution is maintainable and

the petitioners are entitled to invoke the jurisdiction of this Court for the enforcement of their fundamental right founded on the principle of equal

pay for equal work." "Equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive

Principles of State Policy as contained in Art. 39(d) of the Constitution, "equal pay for equal work" has assumed the status of fundamental right in

service jurisprudence having regard to the constitutional mandate of equality in Arts. 14 and 16 of the Constitution. Equal pay for equal work and

providing security for service by regularizing casual employment within a reasonable period has been accepted by this Court as a constitutional goal

to our socialistic pattern. It has ceased to be a judge made law as it is the part of the constitutional philosophy which ensures a Welfare Socialistic

pattern of a State providing equal opportunity to all and equal pay for equal work for similarly placed employees of the State. This Court has

zealously enforced the fundamental right of equal pay for equal work is effectuating the constitutional goal of equality and social justice in a number

of decisions. See: *Randhir Singh v. Union of India* (AIR 1982 SC 879); *Daily Rated Casual Labour Employed under P&T Department v. Union*

of India (AIR 1 '87 SC 2342); *Dhirendra Champli v. State of U.P.* (1986) 1 SCC 637; *Surrinder Singh v. Engineer in Chief, CPWD* (AIR 1986

SC 584); *R.D. Gupta v. Lt. Governor, Delhi Administration* (AIR 1987 SC 2086); *Bhagwan Dass v. State of Haryana* (AIR 1987 SC 2049);

Jaipal v. State of Haryana {AIR 1988 SC 1504}; *Dharwad District P.W.D. Literate Daily Wage Employees Association v. State of Karnataka,*

(1990) (2) SCC 396). Therefore, the principle of equal pay for equal work even in an establishment which is an instrumentality of a State is

applicable in its full vigour.

The question then arises whether the respondents have practised discrimination in denying the employees of the Kendra pay which the Union of

India has been paying to other similarly placed employees doing the same or similar work. This question is of primary importance which requires

investigation of facts. Unless, it is demonstrated that the employees of the Grih Kalyan Kendra are discriminated in matters relating to pay and

other emoluments with the other similarly placed employees, the principle of equal pay for equal work cannot be applied, while considering this

question, it is not necessary to find out similarity by mathematics formula but there must be a reasonable similarity in the nature of work,

performance of duties, the qualification and the quality of work performed by them. It is permissible to have classification in services based on

hierarchy of posts, pay scales, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the

object sought to be achieved. In *Federation of All India Customs and Central Excise Stenographers v. Union of India*, 1983 (3) SCC 91: (AIR

1988 SC 1291), Sabyasachi Mukharji, J. (as he then was observed (at page 1297): ""There may be qualitative differences as regards reliability and

responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree

and that there is an element of value judgment by these who are charged with the administration in fixing the scales of pay and other conditions of

service. So long as such value judgment is made bona fide, reasonable on an intelligible criteria which has a rational nexus with the object of

differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for unequal work will be a negation

of that right.

Elaborating the aforesaid observations, the learned Single Judge further observed thus (at page 1300):

The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less it varies from

nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus

with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with

fixing the pay scales has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or

based on no basis or arrived malafied either in law or in fact.

22. Let us now examine the facts of this case in the light of the principles flowing from the aforesaid decisions.

23. At the outset, it may be stated that the principle of law enunciated by the Apex Court in *Randhir Singh's case* (supra) remains intact and runs

through all its subsequent decisions. It may be a different matter that it has not been applied in some cases being different on facts. The decisions

referred to by the learned counsel for the appellant do not vary or reject or tone

down the basic principle of 'equal wage for equal work'. Keeping in view the facts of the case, it has been found inapplicable. Before us, the comparison may be between Process Servers Serving in the Judiciary and in the Excise Department of the State Government. But crux of the matter is whether the duties and responsibilities of both the categories of employees are same and similar. If so, they cannot be treated differently in the grant of pay scale. Except for saying that these two categories of employees are working in two different departments is not enough. Claim that duties and responsibilities of the petitioner are not similar to the Process Servers of the Excise Department has not been satisfactorily proved by production of dependable material and tabulation relating to various matters touching qualification, recruitment, duties and functions etc. In the absence of such a material, the complaint of the petitioner that they have been deprived of the scale of pay arbitrarily, unreasonably, unequitably and unjustifiably has to be accepted. Legally speaking, Judiciary is one of the three wings of the State. It is not a Department of the Government. The recommendations emanating from Judiciary should be accepted by the State Government and in case it entertains any kind of doubt, clarifications can at the most be obtained. As to the nature of duties and responsibilities being performed by the employees of Judiciary, the opinion of the High Court should be the last word. For the administration of justice, it requires a sizeable manpower in which Process Servers play a significant role. It is through this Agency that Court processes are carried and served upon large number of persons upto distant and difficult places. Their duties are full of responsibility and risk. Except for small salary and paltry amount towards conveyance allowance, they have to meet other expenses from their pocket while executing Court summons and warrants, remaining out for days from the place for their duty. Any kind of lapse in the execution of the duty has serious consequences on the person subject to service apart from affecting the administration of justice. Such serious are not the duties and responsibilities of the Process Servers of Excise Department of State Government. It appears from the Appellant's affidavit that the case of the petitioner has not been properly understood by it and the Pay Commission. Members of petitioner have been taken to be 'orderlies' and not 'Process Servers'. That is why, they have been granted

lower scale of pay and the recommendations of the High Court and the clarification of their status as 'Process Servers' have been ignored

erroneously, and without proper application of mind. No other point was urged.

From the aforesaid discussion, it is absolutely clear that the members of petitioner are at least entitled to pay parity with Process Servers of Excise

Department in the State Government. Accordingly, we see no merit in this appeal and the same is dismissed. Judgment of Single Judge is upheld

and confirmed.

24. However, the parties are left to bear their respective costs.