* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved On: 8th September, 2017
Pronounced on: 9th November, 2017

\+ **W.P (C) No. 7884/2004 & CM No. 5683/2004**

DELHI JAL BOARD .... Petitioner

Through: Ms. Nandita Rao, ASC along with Mr. Kaushal Kumar, Head Clerk c/o AC(D), DJB

versus

ITS WORKMEN ..... Respondents

Through: Mr. Rajiv Agarwal, Advocate with Ms. Megha De and Mr. Sachin Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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1. The eleven workmen, arrayed as respondents in the present writ petition, were all appointed as daily wage Lower Division Clerks (hereinafter referred to as "LDCs"), on muster roll, with the petitioner, on various dates between 15th September 1982 and 25th October 1984. It is not in dispute that the relevant Recruitment Rules (hereinafter referred as "RRs") mandatorily required passing of written test and typing test, for regular recruitment as LDC, and that none of the respondents were, in fact, subjected to written test or typing test, prior to their initial recruitment as "daily wage muster roll" LDCs. It was only 12 to 14 years after the said workmen had been appointed, that

they were given an opportunity to participate in the written test and typing test on 28th July 1996 and 24th August 1996 respectively.

2. At this stage, the aforementioned workmen raised an industrial dispute, claiming regularization, as LDCs, with effect from the respective dates of their initial appointment, without having to undergo any typing test. The said dispute was referred, by the Secretary (Labour), to the Industrial Tribunal (hereinafter referred to as "the learned Tribunal"), which registered the dispute as ID 36 of 1988, and adjudicated the same *vide* Award dated 15th July 1994. Detailed reference, to the said Award, is not called for, as, undisputedly, the Award was not challenged, and has attained finality. Suffice it to state that, relying on certain earlier orders passed by, *inter alia*, the Supreme Court and by this Court, the learned Tribunal held that LDCs working on muster roll were not entitled to be regularized from the dates of their initial appointment, without being subjected to typing test.

3. The penultimate para of the said Award notes a submission, mooted by the Authorized Representatives appearing for the workmen before the learned Tribunal, that, in view of various judicial decisions, on which they placed reliance, they be also held entitled to payment of salary, at par with regularly appointed LDCs, w.e.f. the dates of their initial appointment. On this suggestion, the learned Tribunal held thus:

> "Learned ARs for the workmen have agreed that as held in the above said decision relied upon by them, the workmen in this case may also be held to be entitled to get same pay and allowances as

> are being paid to the regularly appointed LDCs. This argument of the learned ARs for the workmen has got no force. I am afraid that no such relief can be given to the workmen in this reference. This tribunal cannot give any award beyond the terms of reference. The term of reference in this case is only to the effect whether the LDCs working on M/Roll are entitled to be regularized without being subject to typing test. There is no term of reference, if the LDCs are entitled to same pay and allowances as are being paid to the regular LDCs. Under these circumstances, no relief is submitted by the Learned ARs for the workmen can be granted to them."

4. Consequent on the above Award, the typing test was, held, and all the aforementioned workmen participated therein. It appears that, nine of the aforementioned eleven workmen, namely, Y.N. Sharma, Rajender Singh Bhadana, Ashok Kumar, Sudhir Kumar, Raj Singh, Krishan Kumar Bhiduri, Indar Raj Kumar, Suraj Pal Singh and Dipti Singh, cleared the written test and typing test, on the basis whereof they were regularized as LDCs w.e.f. 25th September 1996. For ease of further recital, these nine workmen would be referred to, hereinafter, as "the first nine workmen". The remaining two workmen, i.e. Bhagwan Dass and Kanwar Pal, failed to clear the typing test. Their services as LDC were, therefore, discontinued, and they were appointed to the lower post of peon-cum-AMR, *vide* Memorandum dated the 30th April 1996, on which post they were regularized w.e.f. 1st April 1989. For ease of further recital, these two workmen would be referred to, hereinafter, as "the remaining two workmen".

5. All the aforementioned eleven workmen raised fresh industrial disputes, claiming, this time, not only regularization as LDCs w.e.f.

their initial dates of appointment, but also for pay parity with regularly appointed LDCs, by application of the principle "equal pay for equal work". Inasmuch as the case of the first nine workmen, and the remaining two workmen, were slightly different, two distinct Terms of Reference were incorporated in the Order, dated the 11th of September 1997, read with Corrigendum, dated the 11th of October 2000 thereto, whereby the said disputes were referred, by the Government of the National capital Territory of Delhi, for adjudication to the learned Tribunal (after attempts at conciliation had failed). These two terms of reference read as under:

> "(i) Whether S/Shri Y.N. Sharma, Rajender Singh Bhadana, Ashok Kumar, Sudhir Kumar, Raj Singh, Krishan Kumar Bhiduri, Indar Raj Kumar, Suraj pal Singh and Dipti Singh are entitled to be regularized on the post of LDC from their respective initial date of appointment instead of 25.09.96 improper pay scale and whether they are entitled to a reference from the date of appointment to 24.09.96 at par with the regular counter parts and if so, what direction is necessary in this regard?
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> (ii) Whether S/Shri BhagwanDass and Kanwar Pal muster roll LDC are entitled to be regularized onset post from their respective initial date of appointment improper pay scale and whether they are entitled to wage difference for their muster roll employment at par with the regular counterparts and if so what direction is unnecessary in this regard?"

