

(2010) 12 MAD CK 0204

In the Madras High Court

Case No : W.A. No's. 1839 to 1842 of 2009, 450 to 457, 395 to 449, 740 to 753, 1655, 1679 to 1685, 1885 to 1897, 2248 to 2260 and 2292 to 2359 of 2010

T.A. Sugumaran

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 39
Industrial Disputes Act, 1947 — Section 18(1)

Citation : (2010) 12 MAD CK 0204

Hon'ble Judges : K.K. Sasidharan, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : T.V. Ramanujam, for T.V. Krishnamachari, in W.A. Nos. 450 to 457, 395 to 449, 740 to 753, 1679 to 1685 and 2292 to 2359 of 2010, K. Maheswaran, in W.A. Nos. 1885 to 1897 of 2010, Vijay Narayan for R. Pathiban, in W.A. Nos. 2248 to 2260 of 2010, G. Rajan, in W.A. Nos. 1839 to 1842 of 2009, for the Appellant; Malarvizhi Vijayakumar, Spl. Govt. Pleader for Respondent Nos. 1 and 2 in all W. As. and G. Thilakavathy, in W.A. Nos. 395 to 457/2010 and 1655/2010, for the Respondent

Final Decision : Allowed

Judgement

K.K.Sasidharan, J.—The legality and correctness of the claim made by a section of employees of various Sugar Mills for inclusion of their posts in the Common Cadre Service subsequent to the abolition of the Common Cadre and the rejection of the said claim by the Director of Sugar, is the question which arises for determination in this batch of writ appeals.

2. For the sake of convenience, the Petitioners, who have filed writ petitions claiming parity are hereinafter referred to as "the employees" and the contesting Respondents in those writ petitions as "Management".

The background summarised:

3. The employees were all working in various posts in category "C" Supervisory cadre in the Sugar Mills, both in the co-operative as well as in the Public Sector. Though, some of the posts in the "C" category Supervisory Cadre were included in the Common Cadre Service, the posts where these employees were working were not included in the Common Cadre. This made them to file writ petitions in the year 2007 claiming parity in pay scales. The writ petitions were disposed of with a direction to consider and dispose of the individual representations. Accordingly, the representations were considered by the Director of Sugar and they were rejected. Feeling aggrieved by the said orders of rejection, batch of writ petitions were filed.

4. Writ Petition Nos. 25895 of 2008 etc. batch came up for consideration before a learned Judge and the writ petitions were allowed directing the concerned Respondents to revise the pay scales of the Petitioners therein on par with the scale of pay of the erstwhile supervisory "C" cadre employees included in the Common Cadre. Another batch of writ petitions in W.P. No. 23428 of 2009 etc. batch came up before another learned Judge and those writ petitions were dismissed by holding that it was not possible to include the posts held by the Petitioners in the Common Cadre Service.

5. The Management as well as the concerned employees have come up in appeal challenging the order passed in the respective batch of writ petitions.

6. Before the learned Single Judge the writ Petitioners in the first batch contended that the Commissioner of Sugar was not empowered to choose the post for inclusion in the Common Cadre, out of the grades in Supervisory "C" and as such, all the posts in Supervisory "C" grade should be included in the Common Cadre. They have placed reliance on a judgment of the Division Bench dated 12 July 2007 in W.A. No. 4074 of 2004 (hereinafter referred to as "Chandra's case") in support of their contention that there was no basis for selecting few posts for inclusion in the Common Cadre and excluding other posts. The learned Single Judge was of the view that the opinion expressed by the Division Bench in Chandra's case in the judgment dated 12 July 2007 in W.A. No. 4074 of 2004 squarely applies to all the Supervisory "C" category employees like the Petitioners and non-inclusion of their posts would violate the equality clause as provided under attract Article 14 of the Constitution of India. Accordingly, the writ petitions were allowed. Feeling aggrieved the Government as well as Management have filed writ appeals.

