

(2002) 09 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : LPA No. 258 of 1998

State of Jammu & Kashmir and Others	APPELLANT
Vs	
Sheep Workers Association	RESPONDENT

Date of Decision : 16-09-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 4 JKJ 145

Hon'ble Judges : Muzaffar Jan, J; B.C. Patel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The respondents preferred SWP: No- 1878/92 on 08-07-1992 requesting the court that in view of doctrine of equal pay for equal work, the shepherds of Sheep Husbandry Department being entitled to get the same salary which is being paid to Forest Guards of the Forest Department, the respondents of the petition be directed to pay accordingly.
2. Learned Single Judge after hearing the matter directed the present appellants to pay the petitioner-shepherds pay and grade of Forest Guards in J&K State with effect from the date the last revision was given effect to, so as to bring the case of shepherds at par with Forest Guards with regard to parity of pay, so as to fulfil constitutional obligation of equal pay for equal work.
3. So far as parity of equal pay is concerned, learned Single Judge declined to grant relief with effect from 01-01-1982 on the ground that the same would involve burden on public exchequer and thereby would affect public interest. It is against the said judgment, the original respondents

have preferred appeal while original petitioner has filed cross-objections inter alia praying that the benefit of the pay and grade equivalent to the pay and grade of Forest Guards of the Forest Department be given with effect from 01-01-1982.

CLAIM MADE BY THE PETITIONER

4. With a view to understand the dispute between the parties, it would be necessary to refer the facts which are disclosed in the petition.

4.1. The petitioner is an association known as Shepherds Workers Association. Kashmir and the members are shepherds working with Sheep

Husbandry Department of Kashmir. The union is registered and the petition was filed through its President.

4.2. It is pointed out in the petition that initially, petitioners were appointed as Shepherds in the pay scale of Rs. 180-250 (unrevised). For the

purpose of claiming the nature of appointment, appointment order with regard to one of the Shepherd is produced at annexure- B. Forest Guards

in the Forest Department of J&K State were also appointed in the grade of Rs. 180-250 in the year 1978. Appointment order made by Chief

Conservator of Forests in favour of one of the Forest Guards dated: 09-12-1978 is also placed on record vide annexure-C. It is contended by the

original petitioner that by virtue of SRO 149 dated: 07-04-1972. the shepherds and Forest Guards were placed in the same scale, however, by

virtue of SRO 350 dated: 21-08-1982 the pay was revised from Rs. 180-250 to Rs.390-500 while that of Forest Guards was revised from Rs.

180-250 to Rs. 410-625. In view of this, it is contended by the Shepherds that the Forest Guards are given preferential treatment without legal

justification. In the petition it is averred about the representation, placing on record copy of such representation, stating that the representation has

not been disposed of. It is required to be noted that it was the duty of the petitioner to be specific about the date on which the representation was

made and received by the concerned authority and copies of such representations were required to be placed on record. What is required to be

noted is that against the revision of pay no action was taken and the same was thus accepted.

4-3. It is clear from record that on 01-04-1987 pay scales were revised and the shepherds pay scale was revised from Rs. 390-500 to Rs. 775-

1025 and that of Forest Guards from Rs. 415-625 to Rs. 800-1400, It is averred in the petition that another representation was forwarded.

However, no details are indicated in the petition. The copy is produced on record at Annexure-E. Likewise earlier pay revision, this time also,

except making representation no action was taken in a court of law. If they have accepted even the second pay revision, now grievance made cannot be said to be justified.

4-4. In the year 1992, the pay scales were revised and the shepherds were placed in the grade of Rs. 775-1025 and the Forest Guards were placed in the scale of Rs. 950-1400. It is also stated that the representation was made vide annexure-F without disclosing the date on which the representation was made and received by the concerned respondents.

