

(2014) 01 GUJ CK 0112
In the Gujarat High Court

Case No : Letters Patent Appeal No. 616 of 2013 in Special Civil Application No. 7800 of 1993, Civil Application No. 4975 of 2013 in Letters Patent Appeal No. 616 of 2013 and Civil Application No. 9048 of 2013 in Letters Patent Appeal No. 616 of 2013

State of Gujarat and Others	Vs	APPELLANT
Gujarat State Textile Corp. Ltd. and Others		RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

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

Citation : (2014) LabIC 2548

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : S.N. Shelat and Mr. M.G. Nagarkar,s No. 1 - 2, for the Appellant; J.S. Yadav, Advocate for the Respondent(s) No. 4 and Mr. Mukul Sinha, Advocate for the Respondent(s) No. 1, for the Respondent

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—This appeal under Clause-15 of the Letters Patent is at the instance of the respondents of a Special Civil Application and is directed against the judgment and order passed by the learned Single Judge of this Court dated 12th September 2012 in Special Civil Application No. 7800/2013 by which His Lordship partly allowed the petition filed by the respondent-Union directing the appellants to treat the members of the respondent Union at par with the employees working at the Head Office of the Appellant Corporation on the basis of their pay scales. The facts giving rise to this appeal may be summarized as under:

1.1 The Gujarat State Textile Limited Officers and Technicians Union, respondent No. 1 herein filed a writ application with regard to extending the benefits of the 3rd and 4th Central Pay Commissions Scales of Pay, Dearness Allowance etc. to the employees of Technical & Officers Cadre working in the Textile Mills run by

the appellant Corporation.

1.2 The case of the Union before the learned Single Judge was that the Government of Gujarat enacted the Gujarat Closed Textile Undertakings (Nationalization) Act, 1986 and the Company namely, the Gujarat State Textile Corporation Limited (for short, "the GSTC") was incorporated with a view to re-organize and reconstruct the eleven textile mills which were transferred and vested in the GSTC. On transfer of the eleven textile mills, all the employees of the eleven textile mills became the employees of the GSTC. The head office of the GSTC was set up at Ahmedabad. The Government of Gujarat accepted the recommendations of the 3rd and 4th Pay Commissions and extended its benefits to all the employees employed in Government Corporations and accordingly, the revised pay scales were given to all the employees of such Government Corporations working in different units in different parts of the State. The recommendations of 3rd and 4th Pay Commissions accepted and adopted by the Government for the employees of Government Corporations were also adopted by GSTC. However, the benefits of the 3rd and the 4th Pay commissions were given to only those employees who were working in the Head Office of the Corporation. The benefits of 3rd and 4th Pay Commissions were not extended to the employees such as technicians and other officers working in the mill units of the Corporation who are the members of the Gujarat State Textile Corporation Officers & Technicians Union.

1.3 Being aggrieved by such discriminatory treatment met out to the employees working in the mill units, the Union approached this Court by way of a Special Civil Application No. 7800 of 1993 and prayed for the following reliefs:

21. The petitioners therefore pray that this Hon"ble Court may be pleased:-

(A) To issue writ or writs in the nature of Mandamus and/or Prohibition and/or any other appropriate writ or writs or directions or orders.

(B) To direct the respondents by writ of Mandamus or any other appropriate writ or writs or directions to apply the service rules with effect from the date of making thereof to all the technicians and officers cadres mentioned above in the employment of the 1st respondent Corporation and working in the eleven textile mills of the respondents without any distinction whatsoever.

(C) To direct the respondents to treat all the employees equally and to give benefits of scales of pay and dearness allowances etc as per 3rd and 4th Central Pay Commission recommendations to the technicians and officers cadres mentioned above working in the eleven textile mills run by the respondents as given to the employees working in the Head Office of the 1st respondent Corporation and as given by the National Textile Corporation (Gujarat) Limited to its technicians and officers working in textile units.

(D) To grant to the 2nd petitioner and the technicians and officers cadres working in the eleven textile mills who are members of our Union such other relief as

justice may require.