7. The other batch of writ petitions came up for consideration before another learned Judge. The learned Judge was of the view that inclusion of particular posts in the Common Cadre was essentially a management function and in the absence of particulars furnished by the writ Petitioners regarding the nature of duty and the qualification for the posts in question, it was not possible to arrive at a conclusion that a discriminatory treatment was given to the writ Petitioners by not including their posts in the Common Cadre. Accordingly, the writ petitions were dismissed. Feeling aggrieved the employees are before us.

The rival arguments :

8. The submissions of the learned Senior Counsel on behalf of the employees are as follows:

(a) As per order in G.O. Ms. No. 866 dated 25 July, 1984, the Government have passed orders for creation of Common Cadre for second and third level officers working in Co-operative Sugar Mills including the Public Sector Sugar Mills. The Director of Sugar was asked to frame necessary Rules and Regulations for appointments and transfers. The Commissioner, as per his proceedings dated 16 October, 1984 framed regulations constituting Common Cadre and initially some of the posts were included. The subsequent proceedings dated 27 December, 1989 gives a clear indication that the original inclusion of some of the posts in the Common Cadre as per order dated 16 October, 1984 was only to begin with. The employees were expecting inclusion of their posts also in the Common Cadre and when they found that the Director was not taking steps to extend the common cadre, writ petitions were filed and ultimately, it resulted in passing the order of rejection by the Director of Sugar, on flimsy reasons.

(b) When the Government have taken a decision to form a Common Cadre, it was not open to the Director of Sugar to adopt a pick and choose policy. There was no rationale in taking few posts out of supervisory "C" grade and excluding the other posts from the purview of Common Cadre.

(c) The Government Order in G.O. Ms. No. 866 was issued u/s 119A of the Tamil Nadu Co-operative Societies Act. Therefore, the Director of Sugar was bound to implement the direction by including all the posts in Supervisory "C" Cadre as part of common cadre.

(d) Section 75(2) of the Tamil Nadu Co-operative Societies Act 1983 provides for constitution of a Common Cadre Service. So the creation of Common Cadre is now statutory in character.

(e) There was no delay and laches on the part of the employees in approaching the Court. Originally, only few posts were included under the Common Cadre as it was only a beginning. Subsequently, some of the other posts were also included as per proceedings dated 27 December, 1989. The said proceeding gives a clear indication that the notification as per order dated 16 October, 1984 was only a starting point and it was not final. It was a continuous cause of action as the employees were expecting their inclusion in the common cadre any time. Therefore, there was no delay in approaching the Court with a prayer to include their posts under the Common Cadre.

(f) Though there was a settlement u/s 18(1) of the Industrial Disputes Act, that would not preclude the employees from approaching the Court with a prayer to include their posts in the Common Cadre. The wage settlement was a general decision taken at the industry level and the employees have no other alternative than to sign the settlement.

(g) It is true that certain observations were made in the award passed in I.D. No. 48 of 2000. These employees were not parties to the said industrial dispute. Therefore, any finding given in the said dispute would not bind them.

(h) The Division Bench in Chandra's case clearly observed that all the posts in Supervisory "C" cadre are liable to be included in the Common Cadre. Therefore, the Commissioner of Sugar was not right in rejecting the contention on the ground that the facts in Chandra's case were entirely different.

9. The learned Senior Counsel for the Management would submit thus :

(a) The writ petitions filed by the employees are liable to be dismissed solely on the ground of delay and laches.

(b) The Government order was issued on 25 July, 1984 and it was followed by the proceedings of the Director of Sugar dated 16 October, 1984 wherein, certain posts included in Supervisory "C" were included in the Common Cadre and the other posts were excluded. Subsequently, by way of another proceedings dated 27 December, 1989, some of the other posts were also included. Even then, the posts held by these employees were not included. However, for the reasons best known, the employees have not raised their concern.

(c) The Common Cadre was ultimately abolished as per order dated 3 December 1997. It was only after such abolition, the employees have come up with a claim for inclusion of their posts in the Common Cadre, placing reliance on the judgment of the Division Bench in Chandra's case. Therefore, the writ petitions filed after a period of twenty five years from the date of constitution of the Common Cadre were clearly not maintainable.

