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UNION TERRITORY, CHANDIGARH

v.

KRISHAN BHANDARI

OCTOBER 31, 1996

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[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

*Service Law :*

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*Union Territory of Chandigarh Employees Rules, 1966: Rule 2 Second proviso. Equal pay for equal work—Science Supervisor in the Institute of Education, Union Territory—Pay scale of—Lower than that of District Science Supervisor in State prior to pay revision notification—Parity in pay scale—Held: not entitled to same pay scale as given to District Science Supervisor as second proviso to R.2 did not apply to such a case. Equal pay for equal work—Equivalence of two posts for purpose of—Held: Onus to prove lay on employee not on employer.*

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*Equal pay for equal work—Equivalence of two posts for purpose of—Held: post of Science Supervisor in the Institute of Education, Union Territory not equivalent to post of District Science Supervisor in State.*

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*Appointment—Nature of—Science Master appointed on temporary basis in Union Territory in his own pay scale—Later on confirmed in former post and his name shown in gradation list for Masters—Held: In such circumstances, his appointment to post of Science Supervisor not substantive—Hence, could not claim salary higher than that of Science Master.*

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*Equal pay for equal work—Applicability of principle of—Held: not applicable when discrimination was between acts of two different authorities functioning as State under Article 12—Constitution of India, 1950 Arts. 12, 14, 16 and 39(d).*

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**The respondent was appointed as Science Master on temporary basis. At that time the respondent was having the qualifications of B.Sc. (III Class) and B.Ed. In connection with the implemenatation of UNICEF Aided Science Education Programme on temporary post of Science Supervisor was created. The respondent was transferred as**

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**Science Supervisor in his own pay scale in the State Institute of**

Education, Union Territory against the newly created post under UNICEF Scheme. The respondent was subsequently confirmed on the post of Science Master. A

In the State there existed the Class III post of District Science Supervisor. The pay scale of the said post was higher than that prescribed for the post of Science Master. Ever since his transfer on the post of Science Supervisor the respondent had been drawing pay as per the pay scale prescribed for the post of Science Master. The respondent filed an application before the Central Administrative Tribunal claiming for the scale of pay fixed for the post of District Science Master. B C

The case of the respondent was that he was performing the same duties which were performed by a District Science Supervisor in the State and that the scales of State Government employees had been adopted by the Administration of the Union Territory and that the action of the Administration in not granting to him the revised pay scale as was given to the District Science Supervisor in the State was wholly discriminatory. D

The case of the appellants was that there was no post of District Science Supervisor under the Administration and that the post of District Science Supervisor in the State was a Class II post and the qualification required for the post of District Science Supervisor in the State was M.Sc. (Second class) and the duties of the said post were different from the duties of the post of Science Supervisor in the Union Territory. Moreover, the respondent was actually holding the post of Science Master and had been placed at serial No. 114 in the seniority list for the Science Masters and he was only transferred to the post of Science Supervisor in his own pay scale. E F

The Tribunal allowed the application on the ground that the appellants had not produced any rules or instructions to prove that the qualification prescribed for the post of District Science Supervisor was M.Sc. (Second Class) and that there was no justification in refusing equal pay for equal work to the respondent. Being aggrieved the appellants preferred the present appeal. G

On behalf of the appellants it was contended that the principle of 'equal pay for equal' work could be applied only where there was H

**A** discrimination in the pay scales of two equivalent posts under the same employer and that the said principle had no application in the case of posts held under different employers.

**B** On behalf of the respondent it was contended that the respondent was entitled to the same pay scales as applicable in the State vide Rule 2 of the Union Territory of Chandigarh Employees Rules, 1966; and that the respondent was selected for the post of Science Supervisor and, therefore, he must be treated as having been substantively appointed to the said post of Science Supervisor.

**C** Allowing the appeal, this Court

**D** HELD : 1. The second proviso to Rule 2 of the Union Territory of Chandigarh Employees Rules, 1966 cannot apply to the case of the respondent because it deals with persons appointed to services and posts under the administrative control of the Administration of the Union Territory, who are drawing pay at the rates admissible to corresponding categories of employees of the State Government. The respondent was not such a person because the post of Science Supervisor in the Union Territory was not having the same pay scale as that of the District Science Supervisors in the State prior to the notification issued by the State Government. That was the reason why in the notification that was issued by the Union Territory there was no revision of pay scale for the post of Science Supervisor on the basis of the revision of pay scale for the post of District Science Supervisor in the State. The respondent cannot, therefore, claim the same pay scale as that of District Science Supervisors on the basis of Rule 2 of the Union Territory Chandigarh Employees Rules, 1966. [277 GH, 278 A,B]