4-5. It is further contended that the petitioners were working as shepherds and thus they were looking after the sheep and goats at the high

altitudes, and, for the improvements they were and are discharging their duties for 24 hours without any leave or any other benefit which other

employees are entitled to. It was further contended in the petition that they were discharging risky and dangerous duties and were working better

than Forest Guards. It was also contended that the nature of duty-is identical to the extent that the shepherds have to take the care of Sheep and

Goats on the high altitudes and the Forest Guards have to take care of standing Forests. It was contended that the shepherds deserve to be placed

superior in status. It was contended that initially the shepherds and forest guards were getting the same grade and nature of duties of the petitioner

and that of Forest Guards being identical and duties discharged by the Shepherds being superior, they should have be paid at least equal wages

and the discrimination is without any legal justification.

5. Before considering the reply filed, relevant rules framed by the competent authority and the dictionary meaning is required to be considered.

DICTIONARY MEANING OF GUARD AND SHEPHERD

6. The dictionary meaning of Guard as given in Concise Oxford Dictionary Fourth Impression 1993 is as under:-

6-1. ""Watch over and defend or protect from harm-keep watch so as to control entry or exit. Supervise (prisoners etc.) and preventing from

escaping. A state of vigilance, a person who protects or keeps watch. A body of

soldiers etc. serving to protect a place or person: An escort.

6-2. Thus Forest Guard has to look after a large area covered chiefly with trees and undergrowth. The Forest Guards are required to look after

large number of dense mass of the forest with a view to protect the forest. They have to take all possible precaution such as to defend and to

protect the forest from any harm. The Forest Guard has to keep a watch so as to see any unauthorised person is not entering the forest area to

cause damage to the forest by way of cutting trees. They are required to be vigilant and more watchful to protect the Forest.

6-3. So far as Shepherds are concerned, dictionary referred to hereinabove points out that the shepherd is a person employed to tend sheep

especially at pasture, a member of the clergy, who cares for and guides a congregation.

RELEVANT RULES FOR APPOINTMENT

7. The learned Single Judge has tried to compare the Rules known as J&K Forest Service (Non Gazetted) recruitment Rules, 1970 for forest

services and J&K Sheep Husbandry (Subordinate Service Recruitment) Rules, 1974 to arrive at a conclusion that method and mode of

recruitment, qualification and eligibility for both the services are almost similar. From the rules it is stated by the learned Single Judge in the

judgment that both the categories must be middle pass and physically fit. So far as physical fitness is concerned, there is also provision in J&K Civil

Services (Classification, Control and Appeal) Rules, 1956 as applicable to the employees of the State. The learned Single Judge has observed that

both the categories of employees is similarly worded for direct recruitment and promotion. The common category posts carry same grade and

were paid till 1992. So far as other the Rules are concerned. Learned counsel Mr. Attar has drawn our attention to J&K Forest Service (Non-

Gazetted) Recruitment Rules. 1970. So far as the Forest Guards are concerned. Class-III of the Schedule to the Rules is required to be referred.

Category "A" refers to Guards (all Guards Forest, Game Resin and Grazing Guards, Jr. Depot Assistants. Laboratory Boys). So far as the

qualification is concerned, it has been pointed out that before the amendment he must have passed the middle examination and so far as physical

fitness is concerned, it is stated that his fitness should be as prescribed for

forester grade I. So far as Forester grade 1 is concerned, the physical standard is prescribed at (ii) of the schedule, The Forest Guards must have the following physical standards:

A. Height: 5' 4", 163 Cms.

B. Physical fitness including 16 Miles/25 Kms walk to be completed in 4 hours.

C. Physical fitness Certificate from Civil Surgeon.

8. So far as J&K Sheep Husbandry (Subordinate Service Recruitment) Rules 1974 are concerned, the age shall not be less than 18 years and more than 30 years (relaxation not referred).

9. So far as Forest Guards are concerned, rule 8 prescribes the age at the time of recruitment and according to that it should not exceed 28 years.

