

(2016) 11 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 445 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Amar Chand Thakur

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Citation : (2017) 2 HimLR 661

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ. and Mr. Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Anup Rattan and Mr. Romesh Verma, Additional Advocate Generals with Mr. J.K. Verma, Deputy Advocate General, for the Appellants (LPA No. 445 of 2012 and LPA Nos. 99, 100 and 101 of 2015.); Mr. Dalip Sharma, Senior Advocate with Mr. Manish Sharma, Advo

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J.—Since common questions of law and facts arise for consideration in all these appeals, the same were taken up together for hearing and are being disposed of by way of common judgment. In order to maintain clarity, facts of LPA No. 445 of 2012 have been taken into consideration. The party shall be referred to as the "writ petitioners" and "Department" respectively.

2. Material facts as borne out from the pleadings of the parties are that the writ petitioners were working in the Health and Family Welfare Department as Computers and Junior Statistical Assistants (for short "Department"). As per the Recruitment and Promotion Rules notified on 7.12.1973 for Health and Family Welfare Department Subordinate Class-III Services, computers/ Computers-cum-clerks were placed in the pay scale of Rs.110-250. These posts were to be filled up 100% by way of direct recruitment and the essential qualification for the same was Matric/Higher Secondary Part-I.

3. The post of Statistical Assistant appearing against Sl. No. 9 was in the pay

scale of Rs. 200-500, whereas the post of Statistical Assistant at Sl. No. 10 was in the pay scale of Rs. 140-300. It was averred that the Computers in Economics and Statistics Department (for short "E&S Department") were re-designated on 50:50 basis as Field Investigators Grade-I & Grade-II in the pay scale of Rs. 140-399 and Rs. 120-250 respectively w.e.f. 10.12.1974 vide memorandum dated 19.7.1978, whereas in the "Department", the Computers were in the pay scale of Rs. 110-250 comparable to Field Investigators Grade-I in E&S Department and Junior Statistical Assistants were in the pay scale of Rs.140-300 comparable to Field Investigators Grade-II in E&S Department.

4. When the revision of pay scale took place w.e.f. 1.1.1986, the parity of pay scales of Computers of the "Department" was again maintained with Field Investigators Grade-II (Rs.950-1800) and that of Junior Statistical Assistants (1200-2100) was maintained with that of Field Investigators Grade-I of E&S Department.

5. However, vide notification dated 8.7.1994, the pay scales of Computers and Junior Statistical Assistants of the "Department" vis-a-vis Field Investigators Grade-I & Grade II of E&S Department was disturbed by revising the pay scale of Field Investigators Grade-II w.e.f. 1.1.1994 by allowing them three tier pay scales (950-1800 with initial start of Rs.1000, Rs. 1200-2130 and Rs.1500-2700 on 20:40:40 basis). However, the corresponding revision was not given to the Computers/Junior Statistical Assistants of the "Department" and the Computers were continued in the pay scale of Rs.950-1800.

6. Thereafter, the State vide notification dated 17.10.1995 clubbed and re-designated the post of Field Investigators Grade-II and Field Investigator Grade-I in E&S Department as Investigators w.e.f. 1.1.1994 by again allowing them three tier pay-scale in the ratio of 20:40:40 as already granted vide notification dated 8.7.1994. Subsequently, from 1.1.1996 even the pay scales were revised by allowing them the revised pay scale of Rs. 3120-5160 with initial start of Rs. 3220 and Rs.4400-7000 with five years experience on 50:50 basis in place of 20:40:40 admissible before 1.1.1996, whereas the Computers in the Department were allowed revised pay scale of Rs. 3120-5160 in place of Rs. 950-1800 w.e.f. 1.1.1996 and three tier pay scale allowed to Field Investigators Grade-I and Grade-II was further revised and extended to them w.e.f. 1.1.1986 instead of 1.1.1994.

7. The writ petitioners represented and pursuant to such representations, Director (Health Services) brought to the notice of Principal Secretary (Health) that the pay scales of Statistical Personnel of E&S/Planning Department along with other Departments had been revised w.e.f. 1.1.1986 whereas Statistical Personnel of the "Department" had been left out in that revision even though the pay scales and Recruitment and Promotion Rules of the posts were same in all the Department of the State. It was also pointed out that the appointments were made in various Departments, including present Department through H.P.P.S.C. on the basis of combined test/examinations as well as through Departmental

Promotion Committee. However, the representations were rejected constraining the petitioners to approach this court by filing writ petitions wherein they claimed parity with the so-called similarly situated employees working in the E&S Department.