6. Statement of Claim was filed, by the aforementioned workmen, before the learned Tribunal, which was subsequently amended on 19th October 2000.

7. The first nine workmen ventilated two grievances in the aforementioned Statement of Claim. The first grievance was against

the disbursal, to them, of only minimum wages, till they were regularized on 25th September 1996, whereas their counterparts, who had been appointed as regular LDCs, were being paid regular salary of Rs 260-400/–, which was subsequently revised to Rs 950-1500/-w.e.f. 1st January 1986, along with other benefits. This, the said nine workmen contended, was impermissible in law, as they were discharging the same duties as those discharged by the regularly appointed LDCs. They, therefore, pressed into service, in their aid, the hallowed "equal pay for equal work" principle. The second grievance, voiced by the said nine workmen, was against their regularization w.e.f. 25th September 1996, after they had qualified the written test, and typing test which, were held on 28thJuly 1996 and 24th August 1996 respectively. The workmen contended that they were entitled to be regularized, in the regular pay scale of LDCs, w.e.f. the dates of their initial appointment, as the posts against which they had been appointed were permanent and regular. It was emphasized that they had been working against vacant posts of LDC since their appointment. Their non-regularization, it was therefore contended, would amount to an unfair labour practice, under Section 2 (ra) read with S. No. 10 of the Vth Schedule to the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), and would also infract Article 39(d) of the Constitution of India. They further contended, in this connection, that the conducting of the written test on 28th July 1996 and the typing test on 24th August 1996 was illegal, and was also contrary to the judgment of the Supreme Court in ***Bhagwati Prasad v Delhi State Mineral Development Corporation, 1990 SCC (L & S)***

174, keeping in view the fact that they had worked as LDCs for 13 to 14 years. The Payment of Wages Act, 1936, as also the Model Standing Orders issued under the Industrial Employment (Standing Orders) Act, 1946, were also invoked. They also stressed the fact that they had, to their credit, 90 days of continuous employment, which entitled them to the status of permanent LDCs w.e.f. the dates of their initial appointment, under the aforementioned Model Standing Orders, as well as the fact that they were entitled to regularization as they had completed 240 days of continuous employment in a calendar year.

8. As regards the second Term of Reference, relating to Bhagwan Dass and Kanwar Pal, while advancing, *mutatis mutandis*, the above contentions, it was further contended that their reversion, to the lower post of peon-cum-AMR, in December 1996, on account of their having failed to qualify the typing test, was illegal, as it had been effected without following the principles of natural justice. It was further contended, in this regard, that it was not permissible to revert them to a post to which they had never been appointed in the first place, and that, in view of their extended service, the requirement of passing typing test ought to have been relaxed.

9. For the above reasons, it was prayed, by the respondent-workmen, that they be regularized as LDCs with effect from the dates of their initial appointment, and be disbursed regular salary as LDCs, as was being paid to their counterparts who had been regularly appointed as LDCs, with arrears. Costs were also claimed.

10. The petitioner-Management, in its Written Statement filed in response to the aforementioned Statement of Claim of the workmen, contended that the aforementioned workmen had been engaged for specific work, without undergoing any selection procedure, as a stop gap measure till the appointment of regular LDCs. They, at the time of their initial appointment, did not fulfill the prescribed eligibility conditions as per the RRs. Consequently, for want of fulfillment of the requisite eligibility criteria, it was contended that the workmen were not eligible for regularization as LDCs prior to their fulfilling the written test/typing test and that they had been allowed to continue as LDCs only owing to administrative reasons, as it had not been possible to fill up the posts regularly. Later, when they were given a chance to pass the written test and typing test, it was sought to be pointed out, those who passed the written test and typing test (i.e. the first nine workmen) were regularized as LDCs w.e.f.25th September 1996 whereas the services of those who failed the typing test (i.e. the remaining two workmen) were discontinued, whereafter the said two workmen were given alternative appointment as peon-cum-AMR on daily wages *vide* memo dated 30th April 1996. It was emphasized that this was not a reversion but a fresh appointment given after dispensing with their service as LDCs, for failure to clear the typing test, purely on humanitarian ground and that, it had been accepted by them. Later the said two workmen were regularized as peon-cum-AMR w.e.f. 1st April 1989, which was also accepted by them.

11. The petitioner further emphasized the fact that the respondent-workmen had suppressed the fact that LDCs who were similarly situated had, earlier, filed CWP 4026/1991, before this Court, for being regularized, without having to pass written test/typing test, which was dismissed vide judgment dated 20th December 1991, whereagainst they had also further moved the Supreme Court vide Civil Appeal 3544/1992, without success. It was, therefore, contended that the respondent-workmen were not entitled to re-agitate the same issue all over again.

12. After hearing the parties, the learned Tribunal delivered the presently impugned award on 19th October 2000, disposing of the aforementioned reference, made to it by the Government of NCT of Delhi *vide* order dated 11th September 1997 (*supra*).