Thus there is a difference in age at the time of recruitment. Schedule A to the Sheep Husbandry (Subordinate Service Recruitment) Rules, 1974 in

Category B of Class IV there is a reference of Head Shepherds/Head Gaddies/Farm Jamadar/Shepherd. So far as qualification is concerned it

prescribes middle and which is also relaxable by the appointing authority in case of the candidates hailing from the communities of Bakarwals,

Gaddies and Local Chopans. So far as recruitment is concerned 25% of the posts are to be filled in by promotion from category "A" of Class V:

i.e. Skirting Boy/Laboratory Boy, Field man/Mali and Grazing Guard/Menials and 75% are to be taken directly. As against this in case of the

forest guards, 70% are required to be taken by direct recruitment while 30% posts are required to be filled in by promotion from posts of

Watchers/Orderly/Chowkidar and Farash possessing physical standard as prescribed by direct recruitment. Thus in both the categories difference

is noticed about the promotional avenues and the direct recruitment and also with regard to the nature of physical fitness.

10. Attention of the Court was drawn to J&K Civil Services (Classification, Control and Appeal) Rules, 1956. Chapter III refers to conditions of

age and health. According to rule 35 a certificate to the effect that the medical certificate in the prescribed form is to be obtained and is to be

furnished alongwith first pay bill. Rule 35 also provides that person shall not be appointed to a post in Government service without medical

certificate in respect of non- gazetted officers unless he furnishes a certificate alongwith first pay bill. Reading the rule it appears that general fitness

of a person is required to be considered, such as, vision, deafness, dumbness or orthopedic handicapness. These rules apply to every one. That is

to say to the persons belonging to all categories including the categories namely Shepherds and Forest Guards. However, over and above this

general conditions of health, the Forest Guards must possess physical fitness as indicated in the "rules. Considering these rules it is difficult to say

that the method, mode of recruitment, qualification and eligibility criteria are almost similar. Reading the rules it is clear that there is a difference and

it cannot be said that the rules are same. For the purpose of promotion, a source is different, age bar is also different, direct quota of recruits is also

different. The physical fitness for the post of Forest Guard as indicated, one can be appointed as a Forest Guard but having no requisite fitness, he

can be appointed as a shepherd, if he is otherwise eligible.

11. So far as educational qualifications are concerned, in case of shepherds, the qualification bar of "middle" can be relaxed by the appointing

authority but in case of Forest Guard there is no question of relaxing qualification. Over and above this, in the year 1987 by SRO 389, the Rules

known as J&K Sheep Husbandry (Subordinate Service Recruitment) Rules, 1987 were brought into force. So far as Shepherds are concerned,

the qualification of middle was made relaxable and the 50% of the posts were to be filled in from category VI-A with two years experience in that

category. In the year 1991 State Government introduced the rules known as J&K Forest (Subordinate Service Recruitment) Rules, 1991. So far

as the qualification criteria is concerned, that was changed from Middle to Matric So far as fitness is concerned, it is the same as was earlier and

the candidate is required to have height of 163 Cms and must be able to walk 25 Kms within 4 hours and if he had no physical fitness to walk the

distance, would not be qualified. Over and above this, the general physical fitness certificate was required to be produced from the CMO. So far

as the recruitment is concerned, there was change and 50% were to be recruited by direct recruitment. 25% were required to be promoted from

class XII, category "A" with minimum 5 years service in that category (Class XII includes Mali, Cattle Pond Keeper, Paid Mazdoor, Chairman,

Water Carrier, Road Mazdoor, Watcher and Gardener), 25% of the posts were to be filled in by promotion amongst class XII of Schedule III

with minimum 5 years service in that category. Thus there is material difference in the rules brought into force subsequently also.

12. In the instant case Rules are perused and it becomes very clear that there was no change in the qualification but so far as physical fitness is

concerned there was much difference. It is in view of the nature of the duties the original respondents have pointed out that there is a difference

between the job of the Forest Guards and the Shepherds. The Forest Guards are forming a separate class and cannot be compared with

Shepherds in any manner.

DENIAL BY RESPONDENTS-UNREBUTTED

13. The original respondents have denied that the petitioners were required to discharge their duties for 24 hours, but in fact they were required to

discharge their duty for 6 hours only. The Forest Guards were required to perform the duties for 24 hours. These Forest Guards were required to

look after the compartments round the clock. The petitioners were required to work in the farms. Keeping these aspects in mind and the nature of

duties to be performed by both which is quite distinct and different, the Court has to consider the question.

