

(2019) 05 UK CK 0208

In the Uttarakhand High Court

Case No : Special Appeal No. 302, 303, 304, 306, 347, 356, 357, 358, 359, 360, 363, 364, 365, 366, 367, 402, 414, 415, 308, 340, 341, 342, 344, 345, 346, 348, 349, 350, 351, 352, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 427, 428, 429, 430 Of 2019, Delay Co

State Of Uttarakhand And Others

APPELLANT

Vs

Pankaj Prasad & Others

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 309

Citation : (2019) 05 UK CK 0208

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : Amar Murti Shukla, Anil Kumar Bisht, A.M. Saklani

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Delay, in preferring the appeals, is not opposed by Mr. Amar Murti Shukla, learned counsel for the respondents-writ petitioners; and the delay is, therefore, condoned. Delay Condonation Applications are, accordingly, disposed of. Since the appeals are itself being disposed of, we see no reason to defer hearing of these appeals only to enable the learned Standing Counsel for the appellants-State to rectify the deficiencies pointed out by the Registry in some of the appeals.

2. These appeals are preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 4253 of 2018 and batch dated 18.12.2018.

3. The respondents-writ petitioners are all working in different posts such as Pharmacists, Data Entry Operators, Clerks, Technicians etc. All of them had invoked the jurisdiction of this Court seeking a direction to regularize their services, and to extend them the minimum of the regular pay scales extended to

persons holding regular posts, but were discharging similar duties as that of the respondents-writ petitioners. It is not in dispute that the respondents-writ petitioners were appointed on consolidated wages/contractual basis/daily wages, and not in regular posts. Their claim to be extended the minimum of the regular pay scales, applicable to regular posts, was upheld by the learned Single Judge in the order under appeal. The respondents-writ petitioners had sought the relief, of being extended the minimum of the regular pay scales, placing reliance on the judgment of the Supreme Court in *State of Punjab and others Vs. Jagjit Singh and others* (2017) 1 SCC 148. The learned Single Judge, however, relied on the order passed by this Court in *Manwar Singh Rawat & Others Vs. State of Uttarakhand and others* (Order in Writ Petition (S/S) No. 949 of 2017 and batch dated 12.05.2017), whereby the writ petitions were disposed of directing the appellants-State to consider the case of the petitioners therein, among others, for grant of minimum of the regular pay scales.

4. In the orders, now under appeal before us, the learned Single Judge observed that, having considered the judgments on which reliance has been placed by the learned counsel for the respondents-writ petitioners, and having considered the fact that in the light of the pleadings raised in the writ petition, that the respondents-writ petitioner's claim for grant of minimum of the regular pay scale has been settled by the Supreme Court, these Writ Petitions should also be allowed in terms of the judgment rendered in *Manwar Singh Rawat & Others Vs. State of Uttarakhand and others* (Order in Writ Petition (S/S) No. 949 of 2017 and batch dated 12.05.2017), which was implemented by the State Government by issuing Government Order dated 08.10.2018. The learned Single Judge allowed the batch of writ petitions and issued a mandamus to the appellants-State to pay minimum of the regular pay scales, to the respondents-writ petitioners, within a period of six weeks from the date of presentation of a certified copy of the order. Aggrieved thereby, the present appeals.

5. Mr. Anil Kumar Bisht, learned Standing Counsel for the appellants-State, would submit that it is evident from the judgment of the Supreme Court, in *Jagjit Singh* (2017) 1 SCC 148, on which the respondents-writ petitioners had relied upon in the writ petition, that all the employees therein were appointed in regular posts, albeit on daily wages/ad-hoc/casual/contractual basis; since their appointment was made in regular posts, the Supreme Court had directed that they be paid the minimum of the regular pay scales applicable to that of regular employees; as against the order passed by this Court in Special Appeal No. 400 of 2018 dated 12.06.2018, the Supreme Court had, in its order in Special Leave Petition (Civil) Diary No(s). 36540/2018 dated 13.11.2018, granted stay of the operation of the impugned order until further orders; the learned Single Judge had, even without examining whether or not the respondents-writ petitioners were discharging the same duties as that of regular employees and other factors, directed that they be extended the minimum of the regular pay scale; even in *Manwar Singh Rawat & Others Vs. State of Uttarakhand and others* (Order in Writ Petition (S/S) No. 949 of 2017 and batch dated 12.05.2017), this Court had only directed the

appellants-State to consider extending, to the employees, the benefit of the minimum of the regular pay scale on application of the doctrine of "equal pay for equal work"; in the present case, the learned Single Judge had straightway issued a mandamus to the appellants-State to pay the minimum of the regular pay scales to the respondents-writ petitioners within a period of six weeks; and the order under appeal, therefore, necessitates being set aside.