**F** 2.1. Since the respondent has claimed that the post of District Science Supervisor in the State is at par with the post of Science Supervisor held by him in the Union Territory, it was for the respondent to produce the necessary material to show that the qualification prescribed for the two posts is the same. He has not produced any material in this regard. The Tribunal was in error in proceeding on the basis that it was for the appellants to show that the qualification prescribed for the post of District Science Supervisor is higher viz., M.Sc. (Second Class) and since the appellant had failed to produce any material to show that the qualification prescribed for the post of District Science Supervisor is M.Sc. (Second Class), the

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two posts should be treated as equivalent posts. [278 C-E]

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2.2. Even though the post of Science Supervisor, on which the respondent has been working, was created in connection with the implementation of the UNICEF Aided Science Education Programme, the said post cannot be treated at par with the post of District Science Supervisor in the State. The post of District Science Supervisor in the State is a Class II post governed by the Punjab Educational Services (Class II) Rules. [278 C,D]

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2.3. Since the appointment of the respondent on the post of Science Supervisor was by way of transfer on his own pay shows that the post of Science Supervisor on which the respondent was appointed was not a post higher than the post of Science Master but was an equivalent post. There was, therefore, no question of making any selection for making appointment on the said post. The case of the respondent in this regard is negatived by the fact that after his appointment as Science Supervisor the respondent continued to be borne in the cadre of Science Master and was confirmed on the said post and his name is shown in the Gradation List for Masters. It cannot, therefore, be held that while working as Science Supervisor the respondent is substantively holding the post of Science Master; and he cannot claim salary higher than that of Science Master which is being paid to him. [279 D-F]

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3. The principle of equal pay for equal work is a facet of the principle of equality in the matter of employment guaranteed under Articles 14 and 16 of the Constitution of India. The right to equality can only be claimed when there is discrimination by the State between two persons who are similarly situated. The said principle cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12 of the Constitution. [276 EF]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3976 of 1996.

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From the Judgment and Order dated 17.8.94 of the Central Administrative Tribunal Chandigarh in O.A.No.490 of 1987.

K. Madhava Reddy and Ms. Kamini Jaiswal for the Appellant.

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A Jagdish Singh Khehar and Ashok K. Mahajan for the Respondent.

The Judgment of the Court was delivered by

B **S.C. AGRAWAL, J.** This appeal by special leave has been filed against the judgment of the Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'the Tribunal') dated August 17, 1994 in O.A.No.490/CH/1987 filed by the respondent. By the said judgment the Tribunal, invoking the principle of 'equal pay for equal work' has held that the respondent, who is working as Science Supervisor in the Union Territory of Chandigarh is entitled to be placed on the scale of Rs. 1200-1700, the pay scale for the post of District Science Supervisors, in the C State of Punjab.

The respondent was appointed as Science Master on temporary basis by order dated August 21, 1973. At that time the respondent was having the qualifications of B.Sc. (III Class) and B.Ed. In connection with the implementation of UNICEF Aided Science Education Programme one D Temporary post of Science Supervisor was created by order dated September 1, 1973 in the scale of Rs. 200-500. By order dated November 29, 1973 the respondent was transferred as Science Supervisor in his own pay scale in the State Institute of Education, Chandigarh Administration against the newly created post under UNICEF Scheme. The respondent E has continued to hold the said post of Science Supervisor. In the meanwhile, by order October 6, 1976, he was confirmed on the post of Science Master in the scale of Rs. 220-500 with effect from July 31, 1975. In 1980, the pay scale for the post of Science Master was revised from Rs. 220-500 to Rs. 620-1200 with effect from January 1, 1978. Subsequently the said pay scale has been revised to Rs. 1640-2925 with effect from July 1, 1986.

F In the State of Punjab there exists the Class II post of District Science Supervisor. Initially, the said post was in the pay scale of Rs. 700-1100. By notification dated February 2, 1980, the pay scale of the said post was revised to Rs. 1200-1700 with effect from July 1, 1976. Thereafter, the said pay scale has been revised to Rs. 2400-4000 with effect from July 1, G 1986.

Ever since his transfer on the post of Science Supervisor by order dated November 29, 1973 the respondent has been drawing pay as per the pay scale prescribed for the post of Science Master. In 1987 the respondent H moved the Tribunal by filing O.A. No. 490/CH/1987, wherein he claimed