14. It was for the petitioners to place on record sufficient material to justify their claim that they were working for 24 hours or were discharging

duties round the clock and on high altitudes. Respondents have pointed out that they were required to work in the farms and not for 24 hours but

only for six hours.

WHETHER SUFFICIENT EVIDENCE PRODUCED?

15. So far as writ proceedings are concerned, it is the duty of the petitioner to place on record alongwith the petition sufficient evidence to draw an

inference that what they have contended in the petition is true and is supported by documentary evidence. Petition is required to be affirmed on

oath. The petitioners have to state specifically about the contents which are based on their personal knowledge or based on information which is

believed to be true and even in such eventuality the source of information is required to be disclosed. So far as the suit is concerned, it is based on

verification and the evidence is not to be produced with the plaint itself. If no adequate material is placed on record with the petition, the contention

cannot be accepted. The shepherds were working for 6 hours only and that too in

a farm. The tall claim made by the petitioners is required to be rejected.

16. Thus when no material is placed, the contention with regard to the nature of the work cannot be accepted. With regard to comparison it was for the petitioner to place on record sufficient material to indicate that the work carried out by Shepherds is the same which is being discharged by respondents. In the instant case there is sufficient material to indicate that both were working on different posts, were discharging different duties and nature of work is not similar to each other.

17. In the case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, , the Apex Court has pointed out as under:-

In our opinion when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ

petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter

affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the

case may be the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction

between a pleading under the CPC and a writ petition or a counter affidavit. While in a proceeding that is, a plaint or a written statement, the facts

and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such

facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellant is not entertainable.

18. In case of Range Forest Officers v. S.T. Hamdani reported in (2000) 3 SCC 25, the court has pointed out that filing of an affidavit is only a

statement of a person in his favour and cannot be regarded as the sufficient evidence by any Court or Tribunal to come to the conclusion that a

workman and in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or

engagement for that period was produced by the workman. Thus a claim is made by the petitioner in the petition it is for him to place on record

sufficient and acceptable material.

19. Thus when no material is placed, the contention with regard to the nature of

the work cannot be accepted. In the instant case there is sufficient material to indicate that both were working on different posts, were discharging the different duties and were not similar to each other.

DUTY AND POWER UNDER THE FOREST ACT IN RELATION TO FOREST GUARDS

20. Forest Guard is a Forest Officer within the meaning of Forest Officer as defined in the Jammu and Kashmir Forest Act, 1987 (hereinafter to

be referred to as the Act). The Forest Guard also becomes public servant within the meaning of Ranbir Penal Code in view of section 42 of the

Act. u/s 41 of the Act powers may be invested on the Forest Officers and u/s 41 certain actions can be taken even by a Forest Guard. The

restriction to trade is imposed unless permitted u/s 44 of the Act. Reading the provisions of the Act. it becomes clear that Forest Guards are

required to look after the trees, timber and Forest produce. The Forest Officer which includes the Forest Guard has power to arrest a person

without a warrant for his having connected in any forest offence punishable with imprisonment in terms of section 36 of the Act. Thus reading the

provisions contained in the Act under which the Forest Guard is required to discharge his duties clearly reveals that the shepherds cannot be

compared that they were at par with Forest Guards.

LAW DECLARED BY APEX COURT AND THE FACTS OF THIS CASE

21. The Apex Court in the case of State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, considered the various judgments of

the Apex Court. In para 2 the court pointed out as under:-

In Randhir Singh Vs. Union of India (UOI) and Others, , Chinnappa Reddy. J. speaking for the Bench of three learned Judges said:

We concede the equation of posts and equation of pay are matters primarily for the executive Government and expert bodies like the Pay

Commission and not for Courts but we must hasten to say that where all things are equal that is where all relevant considerations are the same,

persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments of

course, if officers of the same rank perform dissimilar functions and the power, duties, and responsibilities of the posts held by them vary such

officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same

.....Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view that the principle 'equal pay for equal work' is

deductible from those Articles and may be properly applied to case of unequal scales of pay based on no classification or irrational classification

though those drawing the different scales of pay do identical work under the same employer;

22. It is very clear that ""differentiation"" is sought to be justified in view of the nature and the type of work done, the Apex Court pointed out that

the same amount of physical work may entail different quality of work, some more sensitive some requiring more take some less- it varies from

nature and culture of employment.