6. On the other hand, Mr. Amar Murti Shukla, learned counsel appearing on behalf of the respondents-writ petitioners, would submit that, in *Manwar Singh Rawat & Others Vs. State of Uttarakhand and others* (Order in Writ Petition (S/S) No. 949 of 2017 and batch dated 12.05.2017), the claim of employees in different posts, (including posts similar to which the respondents-writ petitioners herein were discharging duties albeit on contractual/casual/daily wage basis), for payment of the minimum of the regular scales of pay, fell for consideration; and, while the learned Single Judge had no doubt directed the appellants-State to consider the case of those employees, the State Government had, by its order dated 08.10.2018, implemented the said order, and had directed that the respondents-writ petitioners be extended the benefit of the minimum of the regular scales of pay; it is only because the State Government had implemented the order, and had extended the benefit of the minimum of the regular scale of pay, to the petitioners in *Manwar Singh Rawat & Others Vs. State of Uttarakhand and others* (Order in Writ Petition (S/S) No. 949 of 2017 and batch dated 12.05.2017), that the learned Single Judge had, in the order under appeal, issued a mandamus directing the appellants-State to grant them the minimum of the regular pay scales, without passing a similar order directing that the respondents-writ petitioners' case be considered for grant of such benefit; in *Jagjit Singh* (2017) 1 SCC 148, the Supreme Court had held that, since the employees therein were appointed on a daily wage/casual/contractual basis in regular posts, it was not necessary for the Court to undertake the exercise of determining whether or not the duties discharged by the employees therein were similar to that of the regular employees; and since the tests laid down by the Supreme Court in *Jagjit Singh* (2017) 1 SCC 148 are satisfied in the present case, no interference is called for with the order under appeal.

7. Before examining the rival contentions, let us take note of the various judgments of this Court, both by learned Single Judges and the Division Bench, on the doctrine of "equal pay for equal work". In his order in *Devendra Prasad Lakhera Vs. State of Uttarakhand and others* (order in Writ Petition (S/S) Nos. 2758 and 2761 of 2017 dated 29.11.2017), the learned Single Judge noted that the learned counsel for the petitioner, after arguing at some length, had confined his prayer only to the extent that the respondents be directed to pay minimum of the pay scale on the principle of "equal pay for equal work"; and the learned Standing Counsel for the State had no objection to such an innocuous prayer of learned counsel for the petitioner. The writ petition was disposed of directing the respondents to pay the minimum of the pay scale, for the post of Lab Technician, to the petitioner, at an early date, in the light of decision of the Supreme Court in

Jagjit Singh (2017) 1 SCC 148, and in accordance with law.

8. In State of Uttarakhand and others Vs. Devendra Prasad Lakhera, and State of Uttarakhand Vs. Umesh Chandra Bhatt, (order in Special Appeal Nos. 398 and 400 of 2018 preferred against the judgment in Writ Petition (S/S) Nos. 2761 and 2758 of 2017 respectively dated 29.11.2017), the Division Bench, in its order dated 12.06.2018, opined that the order under appeal was a consent order; the State should have avoided filing a Special Appeal against those orders which were consensual in nature; the respondent had filed a contempt petition; the stand of the appellant therein was that the judgment was being implemented, despite the present appeal having been filed; it was a sheer abuse of the process of law; and there was no merit in the appeal. The appeals were dismissed subject to payment of costs of Rs. 1,00,000/-, which was directed to be recovered from the persons who had authorized the filing of the special appeals.

9. Special Leave Petition (Civil) Diary No(s). 36539/2018 was preferred by the State of Uttarakhand against the order passed by the Division Bench in Special Appeal No. 398 of 2018 dated 12.06.2018. In its order dated 02.11.2018, the Supreme Court, while expressing its disinclination to interfere with the said order, dismissed the Special Leave Petition. However, the costs imposed by the Division Bench was reduced to Rs. 10,000/-. In its order in Special Leave Petition (Civil) Diary No(s). 36540/2018 dated 13.11.2018, the Supreme Court has granted stay of the operation of the order of the Division Bench of this Court in Special Appeal No. 400 of 2018 dated 12.06.2018.

10. In Manwar Singh Rawat & Others Vs. State of Uttarakhand and others (order in Writ Petition (S/S) No. 949 of 2017 and batch dated 12.05.2017), the learned Single Judge held that salary was a property within the meaning of Article 300A of Constitution of India; no person can be deprived of his property save by authority of law; the respondent-State was a welfare State; it could not be oblivious to the genuine difficulty faced by the employees; the employees had to maintain their families; and it was expected, at least from the State, that the salary and arrears should be disbursed timely to the employees. The writ petitions were disposed of with a direction to the respondents to consider the case of the petitioners for regularization, as per the 2013 Regularization Rules, within a period of eight weeks; and to consider release of the minimum pay scale, in accordance with law on the principle of equal pay for equal work. The respondents were also directed to pay salary to the petitioners, from September, 2016 to April, 2017, forthwith.

