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STATE OF HARYANA AND ORS.

v.

JASMER SINGH AND ORS.

NOVEMBER 7, 1996

B

[A.M. AHMADI, C.J. AND SUJATA V. MANOHAR, J.]

Labour Law :

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*Parity in pay—Equal pay for equal work—Mali-cum-Chowkidars/
Pump Operators employed on daily wages—Held: not entitled to parity in
pay with regulate employees—Such daily-rated workers entitled only to
minimum wages, if any, prescribed for them.*

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*Parity in pay—Equal pay for equal work—Principle—Application
of—Held: not always easy to apply—Involved evaluation of work performed
by different persons holding different jobs—Unless there were mala fides,
evaluation by expert bodies must be accepted—Constitution of India, 1950
Arts. 14 and 16.*

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*Daily-rated workers—Completed prescribed length of service—
Regularisation of—Held: a matter of policy to be decided upon by State
Government.*

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The respondents were employed as Mail-cum-Chowkidars/Pump Operators on daily wages by the appellant--State. The respondent filed a writ petition before the High Court claiming 'equal pay for equal work' as was being paid to regularly employed persons holding similar posts in the services of the appellant--State. The High Court allowed the writ petition. Being aggrieved the appellant--State preferred the present appeal.

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Allowing the appeal, this Court

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HELD: 1.1. The principle of 'equal pay for equal work' is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organisations, or even in the same organisation. The quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical

qualifications which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached top of the pay-scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. The evaluation of such jobs for the purposes of pay-scale must be left to expert bodies and, unless there are any *mala fides* its evaluation should be accepted. [594 GH 596 GH 597 A]

Federation of All India Customs and Central Excise Stenographers (Recognised) and Ors. v. Union of India and Ors., [1988] 3 SCC 91; *State of U.P. and Ors. v. J.P. Chaurasia and Ors.*, [1989] 1 SCC 121; *Mewa Ram Kanojia v. All India Institute of Medical Sciences and Ors.*, [1989] 2 SCC 235; *Harbans Lal and Ors. v. State of H.P. and Ors.*, [1989] 4 SCC 459 and *Ghaziabad Development Authority v. Vikram Chaudhary*, [1995] 5 SCC 210, relied on.

Randhir Singh v. Union of India, [1982] 1 SCC 618, *Dhirendra Chamoli and Anr. v. State of U.P.*, [1986] 1 SCC 637 and *Jaipal and Ors. v. State of Haryana and Ors.*, [1988] 3 SCC 354, referred to.

1.2. Therefore, the respondents, who were employed on daily wages cannot be treated as on a par with persons in regular service of the state holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay-scale of the regularly employed. However, if a minimum wage is prescribed for such workers, the respondents would be entitled to it if it is more than what they are being paid. But regularisation of daily-rated workmen who had completed the prescribed length of service is a matter of policy to be decided upon by the State Government. [597 C-E, F 598 C]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14223 Of 1996 Etc. Etc.

From the Judgment and Order dated 23.3.95 of the Punjab and Haryana High Court in C.W.P. No. 15920 of 1994.

B K. Madhava Reddy, V.A. Mohta, Prem Malhotra for Ms. Indu Malhotra, Kirti Kumar, Gurinder Pal Singh, G.G. Singh, (J.S. Mannipur, O. Nand Lal, I.D. Single) for Anil Kumar Gupta-II, Anis Ahmed Khan, (Jasbir Malik, J.P.N. Gupta), for M.S. Dahiya, Ms. Anjana Sharma, Ms. Puja Anand, Madan Dev Sharma, C.S. Ashri, R.C. Pathak, Ms. Naresh Bakshi and Ms. Revathy Raghavan for the appearing parties.

C The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Delay condoned.

D Leave granted.

These appeals have been filed by the State of Haryana against the various judgments of the Punjab and Haryana High Court granting to perons employed by the State of Haryana on daily wages the same pay as those holding regular posts in Govt. Service. For the sake of convenience **E** the particulars of special leave petition No. 27150 of 1995 are set out.

The respondents are employed as Mali-cum-Chowkidars/Pump Operators on daily wages by the State of Haryana from different dates. The respondents prayed that on the basis of 'equal pay or equal work' they should be paid the same salary as is being paid to regularly employed persons holding similar posts in the services of the State of Haryana. This prayer was granted by the High Court which directed the State of Haryana to pay to the respondents the same salary and allowances as are being paid to regular employees holding similar posts with effect from the dates the respondents were employed on the posts held by them. **F**

G The principle of 'equal pay or equal work' is not always easy to apply. There are inherent difficulties in comparing the evaluating work done by different persons in different organisations, or even in the same organisation. The principle was originally enunciated as a part of the Directive Principles of State Policy in Article 39(d) of the Constitution. **H** In the case of *Randhir Singh v. Union of India and ors.*, [1982] 1 SCC