for salary in the pay scale of Rs. 700-1100 from the date of his appointment as Science Supervisor and in the scale of Rs. 1200-1700 from the date the said pay scale was revised by the Government of Punjab. The case of the respondent was that he is performing the same duties which are performed by a District Science Supervisor in the State of Punjab and that the scales of Punjab Government employees as revised from time to time have been adopted by the Administration of the Union Territory of Chandigarh and that the action of the Chandigarh Administration in not granting to him the revised pay scale as is given to the District Science Supervisors in the State of Punjab is wholly discriminatory. The said application filed by the respondent was contested by the appellants on the ground that there is no post of District Science Supervisor under the Chandigarh Administration and that the post of District Science Supervisor in the State of Punjab is a Class II post and the qualification required for the post of District Science Supervisor in the State of Punjab is M.Sc. (Second class) in Physics or Chemistry or Botany or Zoology and the duties of the said post are different from the duties of the post of Science Supervisor in the Union Territory of Chandigarh in as much as District Science Supervisor in Punjab perform the duties of checking the Science Laboratories in Middle Schools as also High and Senior Secondary Schools while Science Supervisor in Union Territory of Chandigarh has to perform the duty of checking the Laboratory work in Primary Schools only and the said post is only a Class III post. It was also stated that the respondent is actually holding the post of Science Master and has been placed at serial No. 114 in the seniority list for the Science Masters and he was only transferred to the post of Science Supervisor in his own pay scale.

The Tribunal has held that the respondent was appointed as Science Supervisor after being interviewed by a duly constituted Selection Committee and the fact that he was asked to work in his own pay scale would not be sufficient to hold that the respondent continued to be borne on the cadre of Science Master. The Tribunal has observed that the Science Supervisors both in the State of Punjab and Union Territory of Chandigarh have been appointed under a scheme framed and implemented jointly by the UNICEF and NCERT and that in a number of letters from the Central Co-ordinator of NCERT to the Education Secretary, Government of Union Territory, Chandigarh, the post of Science Supervisor has been described as District Science Supervisor. The Tribunal has also stated that since there are no separate districts in the Union Territory of Chandigarh, the post of Science Supervisor has not been described as District Science Supervisor. As regards the qualification for the post of District Science Supervisor in the State of Punjab being different from the qualification

- A required for the post of Science Supervisor in the Union Territory of Chandigarh, the Tribunal has held that no document had been placed on record by the appellants which could support the view that the District Science Supervisors in the State of Punjab were required to hold the basic qualification of M.Sc. (Second Class) in Physics or Chemistry or Botany or Zoology before they were duly appointed and in the absence of any
- B such rules or instructions, there could be no justification in refusing equal pay for equal work to the respondent.

- C Shri K. Madhva Reddy, the learned senior counsel appearing for the appellants, has submitted that the Tribunal was in error in applying the principle of 'equal pay for equal work' in the facts of the present case. It has been urged that the post of District Science Supervisor in the State of Punjab is not comparable with the post of Science Supervisor held by the respondent inasmuch as the respondent was in the cadre of Science Master which is a Class III post while the post of District Science Supervisor in the State of Punjab is a Class II post. It has also been urged that the
- D principle of 'equal pay for equal work' can be applied only in cases where there is discrimination in the matter of fixation of pay scales in respect of two equivalent posts under the same employer, and that the said principle can have no application to claim parity in pay between posts held under different employers.

- E We find considerable force in the said submissions of Shri Reddy. The principle of 'equal pay for equal work' is a facet of the principle of equality in the matter of employment guaranteed under Articles 14 and 16 of the Constitution of India. The right to equality can only be claimed when there is discrimination by the State between two persons who are similarly situate. The said principle cannot be invoked in cases where
- F discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12 of the Constitution. Shri Jagdish Singh Khehar, the learned senior counsel appearing for the respondent, does not dispute this proposition. He has, however, submitted that since the Union Territory of Chandigarh has adopted the same pay scales as those applicable in the state of Punjab, the respondent is justified
- G in claiming the same pay scale as is given to District Science Supervisors in the State of Punjab. In this context, the learned counsel has invited our attention to the provisions of Rule 2 of the Union Territory of Chandigarh Employees Rules, 1966 which prescribes as follows:-

- H "Rule 2. Condition of Service of persons appointed to the

Central Civil Services and posts under the Administrative Control of certain Administration. A'

The conditions of services of persons appointed to the Central Civil Services and posts Class I, Class II, Class III and Class IV under the Union Territory of Chandigarh shall, subject to any other provision made by the President, be the same as the conditions of service of persons appointed to other corresponding Central Civil Services and posts be governed by the same rules and orders as are for the time being applicable to the latter category of persons; B

Provided that the scales of pay and dearness and other allowances granted to such employees, shall until any other provision is made in this behalf, continue to be governed by the orders in force immediately before the commencement of these rules; C

Provided further that in the case of persons appointed to services and posts under the Administrative Control of the Administrator, Chandigarh, if they are drawing pay at the rates admissible to corresponding categories of employees of the Government of Punjab, it shall be competent for the Administrator to revise their scales of pay from time to time so as to bring them on par with the scales of pay which may be sanctioned by the Government of Punjab from time to time for the corresponding categories of employees." D E