11. In Pradeep Singh and others Vs. State of Uttarakhand and others (order in Writ Petition (S/S) No. 247 of 2018 and batch dated 09.02.2018), a learned Single Judge of this Court noted that the petitioners were seeking payment of salary which had been withheld from July, 2017; in other words they were praying for release of their salary from July, 2013 onwards; and the learned counsel for the petitioner had also submitted that the order passed in Writ Petition (S/S) No. 983 of 2017 and batch dated 12.05.2017 had not been

challenged by the respondents, and had attained finality. Following the order in Writ Petition (S/S) No. 983 of 2017 and batch dated 12.5.2017, a direction was given to the respondents to consider release of the minimum pay scale, in accordance with law, on the principle of "equal pay for equal work", from July, 2017 onwards, for the period the petitioners had worked with the third respondent.

12. None of the aforesaid judgments of this Court have referred to any judgment of the Supreme Court, regarding the tests to be satisfied for application of the principle of "equal pay for equal work", except in Writ Petition (S/S) Nos. 2758 and 2761 of 2017 whereby the respondents were directed to pay the minimum of pay scales, for the post of Lab Technicians to the petitioners therein, in the light of the decision of the Supreme Court in Jagjit Singh (2017) 1 SCC 148, and in accordance with law. Mr. Amar Murti Shukla, learned counsel for the respondents-writ petitioners, would contend that, since in some of the aforesaid judgments no appeals were preferred to the Division Bench, the orders passed by the learned Single Judges, having been implemented by the Government, would necessitate such orders being followed, and these appeals also being dismissed. We must express our inability to agree. The mere fact that the State did not prefer appeals in earlier cases, would not disable them from now filing these appeals.

13. On a similar question as to whether the State could prefer an appeal in one case, even where a common order was passed in four cases, the Supreme Court, in *The State of Punjab Vs. Joginder Singh* AIR 1963 SC 913, noted the submission, urged on behalf of the respondents therein, that, since orders in the other three petitions had become final, any order passed in the appeal before it, at variance with the relief granted in the other three petitions, would create inconsistent decrees in respect of the same matter; and the appeal before it should also be dismissed. The Supreme Court held that this would not be the legal effect of an order passed by it in the appeal, and there was no merit in the objection as a bar to the hearing of the appeal; the true position was that, if the appeal filed by the State Government were to succeed, it would only mean that the finality of the orders passed in the other three writ petitions by the Punjab High Court would not be disturbed, and those three successful petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed; that, however, would not help the respondent before it, who would be bound by the judgment of the Supreme Court in the present appeal; and, so far as the general law was concerned, the law laid down by the Supreme Court would be applicable to everyone other than the three writ petitioners (who would be entitled to the benefit of decisions in their favour having attained finality).

14. While those, in whose favour the orders passed by this court have attained finality, are entitled to be extended the benefits in terms of the said judgments, for others, who were not parties thereto, the said judgments would only constitute a precedent and, if the law laid down therein is not in accordance with

the law laid down by the Supreme Court, it is the law declared by the Supreme Court, binding under Article 141 of the Constitution of India, which would apply to them, and not that of this Court. Since the attention of the Supreme Court in Jagjit Singh (2017) 1 SCC 148 was not drawn to the earlier Constitution Bench judgments in Joginder Singh AIR 1963 SC 913 and Zabar Singh and others Vs. The State of Haryana and others (1972) 2 SCC 275, which were followed by the two Judge Bench of the Supreme Court in State of Bihar and others Vs. The Bihar Secondary Teachers Struggle Committee, Munger and others Order in Civil Appeal No. 4862 of 2019 dated 10.05.2019, which also noted the law declared by the two Judge Bench of the Supreme Court in Jagjit Singh (2017) 1 SCC 148, it is useful to refer to the said judgments in some detail.

15. In Joginder Singh AIR 1963 SC 913, the respondent was working as a Junior vernacular teacher in a District Board High School. Certain executive instructions were issued by the Punjab Government, as a result of which these teachers became State employees. When these proceedings were issued, the State employees were governed by Rules framed under Article 309 of the Constitution of India. It prescribed the qualification for appointment, the recruiting authority, conditions of service and seniority inter-se the members of the service. The appendices to said Rules specified the scales of salary to which teachers, falling within various grades, were entitled to. By the Executive Order dated 27.09.1957, a change was made in the terms and conditions of service of the teachers in the District Board and Municipal Board Schools. Consequent on its provincialisation, the teachers, then employed in these schools, were also taken over, becoming State employees. The order stated that the junior teachers employed in Local Body Schools, which were being "provincialised", shall be given the same grades of pay and other allowances as were given to their counterparts in government employment. The writ petitions were disposed of by the Division Bench of the Punjab High Court granting relief to the petitioners. Aggrieved thereby, the State of Punjab carried the matter in appeal to the Supreme Court.