13. Though issues were struck by the learned Tribunal, it is not necessary to make any specific allusion thereto, as the only issues with which this Court is concerned, in the present case, are the entitlement of the workmen to regularization w.e.f the dates of their initial appointments, and to disbursal of pay to them, from the dates of initial appointment till 24th September 1996,at par with the pay of regularly appointed LDCs. Certain other issues, which had been raised by the petitioner in its written statement, such as want of espousal and laches, were not pressed before the learned Tribunal, and have not been raised as grounds in the present writ petition either.

14. On the issue of the entitlement, of the respondent-workmen, to wages as were being paid to regularly appointed LDCs, from the dates of their initial appointment till 25th September 1996, the impugned award upholds the said claim, in respect of all eleven workmen. In so holding, the learned Tribunal relies on the admitted position that the respondent-workmen were, in fact, appointed as LDCs, and worked as LDCs, discharging the same duties as were being discharged by regularly appointed LDCs, from the dates of their initial appointment. Such, it was noted, was the situation existing prior to, as well as after, 25th September 1996. The learned Tribunal, therefore, opined that there was no justification to deny, to the respondent-workmen, the regular pay of LDCs, prior to 25th September 1996, where such pay had, in fact, been disbursed to them after 25th February 1996. The fact that the first nine workmen passed the typing test only on 25th September 1996, it was held could not be a justification therefor, as there was no justification for the petitioner not to hold the written test and typing test for twelve years after the workmen had initially been appointed as LDCs. Proceeding on the above reasoning, the learned Tribunal held that, the respondent-workmen, doing the same work as was being done by the regularly appointed LDCs, could not be paid merely minimum wages, while regularly appointed LDCs were being disbursed, the prescribed salary of Rs.950-1500/-. The fact that the work, conduct and efficiency of the respondent-workmen had never been called into question, by the petitioner, was also noticed in this regard.

15. As regards the earlier award dated 15th July 1994, the learned Tribunal observed that, in the said case, there was no controversy regarding the entitlement, of the workmen, to regular pay of LDCs w.e.f. the dates of their initial appointment, as the dispute in that case was only with respect to their right of retrospective regularization.

16. Reliance was placed, for the above findings on the following decisions:

(i) ***Brahm Prakash Bhardwaj v M.C.D., 1987 (6) ELJ SC 26,***

(ii) ***Jeet Singh v M.C.D., 1987 SCC (Lab) 32,***

(iii) ***D.D.A. v Virender Kumar Tyagi, 1997 (7) SLR 392***,

(iv) ***Bhagwati Prasad (supra)***,

(v) ***Surinder Singh v Engineer-in-Chief, C.P.W.D., (1986) 1 SCC 639***, and

(vi) ***D.G. Works, C.P.W.D. v Regional Labour Commissioner, 2002 LLR 124***.

17. Regarding the claim, of the workmen, to payment at par with regularly appointed LDCs from the dates of their initial appointment, the learned Tribunal held all eleven workmen to be entitled to be paid salary at par with that paid to regularly appointed LDCs, from the date of their initial appointment, albeit on the minimum of the scale, as revised from time to time. Needless to say, in respect of the first nine workmen, the said direction was applicable only till 24th September 1996 as, w.e.f. 25th September 1996, the said workmen had, in fact,

been paid the regular salary of LDCs, having been regularized as such.

18. The petitioner was, therefore, directed to disburse the differential wages which accrued to the respondent-workmen on this basis.

19. Insofar as the claims for regularization as LDCs w.e.f. the dates of their initial appointment was concerned, however, the learned Tribunal held that it was bound by the earlier award, dated 15th July 1994 (*supra*), which clearly held that the first nine workmen could claim regularization as LDCs only w.e.f. 25th September 1996, and that the remaining two workmen, having failed to clear the typing test, were entitled only to be regularized as peon-cum-AMR w.e.f. 01st April 1989. On this issue, therefore, the learned Tribunal held against the workmen.

20. The directions, in the impugned Award of the Tribunal, qua the first nine workmen, are coherent (*de hors* the legality thereof, which would be examined later), in that they have been directed, in sum, to be paid at par with regularly appointed LDCs during their entire service as LDCs, on the reasoning that parity in work, irrespective of whether it was rendered on muster roll or on regular basis, merited parity in pay. In other words, the decision of the Tribunal, in the ultimate eventuate, qua these nine workmen, is that, while they would be regularized as LDCs only w.e.f. 25th September 1996, they would,

even for the period prior thereto, be entitled to be paid wages at par with regular LDCs, though they would be muster roll workers.

21. No incongruity is, *per se*, discernible therein.

22. Qua the remaining two workmen, however, the decision of the learned Tribunal operates somewhat differently, in that, while directing that the said workmen would also be entitled to be paid wages disbursed to regularly appointed LDCs, from the dates of their initial appointment, the Tribunal has, in the same breath, upheld their appointment as peon-cum-AMR w.e.f. 1st April 1989. The situation that would result would be that these workmen would, w.e.f. 1st April 1989, be working on the post of peon-cum-AMR, but would draw the salary of LDCs.