It is urged that since the pay scale in the State of Punjab has been revised by notification dated February 22, 1980 and similar revision has been made in the Union Territory, Chandigarh by notification dated May 16, 1980, the respondent is entitled to revised pay scale for the post of District Science Supervisor. We find no substance in this contention. Rule 2 referred to above cannot be invoked in the present case. Neither the main part of Rule 2 nor the first proviso have any application to the case of the respondent. The second proviso also cannot apply because it deals with persons appointed to services and posts under the administrative control of Administrator, Chandigarh, who are drawing pay at the rates admissible to corresponding categories of employees of the Government of Punjab. The respondent was not such a person because the post of Science Supervisor in the Union Territory of Chandigarh was not having the same pay scale as F G H



- A** that of the District Science Supervisors in the State of Punjab prior to notification dated February 22, 1980 issued by the Government of Punjab. That was the reason why in notification dated May 16, 1980 that was issued by the Union Territory of Chandigarh there was no revision of pay scale for the post of Science Supervisor on the basis of the revision of pay scale for the post District Science Supervisor in the State of Punjab. The
- B** respondent cannot, therefore, claim the same pay scale as that of District Science Supervisors on the basis of Rule 2 of the Union Territory Chandigarh Employees Rules, 1966.

- Even though the post of Science Supervisor, on which the respondent has been working, was created in connection with the implementation of
- C** the UNICEF Aided Science Education Programme, the said post cannot be treated at par with the post of District Science Supervisor in the State of Punjab. The post of District Science Supervisor in the State of Punjab is a Class II post governed by the Punjab Education Services (Class II) Rules. Since the respondent has claimed that the post of District Science Supervisor in the State of Punjab is at par with the post of Science Supervisor
- D** held by him in the Union Territory of Chandigarh, it was for the respondent to produce the necessary material to show that the qualification prescribed for the two posts is the same is on his part. He has not produced any material in this regard. The Tribunal was in error in proceeding on the basis that it was for the appellants to show that the qualification prescribed
- E** for the post of District Science Supervisor is higher viz., M.Sc. (Second Class) and since the appellant had failed to produce any material to show that the qualification prescribed for the post of District Science Supervisor is M.Sc. (Second Class), the two posts should be treated as equivalent posts.

- F** In so far as the respondent is concerned, it is fully established from the records that he was holding the post of Science Master on temporary basis on November 29, 1973, when he was transferred to the post of Science Supervisor and in the order of transfer it is expressly directed that he would continue in his own pay scale. i.e., the scale of Science Master.
- G** After his appointment on the post of Science Supervisor, the respondent continued to be borne in the cadre of Science Master and he was confirmed on the post of Science Master by order dated October 6, 1976 with effect from July 31, 1975. In the Provisional Gradation List of Masters/Mistresses recruited by the Education Department, Chandigarh Administration as it stood on January 1, 1986, the respondent is placed at serial No. 114. This
- H** would show that inspite of his working on the post of Science Supervisor

since 1973, the respondent is continuing in the cadre of Science Masters and he has been paid the salary payable to Science Masters. A

On behalf of the respondent it has been submitted that for the purpose of appointment on the post of Science Supervisor a selection was made through interview and out of a number of persons who appeared for interview the respondent was selected and, therefore, the respondent must be treated as having been substantively appointed on the newly created post of Science Supervisor under order dated November 29, 1973. On behalf of the appellants it has been disputed that any selection was held for the purpose of appointment on the post of Science Supervisor. It is submitted that since the pay scale for the newly created post of Science Supervisor was Rs. 200-500 and it was less than the pay scale of Rs. 220-500 of Science Master none of the Science Masters, who were senior to the respondent, were interested in joining the post of Science Supervisor and the respondent, who was much junior as Science Master, was, therefore, appointed. Since the appointment of the respondent on the post of Science Supervisor was by way of transfer on his own pay shows that the post of Science Supervisor on which the respondent was appointed was not a post higher than the post of Science Master but was an equivalent post. There was, therefore, no question of making any selection for making appointment on the said post. The case of the respondent in this regard is negated by the fact that after his appointment as Science Supervisor by order dated November 29, 1973 the respondent continued to be borne in the cadre of Science Master and was confirmed on the said post with effect from July 31, 1975 by order dated October 6, 1976 and his name is shown in the Gradation list for Masters as on January 1, 1986 therefore, be held that while working as science supervisor the respondent is substantively holding the post of Science Master and he cannot claim salary higher than that of Science Master which is being paid to him. D E F

For the reasons aforementioned, we are unable to uphold the impugned judgment of the Tribunal. The appeal is, therefore, allowed, the judgment of the Tribunal dated August 17, 1994 is set aside and O.A.No 490/CH/1987 filed by the respondent is dismissed. But in the circumstances there is no order as to costs. G

V.S.S.

Appeal allowed.