16. In its judgment in Joginder Singh AIR 1963 SC 913, the Supreme Court observed that the Executive Order dated 27.09.1957 resulted in teachers in the erstwhile Board schools becoming employees of the Government, and to be given the same scales and grades of pay as were applicable to their counterparts in the State cadre; and except this equality of grade and pay, there was nothing more which was contemplated or provided for by the order. While examining the contention, that the State could not constitute two services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service, and the constitution of such services would be violative of Article 14 of the Constitution of India, the Supreme Court observed that, underlying this submission, were two postulates : (1) equal work must receive equal pay, and (2) if there be equality in pay and work there should be equal conditions of service. The Supreme Court relied on Kishori Mohanlal Vs. Union of India AIR 1962 SC 1139, wherein it was held that, if the contention that

officers who do the same kind of work should be given the same pay scales and paying them different pay scales violates Article 14 of the Constitution of India had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service; and the abstract doctrine of "equal pay for equal work" had nothing to do with Article 14 of the Constitution of India.

17. The Supreme Court, in *Joginder Singh* AIR 1963 SC 913, thereafter observed that, if an existing service is recruited on the basis of certain qualifications, the creation of another service for doing the same work, might be in the same way but with better prospects of promotion, cannot be said to be unconstitutional; the Government, which is carrying on administration, should necessarily have a choice in the constitution of the services to man the administration; the limitations imposed by the Constitution are not such as to preclude the creation of such services; there may be instances where a temporary recruitment, to meet an exigency or an emergency which was not expected to last for any appreciable period of time, is resorted to; and to deny to the Government the power to recruit temporary staff, drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by different rules and conditions of service, would be to impose restraints in the manner of administration which was not intended by the Constitution.

18. In *Zabar Singh* (1972) 2 SCC 275, the petitioners were matriculate trained teachers, and were appointed in former Local body schools. It was contended by them that, since the Government had taken over their schools, they became government schools, and the teachers working therein became government employees; the effect of provincialisation of these schools was that all teachers were brought into a common service, performing the same functions and duties under the same authority; and that teachers appointed thereafter and posted in these schools were junior to those appointed earlier in the schools run by the Local Bodies. It is in this context that the Supreme Court observed :

".....Thus, although the teachers in both the cadres were given the same scales of pay and did the same kind of work and those appointed after October 1, 1957, were posted and worked in the same provincialised schools as teachers in the provincialised cadre, the fact was that the State cadre teachers were and continued to be governed by 1955-Rules while the provincialised teachers were governed by 1961-Rules. This fact, coupled with the fact that one was a district and the other a divisional cadre, meant that the two cadres continued to be separate cadres as before. The principal effect of the new Rules, however, was that the number of posts in the cadre would gradually diminish and together with that the total number of posts in the selection grade, despite the percentage of fifteen remaining intact. But that was the inevitable result of the freezing of the cadre, on the one hand, and its being a diminishing cadre on the other. The State cadre became correspondingly an expanding cadre, the total number of posts for all the schools, Government and provincialised, remaining more or less constant....."

19. While examining the contention, that the Constitution Bench judgment in Joginder Singh AIR 1963 SC 913 needed reconsideration, the seven Judge Bench of the Supreme Court, in Zabar Singh (1972) 2 SCC 275, observed :

".....Mr Tarkunde argued that the majority decision required reconsideration. According to him the premise that minimum qualifications for appointments in the two services were dissimilar was not factually correct. Secondly, the 1961-Rules were upheld on the construction of Rule 3 that its rigour was tempered by the division of vacancies into blocks under which roughly 11/13 of the total vacancies in the selection grade would be filled up by the provincialised teachers which interpretation, if correct, was not being implemented. If that interpretation is not correct, the decision for that reason also needs reconsideration. We do not think that such an argument can be accepted. So far as the first limb of that argument is concerned, it may be said that under the District Boards Rules and the Education Code, the minimum qualifications were to be the same as those prescribed for government schools teachers. But even if that was so, it cannot be gainsaid that on October 1, 1957 there were at least 50 per cent of the provincialised teachers numbering more than 10,000 as against 22 out of 107 government schools teachers, who were non-matriculantes and quite a number of them untrained, and actuality which must have been present before the Government when it decided to keep the two services separate. Regarding the second limb of the argument, the statement that the block system reduced the rigour of Rule 3 was not the basis for upholding its validity. That rule was sustained on more substantial grounds viz. that there never was any integration of the two services, that those services were dissimilar, that the Government was entitled to retain them as separate, that it was also entitled to make the provincialised service a diminishing cadre and not to keep up its existing strength in view of its decision that it had to vanish gradually leaving ultimately the State cadre in the field, and lastly, that if the number of selection posts in the provincialised cadre got reduced as time went by it was the direct result of the principle of that cadre being a diminishing one against which no objection on the ground of discrimination or unequal opportunity could be sustained. The minority differed from the majority view because of the assumption it started with that there was an integration of the services when the provincialised teachers were given the same pay and grades, the same kind of work and when teachers from both the services could be posted in either government or provincialised schools. With great respect to the learned Judges in the minority, the analysis made by us of the different rules, orders and memoranda clearly supports the majority view that the two services were not similarly situated, that there was no integration at any time and for the reasons given by us earlier they were kept separate as the other alternatives before Government were found neither just nor proper. We are of the view that the majority decision does not need reconsideration....."