23. Is this legally permissible?

24. The legal position, qua the first nine workmen, and the remaining two workmen, therefore, merit separate consideration.

25. Ms. Nandita Rao, appearing for the petitioner-Management, submits that there was no justification for awarding, to the workmen, the same pay as was being disbursed to regularly appointed LDCs, till the said workmen passed the mandatory typing test. She points out that they had, in fact, been tested twice, on 28thJuly 1996 and 28 August 1996. Accordingly, she asserts that the impugned Award,

insofar as it directs payment, to the workmen, regular pay as LDCs, was unsustainable in law. Reliance is placed, by Ms. Nandita Rao, on ***State of Haryana v Charanjit Singh, 2005 (8) Scale 482***.

26. *Per contra,* Mr. Rajeev Aggarwal, learned counsel appearing for the respondent-workmen, would contend that there was nothing amiss in the direction, of the Tribunal, to pay, to his clients, the wages which were being disbursed to regularly appointed LDCs, as there was no distinction in the work being done by his clients, *vis-a-vis* such regularly appointed LDCs. On the issue of regularization, he submits that the workmen, having been appointed as LDCs and having worked as LDCs for years together, could not be denied regularization on the ground of failure to pass the typing test, and that doing so would amount to an unfair labour practice within the meaning of S. No. 10 to the Vth Schedule of the Act. In answer to ***Charanjit Singh (supra)***, Mr Aggarwal would rely on ***State of Punjab v Jagjit Singh, (2017) 1 SCC 148***, particularly on paras 54 to 56 of the said report.

Analysis

27. As has already been noted herein above, the learned Tribunal granted relief, to the eleven workmen before it, i.e. to the first nine workmen and the remaining two workmen, only to the extent of holding them entitled to pay, at par with regular LDCs, from the dates of their initial appointment on daily wage/muster roll basis. Qua the first nine workmen, the said benefit would accrue only till 24thSeptember, 1996 as, w.e.f. 25th September, 1996, they were, in

fact, regularized as LDCs and paid as such. However, qua the remaining two workmen, i.e. Bhagwan Dass and Kanwar Pal the said benefit would continue to accrue even thereafter, as they were never regularized as LDCs.

28. The learned Tribunal rejected the claim, of all eleven workmen, for regularization as LDCs w.e.f. their initial dates of appointment, placing reliance for this purpose, on the earlier, award, dated 15th July, 1994. *This decision is not in challenge before us, as no appeal or other proceeding has been preferred, by any of the workmen, against the impugned award of the learned Tribunal. None of the respondent-workmen can, therefore, claim today, regularization as LDCs w.e.f. their initial dates of appointment.*

29. Further, insofar as the remaining two workmen i.e. Bhagwan Dass and Kanwar Pal are concerned, the learned Tribunal upholds the decision of the Management to appoint, and subsequently regularize, them as peon-cum-AMR w.e.f. 1st April, 1989. It is undisputed that the said two workmen accepted the said appointment, when it was offered to them in 1996. It is also a matter of record that neither of the said two workmen has challenged the impugned award of the learned Tribunal; *resultantly, the decision, of the learned Tribunal, in the impugned award, to uphold the regularization, of the said two workmen (Bhagwan Dass and Kanwar Pal) as peon-cum-AMR w.e.f. 1st April, 1989, has attained finality.*

30. Insofar as the status of their appointments, are concerned, therefore the resultant situation that emerges is that (i) the first nine workmen functioned as LDC on daily wage/muster roll basis till 24th September, 1996, and as regular LDCs w.e.f. 25th September, 1996, whereas (ii) the remaining two workmen i.e. Bhagwan Dass and Kanwar Pal, functioned as daily wage/muster roll LDCs till 1st April, 1989, whereas, w.e.f. 1st April, 1989, they were to be treated as having been regularly appointed as peon-cum-AMR. The said two workmen, i.e. Bhagwan Dass and Kanwar Pal, are also not petitioners or appellants before us; resultantly, their status as regularly appointed peons-cum-AMRs w.e.f. 1st April 1989 has necessarily to be regarded as undisputed and unalterable.

31. What has to be seen, is that whether, in such circumstances, the learned Tribunal was justified in granting to all the said eleven workmen, wages as paid to regularly appointed LDCs from the dates of their initial appointment.

