

(2025) 05 SHI CK 1038
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 1720 Of 2020

Surender Verma

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 20-05-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 8 Rule 1, Order 8 Rule 10
Indian Penal Code, 1860 — Section 228
Limitation Act., 1963 — Article 116, 117
Limitation Act, 1963 — Section 5, 29(2)
Himachal Pradesh Cooperative Societies Act, 1968 — Section 49, 66, 67, 69, 73, 74, 93, 93(2), 94, 95
Himachal Pradesh Cooperative Societies Rules, 1971 — Rule 143

Citation : (2025) 05 SHI CK 1038

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Naresh K. Sharma, Surinder Saklani, Anup Rattan, Ramakant Sharma, Navlesh Verma, Sharmila Patial, Sushant Kaprate, Raj Negi

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. The instant petition has been filed for the following substantive reliefs: -

"i) Quash the impugned order dated 11.5.2015 (Annexure A-11, colly.) whereby the respondent department has rejected the claim of the petitioner for grant of pay scale of Rs. 5480-8925 to the applicant from the date of his initial appointment 28.5.1997 and further scale of Rs. 10300-34800 and Grade Pay of Rs. 3600 w.e.f. 0.01.2006 as is being given to Assistant Librarian working in the Education Department, being arbitrary, malafide and illegal;

ii) Direct the respondents to grant to the applicant a pay scale of Rs. 5480-8925 to the applicant from the date of his initial appointment 28.5.1997 and further

scale of Rs. 10300-34800 and Grade pay of Rs. 3600 w.e.f. 0.01.2006 as is being given to Assistant Librarian working in the Education Department with all other consequential benefits including arrears thereof alongwith interest thereon @ 18% p.a.”

2. Petitioner was appointed as Assistant Librarian in Rajiv Gandhi Government Post Graduate Ayurvedic College, Paprola (for short the 'College') on 20.5.1997 in the pay scale of Rs. 1200-2100

3. Petitioner is claiming pay scale of Rs. 5480-8925 from the initial date of appointment and Rs. 10300-34800+ 3600 Grade Pay (GP) w.e.f. 1.1.2006, seeking parity with the Assistant Librarians in the Education Department of the State.

4. Petitioner has detailed the sequence of events, which culminated in grant of above noted pay scales to the Assistant Librarians in the Education Department. It has been submitted that CWP Nos. 189/1979, 196/1981, 246/1981 and 116/1982 were filed by the Assistant Librarians of the Education Department in this Court claiming the pay scale of Rs. 300-600 w.e.f. 1.1.1966. The said petitions were allowed on 26.7.1993. However, the State Government did not implement the judgments for considerable time. Later, the benefit of judgments was given to few Senior Assistant Librarians only. Aggrieved against such acts and conduct of the State Government, CWP No. 6018 of 2008, titled Madan Lal Tomar Vs State of H.P. & others was filed in this Court. The said writ petition was disposed of vide judgment dated 22.3.2010 with direction to implement the judgment dated 26.7.1993 and thereafter, all the Assistant Librarians were held entitled to pay scale of Rs. 300-600 w.e.f. 1.11.1966. The LPA Nos. 237 of 2010 and 98 of 2011 were also dismissed on 22.11.2011. The judgment passed by this Court was also affirmed by the Hon'ble Supreme Court. Thereafter, the State Government implemented the judgment passed in CWP No. 6018 of 2008 and all the Assistant Librarians in the Education Department were allowed the pay scale of Rs. 5480-8925 w.e.f. 1.1.1996 and Rs. 10300-34800+ 3600 GP w.e.f. 1.1.2006.

5. Petitioner earlier also filed CWP No. 5082 of 2013 before this Court, seeking the same relief, as prayed in the instant petition. The said writ petition was disposed of on 15.10.2014 with direction to respondent No.1 to decide the representation of the petitioner. In compliance, the impugned order Annexure A-11 was passed by respondent No.3 and the representation of the petitioner was rejected by holding that the post of Assistant Librarian in Department of Ayurveda could not be equated with the same post in Education Department. The benefit of case of Madan Lal Tomar was also held not applicable in the case of the petitioner for the reason that in Education Department, there was one single cadre of Assistant Librarian and hence the equivalence was adjudged amongst equals only. It was also held that every department has its own R&P Rules and service conditions and for such reasons, the parity between the Assistant Librarians in Department of Ayurveda and Assistant Librarians working in

Education Department could not be drawn.