(d) The orders impugned in these writ petitions were passed by the Director of Sugar on the basis of the representations submitted belatedly by the employees. Therefore, the lapsed claim would not get revived on account of passing orders in such belated representations.

(e) The employees were parties to the settlement u/s 18(1) of the Industrial Disputes Act. The original settlement was up to the year 2003 and there were subsequent settlements. The on going settlement would expire only by the end of 2010. So, the employees are not entitled for a different salary structure than the one agreed under the settlement.

(f) The judgment of the Division Bench in Chandra's case has nothing to do with the claim made by the employees. Chandra's case was decided on the peculiar facts of that case. The said employee was originally promoted to a post included in the Common Cadre and subsequently, she was demoted and it was only in such circumstances, the learned Single Judge interfered in the matter and it was ultimately upheld by the Division Bench. The Division Bench has not given any general observation in respect of all the posts in Supervisory "C" cadre, so as to justify the claim made by the employees for inclusion in the Common Cadre.

(g) Though the employees have claimed equal pay for equal work, they have not produced materials to substantiate their contention. In the absence of sufficient materials showing the qualification required for the particular posts and the nature of duties, it was not possible to arrive at a finding that the employees were not given equal pay vis-a-vis equal work.

10. The learned Counsel appearing for the Management in the other writ appeals adopted the arguments of the learned Senior Counsel for the management.

11. The learned Government Pleader has produced a chart showing the financial implication of the matter. According to the learned Government Pleader Sugar Mills are now in a bad shape and they are running with the financial support of the Government and in case the present claim is allowed, it would ruin the financial position of the Sugar Mills. She would further submit that the identification of posts were done in a rational manner and ultimately the very Common Cadre was abolished. Therefore, the employees were not justified in making a claim after such abolition.

The Issues :

12. The issues that this matter raises fall into two parts. First, there is a question regarding delay and laches. Secondly, the legality of the claim for inclusion in the Common Cadre, applying the doctrine, "Equal Pay for Equal Work".

Delay and laches :

13. The Learned Senior Counsel for the Management placed reliance on the judgment of the Supreme Court in Union of India (UOI) and Others Vs. M.K. Sarkar, in support of his contention that the stale or a dead issue cannot be revived by giving a representation and obtaining an order from the Court for consideration of such representation. The relevant paragraphs reads thus :

15 When a belated representation in regard to a "stale" or "dead" issue/ dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without

itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.

14. The Government of Tamil Nadu have taken a decision for creation of a Common Cadre for the posts above the level of Supervisory "C" grade in respect of employees working in Co-operative Sugar Mills and Public Sector Mills. The Government have also decided to effect transfer of officers in the second and third level from one organisation to another. The Director of Sugar was authorized to frame necessary Rules and Regulations for appointment and transfer of second and third level officers of the Co-operative Sugar Mills including the Public Sector Sugar Mills. The Director of Sugar as per his proceedings dated 16, October, 1984 evolved a Common Cadre System covering the Chief Officers, Deputy Chief Officers, Medical Officers, Office Managers and Labour Welfare Officers. There was an indication in the said proceedings that the Common Cadre System will be extended, if deemed fit to all or any of the other categories of employees of Sugar Mills in future. Subsequently some of the other categories of employees were also included in the Common Cadre System as per proceedings dated 27 December, 1989 on the file of Commissioner of Sugar. This Common Cadre System functioned till it was abolished by the Government as per order dated 3 December, 1997. However, a decision was taken by the Government to give pay protection to the employees, who were earlier brought under the Common Cadre System.

15. It is not the case of the employees that they were not aware of the Common Cadre System. None of the employees, who filed writ petitions later to include them in the Common Cadre raised their fingers against their non-inclusion at any point of time between 1984 to 2006. The Common Cadre System contains a provision for transfer of employees from one organisation to another organisation. These employees were interested in working in the very same establishment without the risk of transfer to another establishment. They also wanted to continue their service up to 60 years, inasmuch as the age of retirement in the case of employees in the Common Cadre was 58 years. These employees have enjoyed the benefit of 60 years of retirement and they continued in the very same organisation, without transfer. It was only in the year 2006 and that too after the decision of the Division Bench in Chandra's case the employees started filing representations claiming inclusion of their posts under the Common Cadre System.