32. The issue of regularization, or the date from which they are entitled to be regularized as LDC, if at all, does not arise in respect of any of the said eleven workmen, for three reasons. Firstly, this Court, *vide* its judgment, dated 20th December 1991, rendered in CWP 4026/1991, has already held that passing of the typing test was a pre-requisite for regularization as LDC, and the said decision stands affirmed, in appeal, by the Supreme Court, *vide* order dated 1st September 1992 in Civil Appeal 3544/1992. Though neither of the

said orders is forthcoming before me, this legal position has neither been disputed before the authorities below nor is traversed before me, either by way of written pleadings or oral arguments. Secondly, none of the said workmen challenged the award dated 15th July 1994, which, relying on the aforementioned judgment dated 20th December 1991 of this Court and subsequent order dated 1st September 1992 of the Supreme Court, upheld the decision of the Management to regularize the workmen as LDCs only after they cleared the written and typing test. The claim, of the workmen, for retrospective regularization as LDCs after having cleared the typing test was specifically negative by the learned Tribunal in the said award, which was never challenged. Thirdly, none of the workmen has approached this Court, challenging the decision of the learned Tribunal, in the presently impugned award dated 19th October 2000, upholding the regularization, of the first nine workmen, as LDCs only w.e.f. 25th September 1996, and the regularization of the remaining two workmen, as peon-cum-AMR, w.e.f. 1st April, 1989. This Court, therefore, is not required to examine the issue of alleged entitlement, of the respondents, to regularization, and does not, therefore, propose to do so either.

33. In view of the aforementioned admitted position, this Court is required to decide whether the eleven respondent-workmen could be granted pay, as paid to regular LDCs, w.e.f. the dates of their initial appointment. Be it noted, the finding of the learned Tribunal, that the said workmen, were actually discharging the same duties, as were

being discharged by the regularly appointed workmen, has not been questioned before this Court.

34. Insofar as the first nine workmen are concerned, the issue is not *res integra*, but stands concluded by the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs Jagjit Singh (2017) 1 SCC 148.*** The said decision clearly applies, on facts as well as in law, to this aspect of the controversy in the present case. As such it would be necessary to dilate, to some extent, on the issues arising in ***Jagjit Singh (supra)*** and the law laid down by the Supreme Court therein.

35. ***Jagjit Singh (supra)*** was an appeal against a judgment of the Full Bench of the High Court of Punjab and Haryana, which, in turn, was constituted in view of the irreconcilably divergent views expressed by two Division Bench of the High Court in ***State of Punjab v Rajender Singh (2009) SC Online P&H 125*** and ***State of Punjab v Rajender Kumar (2010) SCC Online P&H SCC 1009***. Both the decisions addressed the issue of whether temporary/daily wage employees, who claimed to be doing the same work as regular employees holding the same post were entitled to parity of pay with such regular employees. ***Rajender Singh (supra)*** held in the negative, whereas ***Rajender Kumar (supra)*** held in the affirmative. The Full Bench went on to hold that such temporary employees were not entitled to minimum of the regular pay scale merely on the ground that the duties discharged by them were similar to those discharged by regular employees. To this general principle, however, the Full Bench

carved out two exceptions where parity of pay could be granted viz., (i) where the daily wager/adhoc/contractual appointees were appointed against regular sanctioned posts after undergoing a selection process which gave equal opportunities to all other eligible candidates and where the said daily wages/adhoc/contractual appointees were not appointed against regular sanctioned posts but their services were availed continuously with notional breaks, for long periods of time.

36 In such circumstances, the Supreme Court delineated the issue arising before it for consideration as - "whether temporarily engaged employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay scale, along with dearness allowance (as revised from time to time) on account of their performing the same duties which are discharged by those engaged on regular basis, against sanctioned posts."

37 The Supreme Court, thereafter, went on to examine as many as 33 judgments on the issue of equal pay for equal work, whereafter the court laid down the law in clear, unequivocal and categorical terms, in paras 41.1 to 42.17 of the report, thus:

> "42.1 *The "onus of proof" of parity in the duties and responsibilities of the subject post with the reference post under the principle of "equal pay for equal work" lies on the person who claims it*. He who approaches the court has to establish that the subject post occupied by him requires him to discharge equal work of equal value, as the reference post (see ***Orissa University of***

Agriculture & Technology case [Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188 : 2003 SCC (L&S) 645] , UT Chandigarh, Admn. v. Manju Mathur [U.T. Chandigarh, Admn. v. Manju Mathur, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348] , SAIL case[SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] andNational Aluminium Co. Ltd. case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353]).

42.2 *The mere fact that the subject post occupied by the claimant is in a "different department" vis-à-vis the reference post does not have any bearing on the determination of a claim under the principle of "equal pay for equal work". Persons discharging identical duties cannot be treated differently in the matter of their pay, merely because they belong to different departments of the Government* (see ***Randhir Singh case [Randhir Singh v. U.O.I., (1982) 1 SCC 618 : 1982 SCC (L&S) 119] and D.S. Nakara case [D.S. Nakara v. U.O.I., (1983) 1 SCC 305 : 1983 SCC (L&S) 145]).***

42.3 *The principle of "equal pay for equal work", applies to cases of unequal scales of pay, based on no classification or irrational classification* (see ***Randhir Singh case [Randhir Singh v. U.O.I., (1982) 1 SCC 618 : 1982 SCC (L&S) 119]***). *For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity* (see ***Federation of All India Customs and Central Excise Stenographers case* [*Federation of All India Customs and Central Excise Stenographers* v. *U.O.I.*, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] , *Mewa Ram Kanojia case* [*Mewa Ram Kanojia* v. *All India Institute of Medical Sciences*, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] , *Grih Kalyan Kendra Workers' Union case* [*Grih Kalyan Kendra Workers' Union* v. *U.O.I.*, (1991) 1 SCC 619 : 1991 SCC (L&S) 621] and *S.C. Chandra case* [*S.C. Chandra* v. *State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943]).**

42.4 *Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay and cannot claim the benefit of the principle of "equal pay for equal*

work"(see ***Randhir Singh case [Randhir Singh v. U.O.I., (1982) 1 SCC 618 : 1982 SCC (L&S) 119], State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.[State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822] and Hukum Chand Gupta case [Hukum Chand Gupta v.ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).*** Therefore, the principle would not be automatically invoked merely because the subject and reference posts have the same nomenclature.