(E) To allow this petition with cost.

(F) To direct the respondent including the newly added respondent, the Official Liquidator to pay to all the officers/employees who were working in the specified Mills under the Gujarat State Textile Corporation the arrears of the difference of salary which such employees would be entitled to under the 3rd and 4th pay commissions and be further pleased to direct the said respondents to pay to such employees the difference of compensation which is paid under VRS scheme after calculating the same as per the pay scales which the concerned employee may be entitled to under the 5th pay commission.

1.4 Thus, the issue which fell for the consideration of the learned Single Judge was whether the members of the Union were entitled to receive the pay scales and other consequential benefits of the 3rd, 4th and 5th Pay Commission as was paid to the other employees of the Corporation working at the Head Office.

1.5 The defence of the appellants before the learned Single Judge was that the service conditions of the staff was governed under the various agreements entered into between the Ahmedabad Textile Mills Association and Representative Union i.e. the Textile Labour Association (TLA). The demand raised in the petition was with regard to revision in pay scale of the Technical Staff Award as well as Non-award staff. Therefore, so far as the Award staff was concerned, the TLA being the representative union under the Bombay Industrial Relations Act, had no locus standi to file such a petition raising demands in respect of terms and conditions of the services for the Award-staff.

1.6 It was also the case of the appellants before the learned Single Judge that so far as the non-award staff was concerned, it comprised of the Officers of the constituent mills who were not governed by the Awards between the Ahmedabad Textile Association and the Textile Labour Association. It was also the case of the Appellant Corporation that it was not in a position to provide any revision to its technical as well as non-award staff. The Corporation had already accumulated losses to the tune of Rs. 312.17 Crore as on 31st March 1993 and was incurring losses to the tune of Rs. 4.00 Crore per mensem. It was also brought to the notice of the learned Single Judge that the Corporation had been declared a sick Industrial Undertaking by the BIFR vide its order dated 2nd July 1993. It was also submitted before the learned Single Judge that if such revision of the pay scale was allowed in terms of the demand, then there would be an additional financial burden between Rs. 1.6 Crore and 2 Crore per annum.

1.7 It was also submitted before the learned Single Judge that it was not possible and legally permissible to claim parity between the Staff working at the Central Office and the Staff working at the mill's Unit for the simple reason that the nature of work carried out at the Central Office and nature of work carried out by Officers at the Mill's Units were altogether different.

2. The learned Single Judge partly allowed the petition by making the following observations:

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

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

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

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

20. This Court is conscious about the principle laid down by the Apex Court in decisions relied upon by learned counsel Ms. Davawala where the Government Company has gone into liquidation. In the present case also, the respondent-

Corporation has been wound-up by the orders of this Court. Before we proceed further, it may be noted that during the course of arguments, learned counsel Dr. Sinha had made a categorical statement that the members of the petitioner-Union may be granted the benefits so claimed, only after all the outstanding dues of the respondent-Corporation are paid-up from the sale proceeds of the respondent-Corporation and if, thereafter, the balance funds so available are insufficient to meet with the claims of the members of the petitioner-Union, then the petitioner-Union undertakes that its members shall not claim a single Rupee from the respondent-Corporation or shall not raise any claim against the State.

21. It has also been contended on behalf of the respondent-Corporation that the members of the petitioner-Union have no right whatsoever to challenge the respondent's action of denial of equal treatment, after having accepted the Voluntary Retirement Scheme and in support thereof, reliance has been placed on the Scheme dated 31.08.1996. However, it appears from the record that pursuant to the introduction of the above Scheme dated 31.08.1996, the respondent-Corporation had circulated a Notice on 04.09.1996 whereby, the non-award staff was directed to resign or to face retrenchment. The non-award staffs, who were members of the petitioner-Union, were forced to submit their resignation but, they all did so by reserving their rights under the petition. Thus, the members had submitted the VRS Forms, by displaying their "objection", on the body of the said Forms. Therefore, it was not that the members of the petitioner-Union had accepted the Voluntary Retirement Scheme wholeheartedly but, they had signed it under protest. Hence, the submission advanced on behalf of the respondent-Corporation is baseless and devoid of merits.