6. The petitioner has now filed the instant petition on the grounds that the petitioner was selected in the same process by which the Assistant Librarians in the Education Department are selected. The duties and functions discharged by the petitioner are more onerous than his counter parts in Education Department. The incumbent in both the departments holding the posts of Assistant Librarians are having the same educational qualification and identical conditions of service. The petitioner has also pressed into service principle of equal pay for equal work.

7. The respondents by way of their reply have defended the rejection order Annexure A-11 by stating that the service conditions and R&P Rules for the post of Assistant Librarians in Department of Ayurveda and Education Department were different. The petitioner was governed by the R&P Rules for the post of Assistant Librarians in Department of Ayurveda wherein the pay scale was Rs. 1200-2100 at the time of initial appointment of the petitioner, which was later revised to Rs. 4020-6200 and further revised to Rs. 5910-20200 + 2400 GP w.e.f. 1.1.2006. As per respondents, the petitioner was also not entitled to draw parity with his counter parts in Education Department because of difference in service conditions.

8. I have heard learned counsel for the parties and have also gone through the record carefully.

9. It is more than settled that parity of pay scale cannot be claimed on the sole ground of similarity in designation. For drawing parity between posts with same designations in different departments or organizations as also for attracting the doctrine of equal pay for equal work, there has to be quantified data as to nature of duties, recruitment and promotion rules, initial qualification and mode of selection etc. The principle finds reiteration in the matter LPA No. 11 of 2012 titled Principal Secretary Personnel Vs Partap Thakur decided by Hon'ble Division Bench of this Court vide judgment dated 22.9.2014 after noticing the legal position as under: -

"11. The Apex Court in Hukum Chand Gupta versus Director General, Indian Council of Agricultural Research and others, reported in (2012) 12 Supreme Court Cases 666, held as to how parity can be claimed or granted. It is apt to reproduce relevant portion of para 20 of the judgment herein:

20. There cannot be straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a writ court would

normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the writ court would lack the necessary expertise to undertake the complex exercise of equation of posts or the pay scales."

12. The Apex Court in another case titled as State of Madhya Pradesh and others versus Ramesh Chandra Bajpai, reported in (2009) 13 Supreme Court Cases 635, held that the Court has to consider factors like the source and mode of recruitment/appointment, qualifications, nature of work, value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. It is apt to reproduce para 15 of the judgment herein:

"15. In our view, the approach adopted by the learned Single Judge and the Division Bench is clearly erroneous. It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The court has to consider the factors like the source and mode of recruitment/ appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holds of two posts."

13. The Apex Court in the case titled as Steel Authority of India Limited and others versus Dibyendu Battacharya, reported in (2011) 11 Supreme Court Cases 122, has discussed the development of law and the judgments made by the Apex Court right from the year 1968, in paras 18 to 29 of the judgment herein:

30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the concerned posts. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.

31. The onus to establish the discrimination by the employer lies on the person claiming the parity of pay. The expert committee has to decide such issues, as the fixation of pay scales etc. falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible for administration i.e. service conditions etc., is found to be bonafide, reasonable, and on intelligible criteria which has a rational nexus of objective of differentiation, such

differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just or prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesale/ wholesome identity between the two posts they should not be treated as equivalent and the Court should avoid applying the principle of equal pay for equal work.

32.

33. By the impugned order, the respondent has not been granted the post in Grade E-1 but salary equivalent to that of Shri B.V. Prabhakar has been granted to the Respondent. The order itself is mutually inconsistent and contradictory. The representation of the respondent had been for waiving the criteria meaning thereby that the respondent sought a relaxation in the eligibility criteria for the post in Grade E-1. It is evident from the representation itself that the respondent never possessed the eligibility for the post of Grade E-1. The Law does not prohibit an employer to have different grade of posts in two different units owned by him. Every unit is an independent entity for the purpose of making recruitment of most of its employees. The respondent had not been appointed in centralised services of the company.

14. The Apex Court in Union Territory Administration, Chandigarh and others versus Manju Mathur and another, reported in (2011) 2 Supreme Court Cases 452, held that similarity of designation or nature or quantum of

15. The Apex Court in the case titled as State of Punjab & Anr. versus Surjit Singh & Ors., reported in 2009 AIR SCW 6759, has discussed the development of law right from the year 1960 till 2009. It is apt to reproduce para 30 of the judgment herein:

"30. Mr. Swarup may or may not be entirely correct in projecting three purported different views of this Court having regard to the accepted principle of law that ratio of a decision must be culled out from reading it in its entirety and not from a part thereof. It is no longer in doubt or dispute that grant of the benefit of the doctrine of 'equal pay for equal work' depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity."