42.5 In determining equality of functions and responsibilities under the principle of "equal pay for equal work", it is necessary to keep in mind that *the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible* (see ***Federation of All India Customs and Central Excise Stenographers case*** **[*Federation of All India Customs and Central Excise Stenographers* v. *U.O.I.*, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] and** ***SBI case*** **[*SBI* v. *M.R. Ganesh Babu*, (2002) 4 SCC 556 : 2002 SCC (L&S) 568]).***The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of "equal pay for equal work"* (see ***State of U.P.*** **v.** ***J.P. Chaurasia*** **[*State of U.P.* v. *J.P. Chaurasia*, (1989) 1 SCC 121 : 1989 SCC (L&S) 71] and** ***Grih Kalyan Kendra Workers' Union case*** **[*Grih Kalyan Kendra Workers' Union*v. *U.O.I.*, (1991) 1 SCC 619 : 1991 SCC (L&S) 621]).**

42.6 *For placement in a regular pay scale, the claimant has to be a regular appointee. The claimant should have been selected on the basis of a regular process of recruitment. An employee appointed on a temporary basis cannot claim to be placed in the regular pay scale* (see ***Orissa University of Agriculture & Technology case*** **[*Orissa University of Agriculture & Technology* v. *Manoj K. Mohanty*, (2003) 5 SCC 188 : 2003 SCC (L&S) 645]).**

42.7 *Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay scales.*

Such as — "selection grade", in the same post. But this difference must emerge out of a legitimate foundation, such as — merit, or seniority, or some other relevant criteria (see ***State of U.P.* v. *J.P. Chaurasia* [*State of U.P.* v. *J.P. Chaurasia*, (1989) 1 SCC 121 : 1989 SCC (L&S) 71]).**

42.8 *If the qualifications for recruitment to the subject post vis-à-vis the reference post are different, it may be difficult to conclude that the duties and responsibilities of the posts are qualitatively similar or comparable* (see ***Mewa Ram Kanojia case*[*Mewa Ram Kanojia* v. *All India Institute of Medical Sciences*, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] and *State of W.B.* v. *Tarun K. Roy* [*State of W.B.* v. *Tarun K. Roy*, (2004) 1 SCC 347 : 2004 SCC (L&S) 225]**). In such a case the principle of "equal pay for equal work" cannot be invoked.

42.9 *The reference post with which parity is claimed under the principle of "equal pay for equal work" has to be at the same hierarchy in the service as the subject post. Pay scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different*. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see ***U.O.I.* v. *Pradip Kumar Dey* [*U.O.I.* v. *Pradip Kumar Dey*, (2000) 8 SCC 580 : 2001 SCC (L&S) 56] and *Hukum Chand Gupta case* [*Hukum Chand Gupta* v. *ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).**

42.10 *A comparison between the subject post and the reference post under the principle of "equal pay for equal work" cannot be made where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations*, though owned by the same master (see ***Harbans Lal case* [*Harbans Lal* v. *State of H.P.*, (1989) 4 SCC 459 : 1990 SCC (L&S) 71]).***Personsengaged differently, and being paid out of different funds, would not be entitled to pay parity* (see ***Official Liquidator* v. *Dayanand*[*Official Liquidator* v. *Dayanand*, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943]).**

42.11 *Different pay scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre*. As for instance, if the duties and responsibilities of

one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of "equal pay for equal work" would not be applicable. And *also when the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post* (see ***SBI case*** **[*SBI* v. *M.R. Ganesh Babu*, (2002) 4 SCC 556 : 2002 SCC (L&S) 568]).**

42.12 *The priority given to different types of posts under the prevailing policies of the Government can also be a relevant factor for placing different posts under different pay scales.* Herein also, the principle of "equal pay for equal work" would not be applicable (see ***State of Haryana*** **v.** ***Haryana Civil Secretariat Personal Staff Assn.*****[*State of Haryana* v. *Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72 : 2002 SCC (L&S) 822]).**

42.13 *The parity in pay, under the principle of "equal pay for equal work", cannot be claimed merely on the ground that at an earlier point of time the subject post and the reference post, were placed in the same pay scale. The principle of "equal pay for equal work" is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities* (see ***State of W.B.*** **v.** ***Minimum Wages Inspectors Assn.*** **[*State of W.B.* v. *W.B. Minimum Wages Inspectors Assn.*, (2010) 5 SCC 225 : (2010) 2 SCC (L&S) 1]).**

42.14 *For parity in pay scales under the principle of "equal pay for equal work", equation in the nature of duties is of paramount importance*. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see ***U.T. Chandigarh, Admn.*** **v.** ***Manju Mathur*** **[*U.T. Chandigarh, Admn.* v. *Manju Mathur*, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348]).**

42.15 *There can be a valid classification in the matter of pay scales between employees even holding posts with the same nomenclature i.e. between those discharging duties at the headquarters, and others working at the institutional/sub-office*

level (see ***Hukum Chand Gupta case* [*Hukum Chand Gupta* v. *ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]**), when the duties are qualitatively dissimilar.