The Apex Court further pointed out in para 12 as under:-

It would be evident from the definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar

conditions. Further, as pointed out by Mukherji. J. (as he then was) Federation of All India Customs and Central Excise Stenographers

(Recognised) and others Vs. Union of India and others, the equality of work may vary from post to post. It may vary from Institution to Institution.

We cannot ignore or over took this reality. It is not a matter of assumption but one of proof. The respondents ""original petitioners"" have failed to

establish that their duties, responsibilities and functions are similar to those of non-technical lecturers in Technical Colleges. They have also failed to

establish that the distinction between their scale of pay and that of non-technical lecturers working in technical schools is either irrational and that it

has no basis, or that it is vitiated by mala fides, either in law or in fact (See the approach adopted in Federation of All India Customs and Central

Excise Stenographers (Recognised) and others Vs. Union of India and others, . It must be remembered that since the plea of equal pay for equal

work has to be examined with reference to Article 14. the burden is upon the petitioners to establish their rights to equal pay, or the plea of

discrimination, as the case may be."" This burden, the original petitioners (respondents herein) have failed to discharge.

23. Thus one has to examine the duties, responsibilities and functions, whether, they are similar to those of shepherds and the Forest Guards or not

in the instant case.

24. What Apex Court in the case of Babu Lal, Convenor and another Vs. New Delhi Municipal Committee and another, , has observed is also to

be seen. What is required to be seen is that the persons are discharging similar duties to that of other employees having same status and similar

responsibilities. It is required to be noted that in that case the SWD Beldars and SWD mates were under the administrative control of the Health

Department. The appointing authority was the same. Even the disciplinary authority was the same, Manner of appointment was the same,

promotional avenues were the same. The SWD Beldars are promoted as Mates on the basis of seniority. From amongst SWD Beldars and

Mates. The promotions are effected and for the Mates, the promotions are effected to the post of Assistant Sanitary Inspector on the basis of 10

year's service and qualifying a departmental written test. The higher promotion were also granted from amongst these promoted persons. It was

admitted position that work of SWD Beldars and SED Mates is almost the similar to the of Swermen/Swermates and SD Lorry Beldars. In the

instant case as indicated the promotional avenues are different, promotional quota is different, age bar is different, educational qualifications are

different, and in the case of Shepherds there is relaxation of qualification. There is vast difference in physical illness. In the instant case there is no

common post for higher promotion and feeding channel for promotion is also different, Over and above the duties to be discharged cannot be said

to be the same or even similar.

25. The Apex Court in the case of Grih Kalyan Kendra Workers' Union Vs. Union of India and others, , has pointed out that 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. It was pointed out that mathematical accuracy is not needed. In that case

pursuant to the directions of the Court parties including the petitioners appeared before the former Chief Justice and after considering the entire

material, the former Chief Justice submitted an elaborate report to the Court making comprehensive suggestions and thus the suggestions were

accepted, on the basis of the report submitted by the former Chief Justice and the decision was rendered. It was also held that it was not open to reopen the same question by means of the writ petition. It is required to be noted that in view of the duties to be discharged by the shepherds and the Forest Guards, the physical fitness has been prescribed. Person possessing the physical fitness for shepherd cannot be appointed as Forest Guard. However a person having physical fitness for the post of Forest Guard can be appointed as a shepherd. The classification is based on physical fitness also. May be initially the salary was the same. However both were distinctly referred. One is a shepherd and another a Forest Guard. Considering various other aspects, such as promotion, quota in appointment, relaxation of educational qualification for shepherds, nature of work being different, if there is classification and the two different scales are provided, it cannot be said that the same is violative of Arts. 14 and 16 of the Constitution of India. Even in case of two class of employees Gazetted Supervisors holding degree in Engineering and the other class of non-gazetted supervisors being diploma and license holders, the Apex Court in case of V. Markendeya and Others Vs. State of Andhra Pradesh and Others, held that on the basis of difference in educational qualification such difference in pay scale was justified and cannot be violative of Articles 14 and 16 of the Constitution of India. In the instant case the duties to be discharged by the shepherds and the Forest Guards are quite distinct. One has to analyse the relevant rules, orders, nature of duties, functions, measure of responsibilities required for the relevant post. The court does not find that by classification made by the State, different treatment to the two classes of employees were given, and were discriminated in violation of the equality under Articles 14 and 16 of the Constitution of India.