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

23. In view of the above discussion and considering the principle rendered by the Apex Court in Chairman-cum-Managing Director, National Textile Corporation Ltd.'s case (supra), I am of the view that the members of the petitioner-Union are required to be treated on par with the employees at the Head Office of the respondent-Corporation and hence, the petition deserves to be partly allowed.

24. For the foregoing reasons, the petition is partly allowed;

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

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

(iii) As recorded earlier, during the course of arguments, learned counsel Dr. Sinha had made a categorical statement that the members of the petitioner-Union may be given the benefits so claimed from the sale proceeds of the respondent-Corporation, only after the outstanding dues of all the creditors of the erstwhile Corporation are met, since the petitioner-Union is of the firm belief that substantial funds from the sale proceeds shall still be available from which payments can be made to the members of the petitioner-Union. In view of the said statement, the benefits flowing from this judgment shall be released from the sale proceeds of the respondent-Corporation, after all the dues of the respondent-Corporation are paid up; and if the funds derived from the sale proceeds are insufficient to make payment to the members of the petitioner-Union, then no payment shall be made and the members of the petitioner-Union will not be entitled to claim any benefits from the State in view of their undertaking.

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

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

3. What is discernible from the findings recorded by the learned Single Judge is as under:

i) The principle of "equal pay for equal work" has no mechanical application in every case and it requires consideration of the various dimensions of a given job.

ii) Normally the applicability of the principle of equal pay for equal work should

be best left to be evaluated and determined by an expert body and the courts should not undertake such an exercise.

iii) The burden to prove and establish parity for the purpose of invoking the doctrine of equal pay for equal work is on the workmen asserting such parity. Such onus has to be discharged by producing cogent and reliable evidence in that regard.

iv) When the nature of duties and responsibility is not equal, the question of equal pay would not arise, but at the same time the Court cannot ignore the fact that the employees working in the Mills have received a step-motherly treatment at the hands of the Corporation and they would be entitled to have a pay revision at par with the employees working in the Head Office.

v) The Non-award staff who were members of the Union were forced to submit their resignation and such resignations were tendered without prejudice to their rights and contentions to raise objection as regards the voluntary nature of the resignation.

vi) The learned Single Judge directed to provide the revision of pay scales to the members of the Union not by invoking the doctrine or applying the doctrine of equal pay for equal work, but in view of the alleged step-motherly treatment thought fit to direct the Corporation to treat the Members of the Union at par with the employees working at the Head Office of the respondent-Corporation.

4. Feeling dissatisfied with the judgment and order passed by the learned Single Judge, the Corporation has come up with the present appeal.

5. Mr. S.N. Shelat, the learned Senior Advocate assisted by Mr. M.G. Nagarkar, appearing for the appellants, submitted that the order passed by the learned Single Judge is erroneous in law and deserves to be set aside.

5.1 Mr. Shelat submitted that the learned Single Judge having once arrived at the conclusion that the doctrine of equal pay for equal work was not applicable then in such circumstances the petition ought to have been rejected but despite holding so, the learned Single Judge proceeded further to direct the Corporation to treat the members of the Union at par with the employees working at the Head Office of the Corporation.

5.2 Mr. Shelat submitted that the learned Single Judge ought to have appreciated that the staff/sub-staff who were working in the Mills were governed by the rules prevailing in the respective mills and not by the Rules of the Corporation. Moreover, the employees working in Corporation were neither governed by such Service Rules nor were they given any benefits of the Pay Commission.

5.3 Mr. Shelat also invited our attention to the provisions of the Gujarat Closed Textile Undertakings (Nationalization) Act, 1986.

5.4 Mr. Shelat also submitted that the employees of the Mills who were the members of the Union had already accepted/availed the Voluntary Retirement

Scheme and after availing the same it was not open for them to thereafter contend that the resignations were not voluntary.