20. The Supreme Court, in Zabar Singh (1972) 2 SCC 275, summed up the position as under :

".....To sum up the position, the two services were from as early as 1937 and before separate. At no stage, even after provincialisation was decided upon and the principles of its implementation were drawn up there was any integration of the two. In fact, after considering the alternatives which the Government had before it, it opted, on consideration of difficulties of integration, for the alternative of keeping the two separate. Since the State cadre had its own Rules of 1955, the Government decided in 1960 upon certain principles upon which Rules could be framed for the provincialised cadre. The real grievance of the provincialised teachers could be not that an integrated service was split into two by the Rules, but that the Rules did not combine the two. No principle under Article 14 or Article 16 is involved if such an integration was not brought about, for, considering the past history of the two services and the differences existing between them. The Government could not be required to fuse them into one upon any principle emanating from the two Articles. The decision to make the provincialised cadre a diminishing one, to implement which that cadre had to be closed at one end, aimed at seeing the provincialised cadre gradually vanish leaving approximately at the end of 30 years the State cadre alone in the field. There is nothing in either Article 14 or Article 16 under which the Government could be compelled to maintain that cadre in its original strength or make fresh appointments in that cadre. The logic of the Government decision to make the provincialised cadre a diminishing one was that as the posts in that cadre gradually diminished, the number of selection posts also diminished. The proportion of 85: 15, however, remained intact, and teachers in both the cadres according to their seniority continued to obtain their promotional chances. No injustice in this process could justifiably be claimed as when the posts in the provincialised cadre were larger in number, its members got a larger number of selection posts. The block system in Rule 3 was devised to implement the process of diminution in a phased manner. Whether the ratio of 11: 13 resulted from it or not is not material, for, once the principle of that cadre being a diminishing one is accepted as not violating the rule in Article 14 or Article 16, and so long as 15% remained untouched, the block system is no more than a method to further the process of diminution. The two services thus being a separate both before and after provincialisation and there being no complaint about dissimilar or arbitrary treatment among members of the provincialised cadre, it is difficult to appreciate the grievance of discrimination or the denial of equal opportunity. The conclusion on the reasons hereabove given is that no infringement of either of the two Articles is involved in this case....."

(emphasis supplied)

21. In *Zabar Singh* (1972) 2 SCC 275, the Supreme Court held that there could be two distinct cadres of teachers drawing the same scale of pay and doing the same kind of work, one a district cadre and the other a divisional cadre; even if the minimum qualification prescribed for appointment of teachers was the same, it was open to the State Government to keep the two services separate, if the other alternative before it was found neither just nor proper; and Articles 14 and

16 of the Constitution of India neither obligated the State Government to fuse two services into one, nor could it be compelled to integrate the two cadres despite their drawing the same scale of pay and discharging the same kind of work.

22. The Supreme Court, in Jagjit Singh (2017) 1 SCC 148, observed :

"..... All the judgments noticed in paragraphs 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of 'equal pay for equal work'. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them, were against the same post for which a higher pay-scale was being allowed, in other Government departments. Or alternatively, their duties and responsibilities were the same, as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of 'equal pay for equal work' was invoked and considered, it would be just and appropriate, to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of 'equal pay for equal work'. Our consideration, has led us to the following deductions:

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 [Orissa University of Agriculture & Technology case : (2003) 5 SCC 188; Union Territory Administration, Chandigarh v. Manju Mathur : (2011) 2 SCC 452; The Steel Authority of India Limited case : (2011) 11 SCC 122; and the National Aluminum Company Limited case : (2014) 6 SCC 756].

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 [Randhir Singh case : (1982) 1 SCC 618; and D.S. Nakara case (1983) 1 SCC 304].

The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (Randhir Singh case : (1982) 1 SCC 618). 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 (Federation of All India Customs and Central Excise Stenographers (Recognized) case : (1988) 3 SCC 91; Mewa Ram Kanojia case : (1989) 2 SCC 235, Grih Kalyan Kendra Workers' Union case :

(1991) 1 SCC 619 and the S.C. Chandra case : (2007) 8 SCC 279).