42.16 *The principle of "equal pay for equal work" would not be applicable, where a differential higher pay scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues* (see ***Hukum Chand Gupta case* [*Hukum Chand Gupta* v. *ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).**

42.17 *Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay scales under the principle of "equal pay for equal work", even if two organizations have a common employer. Likewise, if the management and control of two organizations is with different entities which are independent of one another, the principle of "equal pay for equal work" would not apply* (see ***S.C. Chandra case* [*S.C. Chandra* v. *State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] and *National Aluminium Co. Ltd. case* [*National Aluminium Co. Ltd.* v. *Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353])."**

(Emphasis Supplied)

(The guiding principles, as carved out by the Supreme Court in the above extracted passages, have been italicized, for ready reference)

38. Thereafter the Supreme Court went on, specifically to examine the issue of parity of pay, as claimed by temporary employees/daily wages, with regular employees holding corresponding posts and discharging similar duties. After referring, once again, to the various authorities on the point, the Supreme Court concluded in para 45.5 of the report thus:

> **45.5.** It is, therefore, apparent that in all matters where this Court did not extend the benefit of "equal pay for equal work" to temporary employees, *it was because the employees could not establish that they were rendering similar duties and responsibilities as were being discharged by regular employees holding corresponding posts."*
>
> (Emphasis Supplied)

39. The Supreme Court also noticed that a contrary view had been expressed, by another Division Bench of the Supreme Court itself, in ***State of Haryana v Jasmer Singh, (1996) 11 SCC 77***. However, in view of the fact that the said decision was contrary to several other decisions on the same issue, the Supreme Court held that ***Jasmer Singh (supra)*** could not be regarded as good law. Para 46.9 of the report pronounced, regarding ***Jasmer Singh (supra),*** thus:

> "46.9. It is not necessary for us to refer the matter for adjudication to a larger Bench because the judgment in *State of Haryana* v. *Jasmer Singh* [***State of Haryana* v. *Jasmer Singh*, (1996) 11 SCC 77 : 1997 SCC (L&S) 210**] , is irreconcilable and inconsistent with a large number of judgments, some of which are by the larger Benches, where the benefit of the principle in question was extended to temporary employees (including daily wagers)".

40. As the Full Bench of the Punjab and Haryana High Court, in the judgment under appeal before the Supreme Court, had also placed considerable reliance on the well known judgment of the Constitution Bench of the Supreme Court in ***Uma Devi (supra)***, the applicability of the said decision was also examined, in detail, in paras 48 to 55 of the report. Paras 49.1 and 51.1 are of particular significance to the issue in controversy in the present writ petition and deserve, therefore, to be reproduced in *extenso,* thus:

> "49.1 We are of the considered view, that in para 44 extracted above, *the Constitution Bench clearly distinguished the issues of pay parity and regularization in service. It was held, that on the issue of pay parity, the concept of "equality" would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of "equality" could not be invoked for absorbing temporary employees in government service, or for making temporary employees regular/permanent. All the observations made in the above-extracted paragraphs, relate to the subject of regularization/permanence, and not, to the principle of "equal pay for equal work". As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good by making such a direction.*
>
> 51.1 It is apparent that this Court in ***State of Punjab*** **v.** ***Surjit Singh*** **[*State of Punjab*v. *Surjit Singh*, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] did hold that the determination rendered in para 55 of the judgment in *Umadevi (3) case* [*State of Karnataka* v. *Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] ,** was in exercise of the power vested in this Court under Article 142 of the Constitution of India. But *the above observation does not lead to the conclusion or the inference, that the principle of "equal pay for equal work" is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee discharging the same duties.* It needs to be noticed that on the subject of pay parity, the findings recorded by this Court in ***Umadevi (3) case*** **[*State of Karnataka* v. *Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753]** , were limited to the conclusions recorded in para 55 thereof (which we have dealt with above, while dealing with the case law on the principle of "equal pay for equal work")."
>
> (Emphasis supplied)

41. The above extracted passage, from ***Jagjit Singh (supra)***, clearly highlights the distinction between the claim to regularization, and the

claim to parity of pay, and underscores the legal position that the untenablity of the former need not necessarily imply the rejection of the latter.

42 Para 54.3 of the report goes on to hold as under:

> "54.3 Based on the consideration recorded hereinabove, the determination in the impugned judgment rendered by the Full Bench of the High Court, whereby it classified temporary employees for differential treatment on the subject of wages, is clearly unsustainable and is liable to be set aside."

43 Finally, para 60 of the report clearly expounds the law on the subject, in the following words:

> "60. Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarized by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because *it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees.* Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. *There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the*

present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarized by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post".