5.5 Mr. Shelat lastly submitted that the final directions issued by the learned Single Judge are totally inconsistent with the findings recorded by the learned Single Judge as regards the applicability of the doctrine of equal pay for equal work.

6. On the other hand Dr. Mukul Sinha, the learned Counsel appearing for the respondent-Union opposed this appeal submitting that no error, not to speak of any error of law, could be said to have been committed by the learned Single Judge in passing the order impugned.

6.1 Mr. Sinha submitted that after taking into consideration all the relevant aspects of the matter, the learned Single Judge rightly directed the Corporation to treat the members of the Union working in the Mills at par with the employees of the Corporation working in the Head Office.

6.2 Mr. Sinha submitted that, after the order of winding up dated 6th February 1997 passed by this High Court in a Company Petition No. 205 of 1996, the Official Liquidator was appointed, who, in turn, took over the possession of all the assets of the Corporation including the mills and the same were put to auction in accordance with the provisions of the Company Law. Out of the sale proceeds received, all the liabilities were discharged, except the dues of the members of the union. After the settlement of the dues with other creditors, the Official Liquidator was left with a balance amount of Rs. 81 Crore, out of which Rs. 50 Crore were transferred to the government so as to discharge other liabilities, if any.

6.3 The said fact is borne out by the observations made by this Court (Coram: K.A. Puj, J.) in the judgment and order dated 22nd July 2010 passed in Company Application No. 450/2009 which reads as under:

39. In view of the fact that almost all liabilities have been discharged by the State Government and in view of the further fact that the State Government has undertaken a discharge the liability, if any, that may arise in future, the huge balance of Rs. 81 Crores lying with the Official Liquidator no longer requires. Hence the Court directs the Official Liquidator to remit the amount of Rs. 50 Crore to the State Government keeping with him the remaining amount so as to discharge the liabilities, if any, or to adjust and appropriate the same towards Central Government fees or other expenses. The State Government is also directed to file an undertaking before this Court and copy thereof be furnished to Official Liquidator stating therein that in case in future if any liability arises either from the creditors or from the workers and for discharge of such liability, if any amount is required the same shall be remitted forthwith by the State Government.

6.4 Mr. Sinha submitted that on transfer of Rs. 50 Crore to the Government, the Official Liquidator was left with the balance amount of Rs. 33,40,26,964 as on

11th July 2013. The State Government had undertaken to discharge all the future liabilities of the Corporation and the affidavits to that effect have been filed by the Government before this Court in Company Application No. 250/2006 in Company Petition No. 205/1996.

6.5 Mr. Sinha further submitted that the liability towards the dues of the members of the Union comes to Rs. 47,26,94,981-00 (excluding the dues of the workers who left the service between 1986 and 1996). The amount of Rs. 81 Crore is the surplus amount left with the Official Liquidator, out of which Rs. 50 Crore have been transferred to the Government and the balance amount of Rs. 33,40,26,964 as on 11th July 2013 is still lying with the Official Liquidator.

6.6 Mr. Sinha submitted that sufficient funds are available with the Government and the Official Liquidator to discharge the liability Rs. 60 Crore towards the members of the union. Even after settling the dues of the members of the Union (which comes to around Rs. 47.27 Crore) there would be a surplus of around Rs. 36.13 Crore. It is submitted that after having agreed to discharge the obligations of making the payment of future dues, including the dues towards wages of the employees before the Court, the Official Liquidator and the Government should not be permitted to resile from their solemn undertaking.

6.7 It was further submitted that the employees of the Corporation who were working in the head office have been given all the benefits. They have been given the benefits of the 3rd pay commission, 4th pay commission and also 5th pay commission and all their dues have been settled accordingly. Even those employees of the head office of the Corporation who opted for Voluntary Retirement under VRS, they have been paid all the benefits on the basis of 3rd, 4th and 5th pay commissions. Such an action on the part of Corporation is violative of Article 14 and 16 of the Constitution of India.

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this appeal is whether the learned Single Judge committed any error in passing the order impugned.