16. It would also be profitable to reproduce para 13 of the judgment rendered by the Apex Court in New Delhi Municipal Council versus Pan Singh & Ors., reported in 2007 AIR SCW 1705, herein:

"13. They, thus, formed a class by themselves. A cut-off date having been fixed by the Tribunal, those who were thus not similarly situated, were to be treated to have formed a different class. They could not be treated alike with the others.

The High Court, unfortunately, has not considered this aspect of the matter.”

17. The Apex Court in a case titled as State of Haryana and others versus Charanjit Singh and others etc. etc., reported in AIR 2006 Supreme Court 161, held that the principle of 'equal pay for equal work' has no mechanical application in every case. It is apt to reproduce para 17 of the judgment herein:

“17. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. 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. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regards. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal.

Thus, before any direction can be issued by a Court, the Court must first see that

there are necessary averments and there is a proof. If the High Court, is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.”

18. A Division Bench of this Court in a case titled as Roshan Lal versus Hon'ble High Court of Himachal Pradesh and another, being CWP No. 873 of 1993, decided on 27th October, 1994, held that even if a post of one cadre is created in two departments and different pay scales are granted, that cannot be a ground to claim parity. In order to claim parity, the writ petitioners have to indicate that their jobs, duties, responsibilities and functions are similar. In this case, the Court has examined whether the post of Book Binder sanctioned in the High Court and Secretariat of the State Government and in other departments are entitled to same pay scale? No doubt, the post of Book Binder was created in all these departments, but it was held that it is for the writ petitioner to plead and prove that the factors are similar. This Court, after discussing all facts and factors, rejected the plea for grant of parity and the writ petition was dismissed. It is apt to reproduce relevant portion of the judgment herein:

“Having heard the learned counsel for the petitioner, we find no justification in the submission. It is too much of the employee of the High Court to claim that the High Court should be equated with the Printing and Stationery Department of the State Government. Even on the basis of job, there would be no similarity. The Printing and Stationery Department would have continuous and different varieties of work needing a different type of Book-Binder than the Book Binder in the High Court.”

10. Further, the jurisdiction of this Court to draw parity for the purpose of grant of pay scale to the employees of different departments having the same designation has also been elaborated in the judgment dated 28.9.2023, passed by this Court in CWPOA No. 1007 of 2019 along with connected matters, in following terms: -

“11. The scope of judicial review in the matters concerning grant of pay scales, its revision and related issues is well defined. The Court should interfere only when the administrative action is palpably unreasonable, unjustified and prejudicial to a section of employees. Reference in this regard can be made to the judgment passed by Hon'ble Supreme Court in Haryana State Minor Irrigation Tubewells Corporation and others Vs. G.S. Uppal and Others, (2008) 7 SCC 375, it has been held as under:-

“21. There is no dispute nor can there be any to the principle as settled in the above-cited decisions of this Court that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally

well-settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.”

12. Similarly, in *Shiba Kumar Dutta and Others Vs. Union of India and Others*, (1997) 3 SCC 545, Hon’ble Supreme Court has deprecated the practice adopted for invidious discrimination and denial of equal treatment by the employers to its employees.

13. Equally settled is the proposition that the decision as to fixation of pay and its revision vis-a-vis various categories of its employees is exclusive domain of the government. These are the matters to be decided by the experts and it is not for the Court to substitute its own opinion. Similarly in the cases of parity in pay scales on the basis of nature of duties and responsibilities, it has been repeatedly held that the expert job cannot be undertaken by the Court and in case of any challenge being made on the ground of disparity the burden of proof in establishing parity in pay scales and nature of duties as also responsibilities is on the person claiming such right.

14. In *Punjab State Power Corporation Limited Vs. Rajesh Kumar Jindal and Others*, (2019) 3 SCC 547, it has been held as under:-

“21. It is well settled that for considering the equation of posts and the issue of equivalence of posts, the following factors had been held to be determinative:-

(i) The nature and duties of a post;

(ii) The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;

(iii) The minimum qualifications, if any, prescribed for recruitment to the post; and

(iv) The salary of the post (vide *Union of India and Another v. P.K. Roy and Others*).