16. The question is whether submitting such representations would enure to their benefit or otherwise a stale claim could be revived on account of such representations and the ultimate order passed by the authorities rejecting such representations.

17. Neither in the original proceedings dated 16 October 1984 nor in the subsequent proceedings dated 27 December 1989, the subject posts were

included in the Common Cadre. It was only after a period of about twenty three years from the initial constitution of Common Cadre that they have taken up the issue with the Commissioner of Sugar which resulted in the rejection of their claim. Therefore, the learned Senior Counsel for the Management was perfectly justified in his contention that the writ petitions should have been dismissed solely on the ground of delay and laches.

18. The employees have sat on the fence and allowed the Commissioner of Sugar to notify the posts under the Common Cadre System and ultimately in its withdrawal and then to claim the benefits of the Common Cadre on the grounds which were available to them when the cadre was constituted, would amount to giving premium for such delay.

19. Though the management has taken up a preliminary objection regarding maintainability of the writ petition against Co-operative Societies, we are not inclined to consider the said issue in these appeals, The writ petitions were heard on merits by the learned Judges and ultimately first batch of writ petitions were allowed and the other batch of writ petitions were dismissed. Therefore, we are of the view that the writ appeals should be heard on merits.

20. The authorities have selected few posts out of the Supervisory Cadre and those posts were included in the Common Cadre Service. The proceedings dated 27 December 1989 on the file of the Commissioner of Sugar shows that the matter was examined by the authorities and it has been decided to include some of the categories of employees under the Common Cadre System. The employees have not produced any materials to substantiate their contention that they were doing similar work like that of the other employees of Supervisory "C" included in the Common Cadre System. The factors which weighed with the authorities to identify the categories of posts in the Common Cadre System cannot be examined after a period of about twenty five years and that too after the abolition of the very system itself.

21. The learned Counsel for the employees placed heavy reliance on Section 75(2) of the Tamil Nadu Co-operative Societies Act, 1983 providing for constitution of a Common Cadre of service. The said provision would not come to the help of the employees. Sub-section (2) of Section 75 provides that if any such Common Cadre of service is constituted in respect of any post, all the employees holding such posts on the date of constitution of such Common Cadre of service shall be deemed to have been absorbed in the Common Cadre of service with effect on and from the date of constitution of such Common Cadre of service.

22. Admittedly the posts held by the present employees were not included in the Common Cadre. These employees cannot justify their claim on the basis of a deeming provision in the absence of inclusion of such posts in the Common Cadre.

23. The genesis of the claim was the judgment of the Division Bench in

Chandra's case. In fact, claims were made only after the decision of the Division Bench in Chandra's case.

24. We have perused the order passed by the learned Single Judge as well the Division Bench in Chandra's case. The said case was decided on the peculiar facts of that case Tmt. Chandra was promoted to the post of Assistant Engineer (Mechanical) from the post of Draughtsman. Subsequently, she was demoted. The learned Single Judge as well as the Division Bench found that the post of Assistant Engineer (Mechanical) was included in the Common Cadre. Once the employee was promoted to a Common Cadre post, it was not open to the management to demote her to a post which was not part of the Common Cadre. It was only in that peculiar factual context, the Division Bench has made an observation with regard to Common Cadre. The said observation cannot be taken in a general manner for the purpose of contending that the very benefits of Chandra's case would accrue to the employees working in non-cadre. The correctness of the decision taken to include various posts in the Common Cadre Service, with reference to the nature of duties, qualifications, pay scale, etc. were not the subject matter in Chandra's case. Therefore, the learned Single Judge was not justified in allowing the writ petitions on the basis of Chandra's case.