8. The Department filed its reply wherein it raised preliminary submissions to the effect that it was for the Government to decide the pay scales which were admissible to its employees. As regards the "Department", it was submitted that the post of Computers was upgraded to the level of Investigators Grade-I & Grade-II and the revision of such post(s) has been made on post to post and Department to Department basis on Punjab pattern as such the pay scales of the category of posts of Investigators in the Department have also been revised from time to time, whereas the same pay scale cannot be granted to the post of Computers in the Department in question as their pay scales have been revised. It is the prerogative of the State Government and the revision to the respective Department has been made on the basis of Punjab Pattern, therefore, petitioners cannot claim parity for grant of pay scale.

9. It was also averred that the nature of job responsibilities of the Statistical Assistants cannot be compared with those of the Computers and therefore there cannot be any parity between the two categories. It was further averred that the equation of post and equation of salary is a complex matter which is best left to expert body.

10. It was further averred that ordinarily pay scales are evolved keeping in mind several factors, e.g.

- (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,
- (v) avenues of promotion,
- (vi) the nature of duties and responsibilities,
- (vii) the horizontal and vertical relativities with similar jobs,
- (viii) public dealings,
- (ix) satisfaction level,
- (x) employer's capacity to pay etc.

11. Lastly, It was averred that it is keeping in view the nature and duties of the category of the Computers in the Planning Department and E&S Department that the post of Computers was upgraded to the level of the Field Investigator Grade-I and Grade-II, which subsequently formed a single cadre as Investigators on the

basis of the Punjab government. Since, the nature of the duties of the writ petitioners and similarly situated persons was not at all comparable to the duties of the Field Investigators / Investigators of Planning, Economics & Statistics Departments, their pay scales from retrospective effect could not be equated at par with the pay scales provided/granted to the field Investigators Grade-I and Grade-II from a retrospective date i.e. 1.1.1986 over and above the decision of the State Government taken from time to time on Punjab pattern.

12. The learned writ Court allowed the writ petition and directed the respondents to restore the parity in the pay scales of the Computers/Junior Statistical Assistants at par with their counterparts, i.e. field Investigator Grade-II and Field Investigator Grade-I (now redesignated as Investigators) in E&S Department w.e.f. 1.1.1986 with all the consequential benefits, within a period of three months from the date of production of certified copy of this judgment by the petitioner(s), failing which the petitioners will be entitled to interest @9% per annum till the implementation of this judgment. Aggrieved by the aforesaid order, the "Department" has filed these Letter Patent Appeals.

13. It is vehemently argued by Shri Anup Rattan, learned Additional Advocate General that the findings arrived at by the learned Writ Court to conclude that the writ petitioners were discharging the same and similar duties, responsibilities and the essential qualification and method of recruitment is highly erroneous and therefore the judgment be set-aside.

14. On the other hand, Shri Dalip Sharma, Sr. Advocate duly assisted by Mr. Manish Sharma, Advocate, contended that findings rendered by the learned Writ Court with respect to there being parity in duties and essential qualification, method of recruitment etc. should not be disturbed as these are well reasoned and prayed for dismissal of the appeal. We have heard learned counsel for the parties and gone through the record of the case.

15. At the outset it may be observed that this Court after placing reliance upon various judgments of the Hon''ble Supreme Court has categorically held that there cannot be a straight jacket formula to hold two posts having same or similar nomenclature would have to be given the same pay-scale as this exercise is of a complex nature, which requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbent on different posts. Even though two posts may be referred by the same name, it would not lead to the necessary inference that posts are identical in every manner. These matters are to be dealt with by expert body like Employer Pay Commission and it is not for the service Tribunal or the Writ court to normally venture to substitute its own opinion for the opinion rendered by the expert as they lack necessary expertise to undertake the complex exercise for the equation of post for the pay-scale.

16. References in this regard can conveniently be made to the judgment rendered in CWP No. 873 of 1993, titled Roshan Lal v. Hon''ble High Court of

Himachal Pradesh, decided on 27.10.1994, LPA No. 59 of 2009, titled as H.P.S.E.B. v. Rajinder Upadhyay, decided on 11.9.2014, LPA No. 11 of 2014, titled as Principal Secretary v. Partap Thakur, decided on 22.9.2014, LPA No. 99 of 2010, titled as H.P. State Electronics Development Corporation Ltd. v. Vijay Sikka, decided on 6.10.2015, and LPA No. 81 of 2012, titled as Kameshwar Gautam v. HPMC, decided on 2.12.2015.