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' [Randhir Singh case : (1982) 1 SCC 618; State of Haryana v. Haryana Civil Secretariat Personal Staff Association : (2002) 6 SCC 72; and Hukum Chand Gupta case : (2012) 12 SCC 666]. Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

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. [Federation of All India Customs and Central Excise Stenographers (Recognized) case :(1988) 3 SCC 91; and State Bank of India case :(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' [State of U.P. v. J.P. Chaurasia : (1989) 1 SCC 121; and Grih Kalyan Kendra Workers' Union case : (1991) 1 SCC 619].

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 [Orissa University of Agriculture & Technology case : (2003) 5 SCC 188].

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 [State of U.P. v. J.P. Chaurasia : (1989) 1 SCC 121].

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. [Mewa Ram Kanojia case : (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.

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 [Union of India v. Pradip Kumar Dey : (2000) 8 SCC 580; and Hukum Chand Gupta case : (2012) 12 SCC 666].

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 [Harbans Lal case : (1989) 4 SCC 459]. Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity [Official Liquidator v. Dayanand : (2008) 10 SCC 1].

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. [State Bank of India case : (2002) 4 SCC 556].

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 [State of Haryana v. Haryana Civil Secretariat Personal Staff Association : (2002) 6 SCC 72].

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. [State of West Bengal v. West Bengal Minimum Wages Inspectors Association : (2010) 5 SCC 225].

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. [Union Territory Administration, Chandigarh v. Manju Mathur : (2011) 2 SCC 452].

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 Ors. working at the institutional/sub-

office level [Hukum Chand Gupta case : (2012) 12 SCC 666], when the duties are qualitatively dissimilar.

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. [Hukum Chand Gupta case : (2012) 12 SCC 666].

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 organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of 'equal pay for equal work' would not apply. [S.C. Chandra case : (2007) 8 SCC 279; and National Aluminum Company Limited case : (2014) 6 SCC 756].

23. The Supreme Court, thereafter, observed :

".....Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned Counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all

the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post....."

(emphasis supplied)

24. The law laid down by the Supreme Court, in *Jagjit Singh* (2017) 1 SCC 148, is that, in determining equality of functions and responsibilities under the principle of "equal pay for equal work", it was necessary to keep in mind that the duties of the two posts should be of equal sensitivity, and also qualitatively similar; for parity in pay-scales, under the principle of "equal pay for equal work", equation in the nature of duties, was of paramount importance; the "onus of proof", of parity in duties and responsibilities of the subject post with the reference post under the principle of "equal pay for equal work", lay on the person who claims it; he, who approaches the Court, has to establish that the subject post occupied by him, required him to discharge equal work of equal value as that of the reference post; the mere fact that the subject post, occupied by the claimant, is in a different department vis-à-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 the Government; the principle of "equal pay for equal work" applies to cases of unequal scales of pay, based on no classification or irrational classification; for equal pay, the employees concerned, with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity; and persons, performing the same/similar functions/duties and responsibilities, could also be placed in different pay-scales based on their qualifications etc.

25. After laying down these tests, the Supreme Court, in *Jagjit Singh* (2017) 1 SCC 148, held that, in the case before it, it was not difficult to record the factual position since it was fairly acknowledged that all the temporary employees, in the batch of appeals before it, were appointed against posts which were also available in the regular cadre/establishment; during the course of their employment, the temporary employees were being randomly deputed to discharge duties and responsibilities which, at some point in time, were assigned to regular employees; regular employees holding substantive posts were also posted to discharge the same work, which was assigned to temporary employees, from time to time; and there was, therefore, no room for any doubt that the duties and responsibilities discharged by the temporary employees, in the batch of appeals before it, were the same as were being discharged by regular employees.

26. In *The Bihar Secondary Teachers Struggle Committee, Munger Order in Civil Appeal No. 4862 of 2019 dated 10.05.2019*, an association of teachers called "Parivartankari Prarambhik Shikshak Sangh" approached the Patna High Court contending that Panchayat elementary teachers were entitled, under the principle