618, however, this Court said that this was a constitutional goal capable of being achieved through constitutional remedies and held that the principle had to be read into Articles 14 and 16 of the Constitution. In that case a Driver-constable in the Delhi Police Force under the Delhi Administration claimed equal salary as other Drivers and this prayer was granted. The same principle was subsequently followed for the purpose of granting relief in *Dhirendra Chamoli and Anr. v. State of U.P.*, [1986] 1 SCC 637 and *Jaipal and Ors. v. State of Haryana and Ors.*, [1988] 3 SCC 354. In the case of *Federation of All India Customs and Central Excise Stenographers (Recognised) and Ors. v. Union of India and Ors.*, [1988] 3 SCC 91, however, this Court explained the principle of 'equal pay for equal work' by holding that differentiation in pay-scales among government servants holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. In that case different pay-scales fixed for stenographers (Grade I) working in the Central Secretariat and those attached to the heads of subordinate offices on the basis of a recommendation of the Pay Commission was held as not violating Article 14 and as not being contrary to the principle of 'equal pay for equal work'. This Court also said that the judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the concerned authorities which, if arrived at *bona fide*, reasonably and rationally, was not open to interference by the Court.

In the case of *State of U.P. and Ors. v. J.P. Chaurasia and Ors.*, [1989] 1 SCC 121 this Court again sounded a note of caution. It pointed out that the principle of 'equal pay for equal work' has no mechanical application in every case of similar work. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, these qualities or characteristics must have a reasonable relation to the object sought to be achieved. In the case before the court, the Bench Secretaries in the High Court of Allahabad claimed the same pay as Section Officers. While negating this claim, the court said that 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. That apart, a higher pay-scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. It observed that although all Bench Secretaries may do the same work, their quality of work may differ. Bench Secretaries (Grade I) are selected by a Selection Committee on the basis of merit with due regard to seniority. A higher

- A pay-scale granted to such Bench Secretaries who are evaluated by competent authority cannot be challenged.

In the case of *Mewa Ram Kanojia v. All India Institute of Medical Sciences and Ors.*, [1989] 2 SCC 235, a classification based on difference in educational qualifications was held as justifying a difference in pay-scales. This Court further observed that the judgment of the Pay Commission in this regard relating to the nature of the job, in the absence of material to the contrary, should be accepted. Referring to these decisions, this Court in the case of *Harbans Lal and Ors. v. State of Himachal Pradesh and Ors.*, [1989] 4 SCC 459 summed up the position by stating that a mere nomenclature designating a person as a Carpenter or a Craftsman was not enough to come to the conclusion that he was doing the same work as another Carpenter in regular service. In that case, carpenters employed by the Himachal Pradesh Handicraft Corporation on daily wages sought parity of wages with Carpenters in regular service. This Court negated this contention, holding that a comparison cannot be made with counterparts in other establishments with different management or even in the establishments in different locations though owned by the same management. 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 must be left to be evaluated and determined by an expert body. The latest judgment pointed out in this connection is the decision in the case of *Ghaziabad Development Authority and Ors. v. Vikram Chaudhary and Ors.*, [1995] 5 SCC 210.

F It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay-scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay-scale must

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

This Court in the case of *Harbans Lal and Ors. v. State of Himachal Pradesh and Ors.* (supra) further held that daily-rated workmen who were before the Court in that case were entitled to be paid minimum wages admissible to such workmen as prescribed and not the minimum in the pay-scale applicable to similar employees in regular service—unless the employer had decided to make such minimum in the pay-scale applicable to the daily-rated workmen. The same position is reiterated in the case of *Ghaziabad Development Authority v. Vikram Chaudhary and Ors.* (supra). B

The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay-scale of the regularly employed. C D E

The High Court was, therefore, not right in directing that the respondents should be paid the same salary and allowances as are being paid to regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wage is prescribed for such workers, the respondents would be entitled to it if it is more than what they are being paid. F

The appellants have fairly stated that the Govt. of Haryana has, from time to time, issued notifications for regularisation of daily-rated workmen such as the respondents, on the basis of a policy decision taken by it to regularise the services of such employees as may be specified. Thus, under a Notification of 11th of May, 1994 daily wage earners who had completed five years of service as on 31.3.1993 and who were covered by that notification were entitled to regularisation of their service. The latest notification in this regard is dated 18th of March, 1996 issued by the H

- A General Administration, Govt. of Haryana. This deals with regularisation of Work-Charged/Casual/Daily-rated employees with the State of Haryana. It sets out that it has been decided to regularise the service of all those Work-Charged/Casual/Daily-rated employees who have completed three years' service on 31st of January 1996 and fulfil other conditions laid down in the Haryana Govt. letter of even number dated 7th of March, 1996.
- B Such of the respondents before us who fulfil the prescribed requirements will be, naturally, entitled to the benefit of regularisation. In fact, it has been pointed out to us by the appellants that out of 6,715 daily-rated workers, 3,280 are already regularised as of 31st January, 1996. This figure of 3,280 includes 2,082 respondents before us. The balance employees could not be regularised as they have not yet completed three years' of service. Such regularisation is a matter of policy to be decided upon by the State Government.
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In the premises, the appeals are allowed and judgments and orders of the High Court are set aside. There will, however, be no order as to costs.

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V.S.S.

Appeals allowed.