17. In addition to the aforesaid, we find that the issue in question now stands succinctly but lucidly considered and expounded by Hon"ble Supreme Court in its recent judgment in a batch of appeals titled State of Punjab and Ors. v. Jagjit Singh & Ors. Civil Appeal No. 213 of 2013, decided on 26.10.2016, wherein the Hon"ble Supreme Court in paragraphs 7 to 24 of the report has dealt with the cases of employees engaged on regular basis, who were claiming higher wages under the condition equal pay for equal work. It was premised on the ground that the duties and responsibilities rendered by them, were against the same post for which higher pay-scale was being allowed in other government department though their duties and responsibilities were the same as of the other posts with different designation but they were placed in a lower scale.

18. Hon"ble Supreme Court after taking into consideration the entire gamut of law on the subject in a well articulated judgment has laid down by the following principles to be followed in matters relating to "equal pay for equal work" which reads as under:-

(i) The "onus of proof", of parity in the duties and responsibilities of the subject post with the reference post, under the principle of "equal pay for equal work", lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see ?Orissa University of Agriculture & Technology, 2003 5 SCC 188, Union Territory Administration, Chandigarh v. Manju Mathur, 2011 2 SCC 452, the Steel Authority of India Limited, 2011 11 SCC 122 and the National Aluminum Company Limited case).

(ii) The mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of "equal pay for equal work". Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see ? Randhir Singh case, 1982 1 SCC 618 , and the D.S. Nakara case 1983 1 SCC 304).

(iii) The principle of "equal pay for equal work", applies to cases of unequal scales of pay, based on no classification or irrational classification (see ? Randhir Singh case). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see ?Federation of All India Customs and Central Excise Stenographers (Recognised) case 1983 3 SCC 91,

the Mewa Ram Kanojia case, 1989 2 SCC 235, the Grih Kalyan Kendra Workers' Union case, 1991 1 SCC 619 and the S.C. Chandra case, 2007 8 SCC 279).

(iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of "equal pay for equal work" (see ? Randhir Singh, 1982 1 SCC 618, State of Haryana v. Haryana Civil Secretariat Personal Staff Association, 2002 6 SCC 72 and the Hukum Chand Gupta, 2012 12 SCC 666). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of "equal pay for equal work", it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see ? Federation of All India Customs and Central Excise Stenographers (Recognised), 1988 3 SCC 91 and the State Bank of India v. M.R. Ganesh Babu, 2002 4 SCC 556). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of "equal pay for equal work" (see - State of U.P. v. J.P. Chaurasia, 1989 1 SCC 121 and the Grih Kalyan Kendra Workers' Union, 1991 1 SCC 619).

(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see ? Orissa University of Agriculture & Technology, 2003 5 SCC 188).

(vii) Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - "selection grade", in the same post. But this difference must emerge out of a legitimate foundation, such as ? merit, or seniority, or some other relevant criteria (see - State of U.P. v. J.P. Chaurasia, 1989 1 SCC 121).

(viii) If the qualifications for recruitment to the subject post vis-a-vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see ? Mewa Ram Kanojia, 1989 2 SCC 235 and Government of W.B. v. Tarun K. Roy 2004 1 SCC 347). In such a cause, the principle of "equal pay for equal work", cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of "equal pay for equal work", has to be at the same hierarchy in the service, as

the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see - *Union of India v. Pradip Kumar Dey*, 2000 8 SCC 580 and the *Hukum Chand Gupta*, 2012 12 SCC 666).

(x) A comparison between the subject post and the reference post, under the principle of "equal pay for equal work", cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see ? *Harbans Lal*, 1989 4 SCC 459). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - *Official Liquidator v. Dayanand*, 2008 10 SCC 1).

(xi) Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of "equal pay for equal work" would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see ? *State Bank of India*, 2002 4 SCC 556).

(xii) The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of "equal pay for equal work" would not be applicable (see - *State of Haryana v. Haryana Civil Secretariat Personal Staff Association*, 2002 6 SCC 72).

(xiii) The parity in pay, under the principle of "equal pay for equal work", cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay-scale. The principle of "equal pay for equal work" is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see - *State of West Bengal v. West Bengal Minimum Wages Inspectors Association*, 2010 5 SCC 225).

(xiv) For parity in pay-scales, under the principle of "equal pay for equal work", equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see ? *Union Territory Administration, Chandigarh v. Manju Mathur*, 2011 2 SCC 452).

(xv) There can be a valid classification in the matter of pay-scales, between

employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see ? Hukum Chand Gupta, 2012 12 SCC 666), when the duties are qualitatively dissimilar.