Wage settlement:

25. There was a settlement arrived at between the employer and the workmen u/s 18(1) of the Industrial Disputes Act. The wages as well as other benefits payable to the workmen were settled in the said wage settlement. The initial settlement was up to the year 2003 and subsequently there was another settlement and the same would be in force till the end of 2010. Though the employees have given an undertaking to abide by the settlement, they have not disclosed the factum of such settlement in the writ petitions. When there is a binding settlement entered into between the management and the workmen, it was not open to them to claim a different pay scale during the currency of the settlement. The employees were also given other benefits besides revision of pay. They have also enjoyed the benefits of higher retirement age. Therefore, it was not open to them to claim different salary structure other than the one agreed to in the settlement. In short, the settlement made u/s 18(1) precludes the employees from claiming a different wage structure during the currency of the settlement.

26. The learned Senior Counsel for the employees placed reliance on a judgment of a Division Bench in T.N.V.K.V.V.S.A.P. Madya Sangam v. Dy. Registrar of Co-op. Socy. (2008(2) LLN 236). This judgment was cited to show that the settlement would be bad in case it contravenes the directions issued by the Registrar. The facts of the case in Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam is entirely different. In the said case, the Registrar has issued directions to cancel all the wage settlements arrived at between the societies and the employees. However, it was found that the

individual societies, instead of adhering to the directions issued by the Registrar u/s 181 of the Co-operative Societies Act, were entering into various settlements with their employees, under the provisions of the Industrial Disputes Act thereby violating the statutory directions issued by the Registrar. It was only in such circumstances, the Division Bench observed that the Registrar was well within his powers to issue the directions and any wage settlement made disregarding such settlement, would be a nullity.

27. In the present case the post occupied by the employees were not brought under the purview of Common Cadre. The direction issued by the Government does not contain the details of individual posts. The said task was entrusted to the Director of Sugar. The Director of Sugar notified certain posts and those posts alone were brought under the purview of the Common Cadre System. The other employees were free to enter into settlement with the management u/s 18(1) of the Industrial Disputes Act. Therefore, there was no conflict between the direction issued by the Registrar and the wage settlement arrived at u/s 18(1) of the Industrial Disputes Act for attracting the ratio of the judgment of the Division Bench cited supra.

28. The other incidental issue is as to whether the claim of this nature can be made after the abolition of the Common Cadre. Admittedly, the Common Cadre System was abolished as per order dated 3 December 1997. It was only the pay protection given to the erstwhile employees under the Common Cadre, which made these employees to make a claim for inclusion in the Common Cadre, knowing fully well that the Common Cadre itself was abolished. Therefore, their intention was only to get the benefits of the Common Cadre without the risk of transfer to the other Societies as done in respect of the employees in the Common Cadre. Some of these employees have already enjoyed the benefits of the retirement age at 60 years, even though it was 58 years in the case of employees under the Common Cadre. Therefore, these employees wanted both the benefits of Common Cadre as well as regular cadre. In fact, they were sitting on the fence. Therefore, the very fact that the Common Cadre itself was abolished on 3 December, 1997 would stand in the way of these employees claiming benefits under the Common Cadre. There is no question of including these posts in the Common Cadre after abolishing the very cadre. Therefore, on that ground also no relief could be granted to the employees.

29. The learned Senior Counsel for the management contended that the writ petitions are not maintainable in view of the existence of alternative remedy. According to the learned Senior Counsel, the employees should have agitated the issue before the forum created under the Industrial Disputes Act. The learned Counsel also placed reliance on the judgment of the Supreme Court in U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, wherein it was indicated that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

We are not deciding the said issue in view of the finding recorded by the writ Court on merits.

30. The learned Senior Counsel for the employees by placing reliance on the judgment of the Supreme Court in Union of India (UOI) and Others Vs. Dineshan K.K., contended that Judicial Review is not altogether excluded in the matter of consideration of the question of equal pay for equal work. However in the said judgment, the Supreme Court has very clearly indicated that the applicability of this principle is left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that necessary material is available on record.