23. The burden of proof in establishing parity in pay scales and the nature of duties and responsibilities is on the person claiming such right. The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they are entitled to parity of pay scales. After referring to number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court, in *SAIL*, held as under:-

“22. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of “equal pay for equal work” as enshrined under Article 39(d) of the Constitution read with Article 14 thereof,

cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is only on the person claiming such right. (Vide U.P. State Sugar Corpn. Ltd. and Another v. Sant Raj Singh and Others (2006) 9 SCC 82, Union of India and Another v. Mahajabeen Akhtar (2008) 1 SCC 368, Union of India v. Dineshan K.K (2008) 1 SCC 586, Union of India and Others v. Hiranmoy Sen and Others (2008) 1 SCC 630, Official Liquidator v. Dayanand and Others (2008) 10 SCC 1, U.P. SEB and Another v. Aziz Ahmad (2009) 2 SCC 606 and State of M.P. and Others v. Ramesh Chandra Bajpai (2009) 13 SCC 635”).

31. Though the above arguments of the respondents appear to be attractive, when considered in the light of the well settled principles, we find no merit in the contention. Equation of posts and revision of pay scale is within the domain of the Government. The matter should be left to the discretion and expertise of the Pay Committee and the Government to take the decision on the scale of pay/revision of pay scale by considering the nature of duties and responsibilities. As pointed out earlier, the Pay Anomaly Committee has given elaborate reasons for revising the pay scales of the Head Clerks at Rs.2000-3500 and Internal Auditors at Rs.1800-3200. The conclusion arrived at by the experts/Pay Anomaly Committee are not susceptible to judicial review and the courts are not to interfere with the decision of the Government which is based on the opinion of the experts.”

15. In Punjab State Electricity Board and Another Vs. Thana Singh and Others, (2019) 4 SCC 113, Hon’ble Supreme Court has held that it is for the employer to classify its employees/posts on the basis of qualifications, duties and responsibilities of the posts concerned and to prescribe different pay scales accordingly. Article 14 of the Constitution of India, would get attracted only if there is discrimination between same set of employees not otherwise.

16. A Division Bench of this Court while deciding LPA No. 445 of 2012, vide its judgment dated 21.11.2016 after placing reliance on State of Punjab and Others Vs. Jagjit Singh and Others, Civil Appeal No. 213 of 2013, decided on 26.10.2016, have observed as under:-“27. However, the aforesaid submissions of the petitioners cannot be accepted in teeth of the ratio laid down by Hon’ble Supreme Court in Jagjit Singh’s case supra, wherein the Hon’ble Supreme Court has categorically held that ‘onus of proof’ of parity in the duties and responsibilities of the subject post with the reference post, under the principle of ‘equal pay & equal work’, lies on the person who claims it and it is for him to establish that the subject post occupied by him, requires him to discharge equal

work of equal value, as the reference post. For this purpose the employees concerned with whom equation as is sought should be performing work, which besides being functionally equal should be of same quality and sensitivity.

28. Further, in determining equality of functions and responsibilities, it would be necessary to keep in mind that the duties of the two posts should be of equal sensitivity and qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification and therefore, pay differentiation would be legitimate and permissible. Therefore, the person holding the same rank/designation but having dissimilar powers, duties and responsibilities can be placed in different scales of pay, and cannot claim the benefit of the principle of 'equal pay for equal work'.

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

17. In view of above exposition of law, the defence raised on behalf of the respondents that they have the prerogative and right to classify various categories of its employees for the purposes of grant of pay scales requires to be upheld. Noticeably, in the fact of the instant petitions, petitioners have not placed on record any quantifiable data to suggest that by application of requisite parameters, the post of Laboratory Attendant was equivalent to the post of Clerk or Junior Technician or any other category of employees for that matter".

11. In the facts of instant case, the petitioner has not provided any data or details which could have been considered by this Court in order to adjudicate the dispute raised by the petitioner. As noticed above, merely equivalence of designation is not sufficient to claim equivalence in pay scale.

12. In order to seek benefits of principle of equal pay for equal work again, the petitioner was required to justify his stand by producing the relevant data. It cannot be forgotten that the grant or withdrawal of pay scale to its employees is the sole prerogative of the State Government. The judicial review on this aspect is not permissible except in rare and exceptional cases to avoid gross injustice. The pay scales are settled by the experts by taking into consideration various relevant factors and this Court in exercise of writ jurisdiction cannot substitute the opinion of the experts save and except in cases, as noticed hereinabove.

13. Viewed from another angle, the petitioner cannot be held entitled to the reliefs, as he had accepted the appointment as Assistant Librarian in the Department of Ayurveda in the pay scale of Rs. 1200-2100. The R&P Rules for the post of Assistant Librarian in the Department of Ayurveda were in place. The petitioner accepted the offer of appointment knowing fully well the then existing R&P rules and the applicability of its provision to his service.

14. In light of above discussions, there is no merit in the petition and the same is accordingly dismissed. Pending applications, if any, stand disposed of.