8. Before advertng to the rival submissions canvassed on other side, we deem it necessary to also look into the provisions of the Gujarat Closed Textile Undertakings (Nationalization) Act, 1986.

9. The Act was enacted with the object to provide for the acquisition and transfer of the closed textile undertakings, and the right, title and interest of the owners in respect of the closed textile undertakings specified in the first schedule with a view to reorganizing and reconstructing the said textile undertakings and thereby forming viable units to sub serve the interest of the general public by the augmentation of the production and distribution, at fair prices of different varieties of cloth and yarn, and for matters connected therewith or incidental thereto.

9.1 Section 2(i) defines "specified textile undertaking" as under:

2. (i) "specified textile undertaking" means a textile undertaking specified in the First Schedule to this Act;

9.2 Section 3 reads as under:

3.(1) On the appointed day, every specified textile undertaking and the right, title and interest of the owner in relation to every such textile undertaking shall stand transferred to, and shall vest absolutely in, the State Government.

(2) The specified textile undertaking which stands vested in the State Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vest in, the Corporation.

9.3 Chapter-IV relates to the provisions relating to employees of specified textile undertaking. Sec. 11(1) and (2) read as under:

11.(1) Where services of a person who is a workman within the meaning of the Industrial Disputes Act, 1947, and who has been, immediately before the appointed day, employed in the specified textile undertaking, are in the opinion of the Corporation necessary having regard to the requirements of the units of the Corporation formed as a result of reorganization and reconstruction of specified textile undertakings, he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such specified textile undertaking had not been transferred to, and vested in, the Corporation, and continue to do so unless and until his employment in such Corporation is duly terminated or until his remuneration and terms and conditions of employment are duly altered by the Corporation.

(2) Where services of a person who is not a workman within the meaning of the Industrial Disputes Act, 1947, and who has been, immediately before the appointed day, employed in the specified textile undertaking, are in the opinion of the Corporation necessary having regard to the requirements of the units of the Corporation formed as a result of reorganization and reconstruction of specified textile undertakings he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation on such terms and conditions of employment as may be determined by the Corporation.

10. The doctrine of "Equal Pay for Equal Work" is not expressly declared a fundamental right under the Constitution. But Article 39(d) read with Articles 14 and 16 the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the Constitution enjoins the State that where all things are equal and person holding identical-posts, performing identical and similar duties under the same employer

should not be treated differently in the matter of their pay. The doctrine of 'Equal Pay for Equal Work' is not abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of "Equal Pay for Equal Work" is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay.

11. While considering the question of application of principle of "Equal Pay for Equal Work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals, Unequals cannot claim equality. [See *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*,]

12. We are of the opinion that Mr. Shelat, the learned Senior Advocate appearing for the appellant is quite justified in submitting that the directions issued by the learned Single Judge are quite inconsistent with the findings recorded by the learned Single Judge, more particularly, so far as the aspect of applying the doctrine of equal pay for equal work is concerned. We have noticed that the learned Single Judge has made it very clear in the order impugned that although his Lordship was convinced that no case for applying the doctrine of equal pay for equal work was made out still proceeded to grant the relief on the premise that the members of the Union working in the mill units were met out with a step-motherly treatment. Once the learned Single Judge reached the conclusion that there was no scope for application of the doctrine of equal pay for equal work in the facts of the case, more particularly, on the basis of the materials on record, His Lordship should not have proceeded ahead to grant any relief.

13. Although Mr. Sinha tried to convince us that there has been a discrimination between the two sets of employees, we have noticed that there is no material placed before us even to prima facie indicate as to what type of work was being carried out by the members of the Union at the mill units compared to the employees who were working in the head office of the Corporation.

14. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibility make a difference. Thus, normally the applicability of this principle must be left to be evaluated and determined by an expert body. This is exactly what the learned Single Judge has also held, yet proceeded to grant the benefits of the 3rd, 4th and 5th Pay Commissions to the members of the Union without there being any materials on record so far as the nature of the work performed by the two sets of employees

is concerned.