of "equal pay for equal work", to the same pay-scales which were being given to the teachers appointed under the State Government. The learned Single Judge dismissed the writ petition. Around this time, several other writ petitions were filed, being aggrieved by the differential treatment whereby the Niyojit Teachers were not given the same pay-scales and were differentially treated. Highlighting denial of the concept of "equal pay for equal work", these petitions challenged the validity of the relevant provisions of the 2006 Rules. It was contended before the Division Bench of the Patna High Court that both categories of teachers, i.e. Government Teachers and Niyojit Teachers, were imparting instructions in the same nationalized schools, and yet there was considerable difference in the emoluments paid to Niyojit Teachers; both categories of teachers were discharging the same responsibility and were teaching the same syllabus, and there was no difference in the performance of their duties and responsibilities; the distinction made between these two categories was completely unreasonable; and on the principle of "equal pay for equal work" Niyojit Teachers were entitled to the same salary, pay-scales and emoluments as were payable to Government Teachers in nationalised schools. The petitioners placed heavy reliance on the judgment of the Supreme Court, in Jagjit Singh (2017) 1 SCC 148, more particularly on paras 42 and 44 thereof. All the writ petitions were allowed by the Division Bench of the Patna High Court holding that there was no pleading that the Niyojit Teachers appointed after 2006 were, in any manner, inferior in qualification or training; and there was no material to suggest that they were discharging different duties and responsibilities in the same institution. The Division Bench held that the admitted position was that both categories of teachers were discharging similar duties of imparting instructions in the same schools, and were having necessary qualifications as were possessed by the teachers appointed before 2006. Placing reliance on the decisions of this Court in Jagjit Singh (2017) 1 SCC 148 and Jaipal and others Vs. State of Haryana and others AIR 1988 SC 1504, the Division Bench of the Patna High Court held that the action of the State, in denying the pay-scales to Niyojit Teachers, was arbitrary and unreasonable.

27. On the State of Bihar carrying the matter in appeal, and on an analysis of several earlier decisions, the Supreme Court, in The Bihar Secondary Teachers Struggle Committee, Munger & Others Order in Civil Appeal No. 4862 of 2019 dated 10.05.2019, accepted the following limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work':

- i) The doctrine of 'equal pay for equal work' is not an abstract doctrine.
- ii) The principle of 'equal pay for equal work' has no mechanical application in every case.
- iii) The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.
- iv) The application of the principle of 'equal pay for equal work' requires

consideration of various dimensions of a given job.

v) Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.

vi) Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.

vii) Equation of posts and salary is a complex matter which should be left to an expert body.

viii) Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.

ix) Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

x) In a given case, mode of selection may be considered as one of the factors which may make a difference.

28. The Supreme Court, thereafter, observed that the qualifications to the applicability of the doctrine of 'equal pay for equal work', which had long been recognised and acknowledged in several decisions, were well established; the decision in Jagjit Singh (2017) 1 SCC 148 again reiterated some of those qualifications; and these limitations or qualifications had not been diluted, but stood reinforced. Thereafter the Supreme Court took note of the submission, advanced on behalf of the State, that the decision in Jagjit Singh (2017) 1 SCC 148 did not take into account the earlier decisions of the Supreme Court in Joginder Singh AIR 1963 SC 913 and Zabar Singh (1972) 2 SCC 275. Justice Uday Umesh Lalit, speaking for the Bench, opined that, strictly speaking, those two matters did not involve the concept of 'equal pay for equal work'; and these cases pointed to the fact that the State could validly make a distinction or differentiation, and let a particular service or cadre be a dying or vanishing cadre, and keep making appointments in other service while maintaining distinct identities of both the services, even when the teachers coming from both the cadres were doing identical jobs.

29. Holding that the State was justified in relying on these two decisions, Justice U.U. Lalit further observed that the subsequent judgments had not noted the decisions of the Supreme Court in Joginder Singh AIR 1963 SC 913 and Zabar Singh (1972) 2 SCC 275; they would proceed on the basis that, even when the teachers from both the cadres were discharging similar duties and responsibilities, the decision of the State Government to maintain different identities of these two cadres was not objectionable, and there could be an INTER SE distinction between the two cadres; even where both the cadres were enjoying the same pay structure, the Supreme Court, in Joginder Singh AIR 1963

SC 913 and Zabar Singh (1972) 2 SCC 275, had not accepted the submission that the chances of promotion ought to be similar; if a pay structure was normally to be evolved keeping in mind factors, such as "method of recruitment" and "employer's capacity to pay", and if the limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work' admitted distinction on the ground of the process of recruitment, the stand of the State Government was not unreasonable or irrational; how best to use or utilise the resources, and what emphasis should be given to which factors, were all policy matters; in the light of the decisions of the Supreme Court in Joginder Singh AIR 1963 SC 913 and Zabar Singh (1972) 2 SCC 275, the State was justified in having two different streams or cadres; if by process of judicial intervention any directions were issued to make available the same salaries and emoluments to Niyojit Teachers, it would create tremendous imbalance and cause great strain on budgetary resources; and the modalities in which expert teachers could be found, whether by giving them better scales and/or by insisting on threshold ability which would be tested through examinations such as TET Examination, were for the Executive to consider.