26. The Apex Court in case of V. Markendeya (supra) pointed out that principle of equal pay for equal work is applicable among equals it cannot be applied to unequals. Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated before the Court that discrimination is practiced by the State in prescribing two different scales for the two classes of employees without there being any reasonable classification for the same.

27. Reliance is placed by the State on the decision of the Apex Court in case of

State of Tamil Nadu and Another Vs. M.R. Alagappan and

Others, etc., . The Agricultural Officers directly recruited from open market having qualification as Bachelor in Agriculture while for a promotee

Deputy Agricultural Officers, the minimum educational qualification was SSLC equivalent to 10+2 standard examination with suitable diploma laid

down by the Rules. It was contended that both were discharging same type of duties i.e. as Agricultural Officers. There was not only difference in

pay scale but the Agricultural Officers were given upward revision which was not offered to Dy. Agri. Officers, though they were discharging

similar duties. In that case Dy. Agri. Officer is not required to have a degree of graduation in Agriculture (B.Sc. Agri) which is the basic

requirement. Even Dy. Agricultural Officer can be assumed to perform the duties of Agriculture Officer when they are assigned such duties and

thus duty was interchangeable. The distinction between the two was that Dy. Agri. Officer belong to Subordinate Service and the educational

qualification was lower. The court pointed out that they did not form similar class of employees even though they may be substantially discharging

the same type of duties and their place of work may be interchangeable. A glaring difference which results into making them fall in a distinct and

separate category of employees deserves to be kept in view. In the first place the contesting respondents are recruited by promotion from the

lower category of Assistant Agriculture Officers. On promotion as Dy. Agri. Officer they remain non-gazetted employees in the Subordinate

Service. These differences were taken into consideration by the Court. Thus it is very clear that two classes of officers were discharging similar

duties yet on the basis of educational qualification and the direct recruitment to a higher post, the equal pay for equal work has been denied.

28. In para 7 of the judgment the Apex Court pointed out as under:-

It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher

grade being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic

qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of

pay. The principle of equal pay for equal work would be an abstract doctrine not

attracting Art. 14 if sought to be applied to them.

29. The Constitution Bench of the Apex Court in case of *State of Mysore and Another Vs. P. Narasing Rao*, clearly ruled that higher educational

qualification furnish a relevant consideration for fixing higher pay scales and consequently the classification pay scales by the new Mysore State

was not violative of Arts. 14 or 16 of the Constitution of India. Thus the tracers were carrying out the same type of work, however it has been

pointed out that there was nothing wrong in awarding higher pay scale to Matriculate tracers as compared to non- matriculates.

30. Even differentiation between graduate and non-graduate supervisors in the matter of promotion cannot be held to be invalid *Dhan Singh*

Ramkrishna Chaudhari and Others Vs. Laxminarayan Ramkishan and Another, .

31. In absence of any material to show that qualification, duties and functions are similar to that of Forest Guards, there is no question of

considering the question of parity merely because once upon a time both were in the same grade.

32. Even if work being discharged by the persons is of similar nature yet there can be difference of pay. In the instant case there is no question of

discharging the same duties but even the duty is discharged by the Forest Guards are quite distinct and different and cannot be compared with the

duties discharged by the shepherds for six hours a day that too in a farm.