31. The learned Senior Counsel for the Management placed reliance on the judgment of the Supreme Court in State of U.P. v. J.P. Chaurasia, (1989) 1 SCC to show that pay fixation is essentially an executive function. The relevant paragraph reads thus :

18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

Doctrine of Equal Pay for Equal Work:

32. The Supreme Court in State of West Bengal and Another Vs. West Bengal Minimum Wages Inspectors Association and Others, , indicated that the Principle of equal pay for equal work is not a fundamental right but a constitutional goal and it depends on various factors. The Supreme Court said :

15. The principles relating to granting higher scale of pay on the basis of equal pay for equal work are well settled. The evaluation of duties and responsibilities of different posts and determination of the Pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts. The principle "equal pay for equal work" is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the

jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment etc. Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees. The burden to prove disparity is on the employees claiming parity.

33. The Supreme Court in *State of Haryana and Others Vs. Charanjit Singh and Others*, etc. etc., , considered the doctrine of equal pay for equal work extensively. The relevant paragraph reads thus :

19. ... 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 the 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 make 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 regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal.

34. In *T. Venkateswarulu Vs. Executive Officer, Tirumala Tirupathi Devasthanams and Others*, , the Supreme Court held that equation/equivalence of posts is an executive function and is done by expert bodies and Courts do not generally interfere in the task of job evaluation unless there is cogent material showing grave error and exercise of Court's jurisdiction is absolutely necessary to undo injustice. The Supreme Court observed :

25. It is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts do not enter upon the task of job evaluation which is generally left to expert bodies as several factors have to be kept in view while evolving a pay structure. Being a complex matter, the court will interfere only if there is cogent material on record to come to a firm conclusion that a grave error has crept in such an exercise and court's interference is absolutely necessary to undo the injustice being caused.

35. The issue regarding claim of parity of pay was considered by the Supreme Court once again recently in *Steel Authority of India v. Dibyendu Bhattacharya* 2010(11) SCALE 647. The legal position was reiterated thus :

16. 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 person claiming such right. (Vide *U.P. State Sugar Corpn. Ltd. and Another Vs. Sant Raj Singh and Others*, ; *Union of India (UOI) and Another Vs. Mahajabeen Akhtar*, ; *Union of India (UOI) and Others Vs. Dineshan K.K.*, ; *Union of India (UOI) and Others Vs. Hiranmoy Sen and Others*, ; *Official Liquidator Vs. Dayanand and Others*, ; *U.P. State Electricity Board and Another Vs. Aziz Ahmad*, ; and *State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai*,).

24. It is a settled legal proposition that it is not always impermissible to provide two different pay-scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority. (Vide *J.P. Chaurasia (Supra)* and *Meva Ram Kanojia (Supra)*).

26. 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. 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 2010 STPL 934 Steel Authority of India Ltd. v. Dibyendu Bhattacharya Supreme Court Judgments @ www.stpl-india.in not be treated as equivalent and the Court should avoid applying the principle of equal pay for equal work.

36. The background facts as narrated above would show that these employees have approached this Court with a stale claim after a period of about twenty five years and that too, after the abolition of the Common Cadre System.

37. The Common Cadre System had its own advantages and disadvantages. The posts included in the Common Cadre System were made transferrable from one organisation to another. Therefore, the employees under the Common Cadre System were liable to be transferred to another organisation situated elsewhere. They have to retire at the age of 58 years. It was only on account of all these factors better pay structure was given to the employees under the Common Cadre System. By making the claim after the abolition of the Common Cadre, these employees wanted only to enjoy the benefits of the system. In any case, no such claim could be made ten years after abolishing the Common Cadre Service.

Disposition:

38. For the reasons set out above, the learned Judge was wrong to quash the orders impugned in the first batch of writ petitions. It follows that we agree that

the learned Single Judge was correct in dismissing the second batch of writ petitions.

39. In the upshot, we allow all the writ appeals challenging the directions given by the learned Judge to include the subject posts in the Common Cadre Service. We would dismiss the second batch of appeals confirming the dismissal of the writ petitions. Consequently, the connected Mps are closed. No costs.