(xvi) The principle of "equal pay for equal work" would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see ? Hukum Chand Gupta , 2012 12 SCC 666).

(xvii) Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of "equal pay for equal work", even if two organisations have a common employer. Likewise, if the management and control of two organisations, is with different entities, which are independent of one another, the principle of "equal pay for equal work" would not apply (see ? S.C. Chandra case 2007 8 SCC 279, and the National Aluminum Company Limited case, 2014 6 SCC 756).

19. Bearing in mind the aforesaid exposition of law, it would be noticed that the petitioners have virtually failed to plead the case of parity and the pleadings if any to this effect are contained only in ground "J" in CWP No. 2318 of 2011 giving rise to LPA No. 445 of 2012, which read as under:-

"(J) That the duties, responsibilities, essential qualifications and method of recruitment was / is also similar in both the departments. It is submitted that the post of Sr. Statistical Assistant in H&FW Department was denied pay parity with Statistical Assistant in E&S Department on the ground that such parity was not permissible in view of Punjab pattern of pay scale"

20. Likewise in CWP No. 12472 of 2008 (LPA No. 99 of 2015) and CWP(T) No. 12509 of 2008 (LPA No. 101 of 2015), the pleadings read as under:-

"(xiv) That the applicant was equally qualified like the Field Investigators Grade-II/Investigator of Economics and Statistic Department and the applicant was well as the Investigators Grade-II/Investigators performed similar and identical nature of duties and enjoyed the same status in all respect as such the respondent State is under legal obligation to bring uniformity in pay scales between the applicant and similarly situated employees, Field Investigators Grade-II/Investigators and different measures cannot be adopted in providing the pay scales by the respondent-State. As such, the applicant is entitled for the pay scale as at par with the pay scale applicable and provided to the Field Investigators Grade-II/Investigators of Economics and Statistic Department."

21. As regards LPA No. 100 of 2015, which was arises out of decision rendered in CWP No. 8905 of 2010, it has been averred:-

"(A) That nature of duties and qualifications of Computers in the Health & Family

Welfare Department are the same as in the Planning and Economics & Statistical Departments as confirmed by the respondent No. 3 himself in his letter Annexure P-7. The action of the respondent State to have two different pay scales for the same category of post, having the same nature of duties and responsibilities, especially after having adopted the same pattern for some posts ignoring others in the same cadre in different Departments within the same Government, is discriminator and violative of Articles 14 and 16 of the Constitution of India." Obviously, these pleadings do not meet the requirement as laid down by the Hon"ble Supreme Court in Jagdish Singh's case supra.

22. Apparently, the only reason spelt out by the learned Writ Court for allowing the petition and granting parity of pay scale to the petitioners was that they are discharging same and similar duties, responsibilities to their counter-parts working in the other departments, as is evidently clear from para 9 of the impugned judgment, which reads thus:-

"9. It is settled law that it is for the employer to grant the pay scales, however, it is equally true that while undertaking this exercise there should not be any arbitrariness or unreasonableness. In the instant case, as noticed above, petitioners are discharging the same and similar duties, responsibilities and the essential qualifications and method of recruitment is the same, but despite that they been denied the higher pay scale granted to their counterparts working in other departments. The employer in both the cases is the State and thus the petitioners cannot be discriminated against. The persons working as Computers comparable to Field Investigators Grade-II form homogenous class and they cannot be discriminated merely on the basis that they happen to work in different department. Respondents have not pointed out why the petitioners have been granted different pay scale vis-?-vis their counterparts in E&S Department in the State. There is no intelligible differentia so as to distinguish the Computers working in the respondent-Department vis-a-vis Field Investigators Grade-II and Grade-I working in other departments of the State for the purpose of pay scales."

23. The learned Writ Court has obviously fallen into error by not taking into consideration that in E&S Department the post of Field Investigators Grade-II and Field Investigator Grade-I were in a single cadre and filled up by placement in the ratio 50:50 of total posts in the pay scale of Rs. 3120-5160 with initial start of Rs. 3220/- (50%) Rs. 4400-7000 (50%) w.e.f. 1.1.1996 respectively. Later on the total number of posts of Field Investigator Grade-II and Field Investigator Grade-I were merged to form a single cadre of Investigators w.e.f. 1.1.1986 by allowing placement in the ratio of 20:40:40 of total posts in the pay scales of Rs. 950-1800 with a start at Rs.1000/-, Rs. 1200- 2100 & Rs. 1500-2640 respectively vide notification No. Fin(PR)B(7)- 1/99 dated 23rd August, 2002 whereas in the H&FW "Department", as per R&P Rules of the concerned post. Computer was in the pay scale of Rs. 950-1800 and Junior Statistical Assistant was in the pay scale of Rs.1200-2100.