33. The Apex Court in *State of Haryana and Others Vs. Jasmer Singh and Others*, has pointed out that the principle of "equal pay for equal work

is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations

or in the same organisation. There may be differences in educational or technical qualifications which may have a bearing on the skills which the

holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to

efficiency in service which may justify difference in pay scales on the basis of criteria such as experience and seniority, or a need to prevent

stagnation in the cadre, so that good performance could be elicited from persons who have reached the top of the pay scale. There may be various

other similar considerations which may have bearing on efficient performance in a job. The evaluations of such jobs for the purposes of pay scale

must be left to expert bodies and unless there are any mala fides its evaluation should be accepted.

34. In case of Union of India and Others Vs. Pradip Kumar Dey, the Apex Court considered the case of radio operators. Division Bench of the

High Court in the said case allowed the appeal stating that admittedly the respondent was performing technical duties and was performing more

hazardous job; the radio operators in CRPF were not only performing similar nature of duties as that of radio operators of the Central Water

Commission or the Directorate of Police Wireless but they were also performing more hazardous duties. The Union of India as opined by the

Division Bench in view of the fact that the recommendation was made for higher pay scale, however, after the Pay Commission turned down the

same, took a different view and pointed out conflicting stand, one before Pay Commission and the other before the Court. The Apex Court in para

8 of the judgment pointed out that the Division Bench was not right and justified in giving direction to grant pay scale in absence of material relating

to other comparable employees as to the qualification, method of recruitment, degree of skill, experience involved in performance of job, training

required, responsibilities undertaken and other facilities in addition to pay scales. Apex Court held that the learned Single Judge was right when he

stated in the order that in absence of such material it was not possible to grant relief to the respondent.

35. In the instant case learned counsel for the shepherd relied upon a document namely letter written by Director Sheep Husbandry to the Chief

Secretary on 28-06-1996. The Director.

Respondent No. 3. stated as under in the said letter:

In the first instance the post of petitioners and the post of Forest Guards were in the same category as both the cadres were in common scale. The

nature of duties of the both cadres are identical and in case of shepherds it is more different and hazardous. By virtue of other Divisions the

petitioners were placed in the lower grade than those of Forest Guards which is quite discrimination to the shepherding staff.

The petitioners have to look after the sheep/goats in the high land pastures with high risks in den forests, and their lives are subject attacks by the

wild animals.

The writ petition is lying in the Hon'ble High Court and this office is attending for hearing whenever it comes before the Court. It is submitted that

the shepherding staff has to work at high land pastures and farms round the clock, the grievance expressed in the writ petition are justified and it is

requested to kindly redress these grievances and their pay revised for which case is submitted strongly.

36. Thus on this letter strong reliance was placed even before the learned Single Judge for considering the case of both Shepherds and Forest

Guards for being treated at par. In case of Union of India v. Pradip Kumar Dey (supra), there was recommendation. The Directorate of CRPF

made recommendations to the Pay Commission forgiving higher pay scales on the basis of which claim is made by respondents for grant of pay

scale. The factual statements contained in the recommendation of a particular department alone cannot be considered per-se proof of such things

or they cannot be themselves vouch for the correctness of the said recommendation. The same could not be taken as a recommendation made by

the Government. Even otherwise a mere recommendation did not confer any right on the respondents to make a claim for writ of mandamus.

37. In view of what is pointed out by the Apex Court, the arguments advanced by the learned Advocate for the original petitioner cannot be

accepted, in the instant case on the oath it has been pointed out that shepherds were working only for six hours and that too in the farms. In view

of this the contents of the letter cannot be relied upon. It appears that the author of the letter has exceeded his authorities. He was not asked by the

State Government to examine the case of shepherds and the Forest Guards and to recommend the case. We have indicated earlier as to the duties

of Forest Guards are quite distinct and different. It cannot be compared, however, for the reasons best known to the Officer has addressed the

letter, which cannot be taken into consideration and in our view, in view of the decision of the Apex Court in the case of the Union of India v.

Pradip Kumar Dey (supra) the reliance on such letter could not be placed in the matter of fixation of pay.