15. 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 regard. In any event, the party who claims equal pay for equal work has to make the 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 Court is, on the 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. [See *State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc.,*]

16. In the case of *State of Haryana and Another Vs. Tilak Raj and Others, ,* the Supreme Court held that the principle of equal pay for equal work is not always easy to apply. It has also been held that there are inherent difficulties in comparing and evaluating the work of different persons in different organizations or even in the same organization. It has been held that this is a concept which requires, for its applicability, complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. It has been held that the problem about equal pay cannot be translated into a mathematical formula. It was further held by the Supreme Court in paragraph 11 as under:

11. A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.

17. In the case of *Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty, ,* the Supreme Court set aside the Order of the High Court granting equal pay for equal justice on the basis that the High Court, before issuing such directions, had not examined facts of the case in order to appreciate whether the respondent therein satisfied the relevant requirements such as the nature of work done by him as compared to the nature of work done by a regularly employed person, the qualifications, the responsibilities, etc. It was noted that as the respondent therein was only on a temporary basis and he had not undergone the process for regular recruitment and in such cases direction to give regular pay scale could not be given without examining the relevant factors. It was held that before giving such directions the Court must also keep in mind as to what would be its implications and impact on the other employees. It was

held that in the absence of necessary averments and materials placed on record, there was no scope to give such a direction. It was held that the burden to prove that everything was equal is on the person claiming equal pay for equal work and in the absence of necessary averments and proofs a party would not be entitled to get such directions.

18. In the case of Government of West Bengal Vs. Tarun K. Roy and Others, , a three-Judge Bench of the Supreme Court has also considered the doctrine of equal pay for equal work in the following terms:

Equal Pay for Equal Work Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently.

19. In Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty, , the Supreme Court observed as under:

10. It is clear from the averments made in the writ petition extracted above, nothing is stated as regards the nature of work, responsibilities attached to the respondent without comparing to the regularly recruited Junior Assistants. It cannot be disputed that there was neither necessary averments in the writ petition nor any material was placed before the High Court so as to consider the application of principle of "equal pay for equal work".

11. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned single Judge was right when he stated in the order that in the absence of such material it was not possible to grant relief to the respondent.

12. Before giving such direction, the High Court also did not keep in mind as to what would be its implications and impact on the other employees working in the appellant-University. From the averments made in the writ petition extracted above, it is clear that no details were given and no material was placed before the High Court for comparison in order to apply the principle of "equal pay for equal work". The Court in State of Haryana Vs. Jasmer Singh and others, , observed that the principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations or even in the same organization.

20. In the present case, we have noticed that the learned Single Judge has

proceeded to grant the relief on the basis that the benefits deserve to be extended to the members of the Union since there is a surplus of the funds and further an assurance was given by the learned counsel appearing for the original petitioners that only after all other liabilities of the Corporation were discharged that the payment be made to the members of the Union.

21. We are unable to appreciate the line of reasoning adopted by the learned Single Judge. Even if there is surplus of funds or there are sufficient funds with the Corporation, by itself, would not justify the grant of benefits to the members of the Union if they are otherwise not entitled to claim.

22. It also appears from the materials on record that most of the members of the Union had resigned by availing of the benefit of the voluntary retirement scheme but have come forward with the case that such resignations were obtained under threat and duress and were not voluntary in nature. Whether the resignations were voluntary in nature or not is a pure question of fact which cannot be decided by way of affidavits - when such allegations are denied by affidavit. However, the fact remains that the employees had availed of the benefit of the voluntary retirement scheme and had tendered their resignations.

23. In the overall view of the matter, we are convinced that this appeal deserves consideration and the impugned order passed by the learned Single Judge is not tenable in law. For the foregoing reasons, we allow this appeal and set aside the order passed by the learned Single Judge. However, in the facts and circumstances of the case, there shall be no order as to costs. In view of the disposal of the main appeal, the connected Civil Applications would not survive and the same are disposed of accordingly.