30. In his concurring opinion, Justice A.M. Sapre, while placing reliance on the judgment of a three Judge Bench of the Supreme Court in N. Meera Rani Vs. Govt. of Tamil Nadu and another AIR 1989 SC 2027, observed that all subsequent decisions, which were cited, had to be read in the light of the Constitution Bench decisions, since they were decisions by Benches comprising of lesser number of Judges; none of the subsequent decisions could have intended taking a view contrary to that of the Constitution Bench; and the question involved in the appeals needed to be decided, in the light of the law laid down by two decisions of the Constitution Bench in Joginder Singh AIR 1963 SC 913 and Zabar Singh (1972) 2 SCC 275. The order of the Division Bench of the Patna High Court was set aside by the Supreme Court.

31. While Mr. Anil Kumar Bisht, learned Standing Counsel, may be justified in his submission that the learned Single Judge has not undertaken the exercise of factually determining, in the order under appeal, whether the respondents-writ petitioners, who seek payment of the minimum of the regular pay scales as are being extended to employees appointed in regular posts, are entitled for such benefits; we cannot also ignore the submission of Mr. Amar Murti Shukla, learned counsel for the respondents-writ petitioners, that the State Government had implemented the order, passed in Manwar Singh Rawat & Others Vs. State of Uttarakhand and others (Order in Writ Petition (S/S) No. 949 of 2017 and batch dated 12.05.2017), by issuing Government Order dated 08.10.2018; the petitioners in Manwar Singh Rawat were similarly situated as that of the respondents-writ petitioners herein; and some of them, holding the very same posts which are being held by the respondent-writ petitioners, were granted the benefit of the minimum of the regular pay scales.

32. This Court would not, in proceedings under Article 226 of the Constitution of

India, undertake a factual determination as to whether the functions discharged by the respondents-writ petitioners are identical or similar to those holding regular posts, as this exercise is required to be undertaken, in the first instance, by the authorities concerned. Consequently this Court would, ordinarily, not issue a mandamus directing the appellants to extend the benefit of the minimum of the regular pay scales to the respondents-writ petitioners. The appellant-State should, however, undertake such an exercise, and determine whether the respondents-writ petitioners herein satisfy the various tests laid down by the Supreme Court, in *Jagjit Singh* (2017) 1 SCC 148 and *The Bihar Secondary Teachers Struggle Committee, Munger* Order in Civil Appeal No. 4862 of 2019 dated 10.05.2019, to claim the benefit of being paid the minimum of the regular pay scales applicable to employees holding regular posts.

33. While considering the claim of the respondents-writ petitioners for being extended the minimum of the regular pay scales, the appellants-State shall also bear in mind that it had earlier issued Government Order dated 08.10.2018 extending the benefit of minimum of the regular pay scale to certain employees who were parties to Writ Petition (S/S) No. 949 of 2017 and batch dated 12.05.2017, which, according to Mr. Amar Murti Shukla, learned counsel for the respondents-writ petitioners, included employees working in similar posts, as those held by the respondents-writ petitioners, on a contractual/ad-hoc/casual/daily wage basis.

34. We consider it appropriate, in such circumstances, to modify the order passed by the learned Single Judge, and direct the appellants to consider the claim of the respondents-writ petitioners, in the light of the law declared by the Supreme Court in *Joginder Singh* AIR 1963 SC 913 *Zabar Singh* (1972) 2 SCC 275, *The Bihar Secondary Teachers Struggle Committee, Munger* Order in Civil Appeal No. 4862 of 2019 dated 10.05.2019, and *Jagjit Singh* (2017) 1 SCC 148, for being extended the minimum of the regular pay scales applicable to persons holding regular posts, bearing in mind the Government Order dated 08.10.2018 referred to hereinabove. The entire exercise, culminating in a decision being taken, and a reasoned order being passed, in this regard shall be completed at the earliest and, in any event, not later than four months from the date of production of a certified copy of this order.

35. Mr. Amar Murti Shukla, learned counsel for the respondents-writ petitioners, would submit that, since the appellants-State had failed to comply with the order passed by the learned Single Judge, the respondents-writ petitioners had initiated proceedings under the Contempt of Courts Act; the appellants-State had, thereafter, extended to the respondents-writ petitioners the minimum wages prescribed in terms of the notification; when the respondents-writ petitioners filed an application before the learned Single Judge contending that the order, extending to the respondents-writ petitioners minimum wages, amounted to criminal contempt, the appellants-State had extended to some of them the benefit of minimum of the regular pay scales applicable to regular

posts; and this benefit has not been extended to a few others as on date.

36. Suffice it, in such circumstances, to make it clear that such of the respondents-writ petitioners, to whom the minimum of the regular pay scales has already been extended, shall be continued to be extended the said benefit, till the appellant-State undertakes and completes the exercise, as directed hereinabove, of determining whether or not the respondents-writ petitioners are entitled to be extended the benefit of the minimum of the regular scales of pay.

37. With the aforesaid directions, all the Special Appeals are disposed of. However, in the circumstances, without costs.