38. At this juncture it would be relevant to point out what Apex Court has held in case of Mahabir Prasad Verma Vs. Dr. Surinder Kaur, as

under:-

If the Government has prescribed a particular pay scale in respect of them, all that court can do is to merely pronounce validity of that fixation. In

the event that the Court finds that the prescription is contrary to law it will strike it down and direct the Government to take a fresh decision in the

matter. It is very different case from one where this court has sought to prescribe pay scales in appeals directly preferred from an award of the

Labour Court dealing with such a matter. In the latter case this court in its appellate jurisdiction can be regarded as enjoying all the jurisdiction

which the Labour Court enjoys. That is not so in the present case.

39. In case of State of U.P. and Others Vs. J.P. Chaurasia and Others, pointed out as under:-

The High Court was, therefore, not right in directing that the respondents should be paid the same salary and allowances as are being paid to

regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wages is prescribed for

such workers, the respondents would be entitled to it. If it is more than what they are being paid.

40. Another aspect required to be borne in mind is this court would not like to interfere in the facts and circumstance of this case and also as the

Apex Court has pointed out in case of Union of India v. Pradip Kumar Dey with emphasis after considering various judgments as under:-

This court also said that the judgment of an administrative authorities concerning the responsibilities which attach to the post and the degree of

reliability expected of an incumbent, would be a value judgment of the authorities concerned, which, if arrived at bona fide, reasonably and

rationality was not open to interference by the court.

41. In case of Union of India v. P.V. Hariharan reported in (1997) 3 SCC 538 the Apex Court observed as under:-

It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a

cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of

such change. The Tribunal should realize that interfering with the prescribed pay scale is a serious matter. The Pay Commission which goes into the

problem at great depth and happens to have a full picture before it is the proper

authority to decide this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board.

42. In case of State of West Bengal and others Vs. Deb Kumar Mukherjee and others, , the case of Inspectors in Animal Husbandry departments

and Inspectors in housing Department was before the court. Before the High Court it was contended that the maintenance of two grades in the

cadre of Inspectors was violative of the principles of "equal pay for equal work" as the Inspectors grade I and II were performing similar duties

and their posts were interchangeable. Other ground raised was that the Inspectors in the Housing department are entitled to the pay scale 425-

1050 which was being drawn by inspectors in Animal Husbandry Department on the ground that Inspectors in both the departments were

performing almost identical duties. The High Court held that since the Inspectors in the Animal Husbandry Department were in the grade of Rs.

425-1050, Inspectors in the Housing Department should also be entitled to the same. The Apex Court pointed out that there is a fallacy for the

reasons that there is nothing common in the Housing Department and the Animal Husbandry Department. The two departments stand apart.

Another, the judgment of the learned Single Judge indicates any factual material to show that the duties of Inspectors in the two departments are

similar. The Apex Court held that the reasons and the findings of the High Court on the face of it, cannot be sustained.

43. In the instant case as indicated earlier there is nothing in common between the Forest Guard and the shepherds. The Apex Court also pointed

out that the three Pay Commissions during the last three decades examined the revision of pay scales of various cadres in the State. On the basis of

material placed before the Pay Commission the two grades in the case of Inspectors in the Housing Department were maintained. Similarly the Pay

Commission recommended different pay scales for Inspectors of different departments of the Government, The Apex Court pointed out that the

High Court in its writ jurisdiction was not justified in arriving at a finding.

CONCLUSION

44. In view of the fact that the law laid down by the Apex Court makes it very clear that ordinarily court should not interfere in the administrative

decision of the Government with regard to the pay scale and that in the instant case as the Forest Guards and the Shepherds are discharging quite

distinct and different duties there is no question of comparison.

It cannot be said that the shepherds are discharging the same duties which are being discharged by the Forest Guards, therefore, the claim made

by the original petitioners is without basis whatsoever. They have not initiated action soon after the first"" revision or the second revision of pay and

other accepting the same, now it is not open to challenge.

45. In view of what is stated hereinabove, the appeal filed by the State is required to be allowed with costs and the cross objections filed by the

original petitioner, having no merit must be dismissed with costs.