24. Apart from the above, the learned Writ Court has further erred in not considering that the post and designation of Junior Statistical Assistant does not exist in any department of State Government except Health & Family Welfare Department. Secondly, in the Health & Family Department, the post of Junior Statistical Assistant is filled up 100% by promotion from amongst the Computer failing which by direct recruitment.

25. In addition, job profile of the Investigator in the E&S Department and Department in question are also different. The Investigator of E&S Department have to conduct socio-economic studies/survey (National Sample Survey, GoI), collection of data from various government and semi government departments, preparation of tabulation sheets for posting data, computation of statistical data manually and with the help of calculating machines/computer etc. whereas the Computers/Junior Statistical Assistants in Department simply collect information on various component of Health & Family Welfare Programme at sub centre level, compile data on characteristics of family planning, acceptors and MCH beneficiaries when required from the sterilization and IUD acceptors registers etc. The duties and responsibilities of the Investigators of E&S Department involves collection/preparation of data of all programmes, schemes & information through out the State whereas Computers & Junior Statistical Assistants of the Department are confined to a single department.

26. Shri Dalip Sharma, learned Sr. Counsel for the writ petitioners would still vehemently argue that the petitioners are entitled to claim parity as it has been duly established on record that not only the qualification but even the pay scale of the writ petitioners was same and similar to the other departments of the government, more especially, the E&S Department and it was only by way of notification dated 8.7.1994 that the pay scales of the Computers and Junior Statistical Assistants vis-?-vis Field Investigators Grade-I & Grade-II of E&S Department were disturbed and thereafter the disparity continued. This disparity was, in fact, even acknowledged by the Directorate Health Services when he brought all these facts to the notice of Principal Secretary (Health).

27. However, the aforesaid submissions of the petitioners cannot be accepted in teeth of the ratio laid down by Hon"ble Supreme Court in Jagjit Singh's case supra, wherein the Hon"ble Supreme Court has categorically held that "onus of proof" of parity in the duties and responsibilities of the subject post with the reference post, under the principle of "equal pay & equal work", lies on the person who claims it and it is for him to establish that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post. For this purpose the employees concerned with whom equation as is sought should be performing work, which besides being functionally equal should be of same quality and sensitivity.

28. Further, in determining equality of functions and responsibilities, it would be necessary to keep in mind that the duties of the two posts should be of equal sensitivity and qualitatively similar. Differentiation of pay-scales for posts with

difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification and therefore, pay differentiation would be legitimate and permissible. Therefore, the person holding the same rank/designation but having dissimilar powers, duties and responsibilities can be placed in different scales of pay, and cannot claim the benefit of the principle of "equal pay for equal work".

29. It has been reiterated in Jagjit Singh case (supra) that parity in pay, under the aforesaid principal of "equal pay for equal work" cannot be claimed merely on the ground, that an earlier point of time, the subject post and the reference post were placed in the same pay scale. The principle "equal pay for equal work" is applicable only when it is shown, that the incumbent of the subject post and the reference post discharge similar duties and responsibilities while claiming parity in pay scales under principle of "equal pay for equal work" equation in the nature of duties is of paramount importance and there is no comparison between one set of employees in one organisation and another set of employees in different organisations, there can be no question of equation of pay scale under this principle.

30. It would be evidently clear from the narration of the factual aspects that the petitioner has failed to discharge the onus of proof, of parity by establishing that the subject post occupied by them requires to discharge equal work of equal value as the reference post. The petitioners were required to prove that they were performing the work, which was functionally equal and of the same quality and sensitivity with the reference and the same fact that an earlier point of time the subject posts and the reference posts were placed in the same pay-scale cannot in itself be a ground to claim "equal pay for equal work", as this principle is applicable only when it is shown that the incumbent of the said post and the reference post, discharge similar duties and responsibilities.

31. Needless to say that under the principle of "equal pay for equal work" parity in the duties and responsibilities of the subject post with the reference post lies on the person who claims it and having failed to discharge such onus the claim of the petitioner for "equal pay and equal work" vis-?-vis the counter-part working in the E&S and other departments is clearly not maintainable.

32. In view of the aforesaid discussion, the learned Writ Court has clearly fallen in error in allowing the writ petition and quashing the decision of the Department. The judgment passed by the learned Writ Court is accordingly set aside and consequently the writ petitions are dismissed, leaving the parties to bear their own costs. Pending application(s), if any, stands disposed of.