(Emphasis supplied)

44. In view of the law laid down by the Supreme Court in ***Jagjit Singh (supra)***, which may, in view of its comprehensive nature, may well be regarded as having penned the omega on the issue, the decision of the learned Tribunal, to grant, to the first nine workmen, the same wages, as were being paid to their regularly appointed counterparts, cannot be faulted on facts or in law. It deserves, therefore, to be upheld.

45. However, insofar as the remaining two workmen, i.e. Bhagwan Dass and Kanwar Pal are concerned, it is not possible to subscribe to the reasoning of the learned Tribunal or uphold the view it has chosen to take. Having upheld the decision, of the Management to regularize the said two workmen as peon-cum-AMR w.e.f. 1st April, 1989, there could be no question of their being granted regular pay of LDCs thereafter. It is trite that an employee can only be paid wages applicable to the post to which he was appointed, irrespective of the nature of duties which may be performed by him (unless of course, the employee is formally made to discharge duties of a higher post as

"additional charge"). Even if it were, therefore, to be assumed the said two workmen were, infact, discharging duties identical to those discharged by regularly appointed LDCs, that fact by itself would not clothe them with the right to claim wages of regular LDCs. *Per sequitur*, it was not open to the learned Tribunal either, to so direct. The direction, in the impugned Award, to grant to the said two workmen (Bhagwan Dass and Kanwar Pal) the wages drawn by regularly appointed LDCs is clearly irreconcilable with its decision to uphold their regularization as peon-cum-AMR w.e.f. 1st April 1989. Regular peon-cum-AMRs could not, conceivably, be allowed the pay of regular LDCs.

46. The decision to uphold the appointment, of the said two workmen, as peon-cum-AMR w.e.f. 1st April 1989, not having been challenged before this Court, the inevitable corollary has to be that they would be entitled, from that date, only to the pay of peon-cum-AMR and not to the pay of regular LDCs. The decision, of the learned Tribunal to award, to the said two workmen i.e. Bhagwan Dass and Kanwar Pal regular pay of LDCs, after 1st April 1989, deserves, therefore, to be set aside.

47. Having said that, the said two workmen would, nonetheless, be entitled to regular pay of LDCs at par with their nine more fortunate colleagues for the period prior to 1st April 1989, starting from their dates of initial appointment. Bhagwan Dass would, therefore, be entitled to pay regular pay of LDCs from 05th July 1983 to 31st

March1989 whereas Kanwar Pal would be entitled to be similarly paid for the period 13th July 1983 to 31st March 1989. W.e.f. 1st April 1989, however, both the said workmen would be entitled only to be paid the salary of peon-cum-AMR. Inasmuch as it appears that they have, in fact been disbursed the pay of peon-cum-AMR after 1st April 1989, no further benefit would accrue to either of the said workmen. Their entitlement, would, therefore have to be restricted to the pay of regular LDCs for the period from their dates of initial appointment till 31st March 1989, as already held hereinabove.The impugned award, insofar as it grants, to the said two workmen, any amount in excess thereof, cannot, therefore, be sustained on facts or in law.

48. Be it noted, the entitlement of these two workmen, to pay parity with regularly appointed LDCs w.e.f dates of their initial appointment till 31st March 1989, would remain, despite the fact that they never cleared the typing test. This is for the reason that the said entitlement is not a consequence of clearing of the typing test, but arises from the fact that, they, like their other nine counter parts, during the said period, discharged the same duties as were discharged by the regularly appointed LDCs, thereby entitling them to the same pay, applying the law laid down by the Supreme Court in ***Jagjit Singh(supra)***.

49. Before parting with the present case, it may be noted that, though Mr. Rajiv Aggarwal, appearing for the workmen, did seek to contend that the acts of the petitioner-Management amounted to "unfair labour practice" within the meaning of clause (ra) of Section 2

of the Act, it is not necessary for me to express any opinion on the said issue, as no such finding has been returned by the learned Tribunal, and none of the workmen have challenged the award. That apart, it may be noted that, even if it were to be assumed, that the petitioner had resorted to unfair labour practice qua any of the workmen, that would only expose the petitioner to penal consequences, as contemplated under Section 25U of the Act, and cannot affect, or enhance, in any manner, the right of any of the workmen to differential wages. Whether the acts of the Management did, or did not, amount to "unfair labour practice" is, therefore, an issue on which I do not venture to express any opinion.

50. Resultantly, the present writ petition is disposed of, as under:

(i) The impugned award, dated 4th October, 2002,is upheld insofar as it

(a) rejects the respondents' claim to regularization as LDCs w.e.f. their initial dates of appointment,

(b) upholds the decision, of the petitioner-Management to appoint and regularize Bhagwan Dass and Kanwar Pal as peon-cum-AMR w.e.f. 1st April 1989 and

(c) grants Y.N. Sharma, Rajender Singh Bhadana, Ashok Kumar, Sudhir Kumar, Raj Singh Chauhan, Krishan KumarBhiduri, Inder Raj Kumar, Suraj Pal Singh and Dipti Singh, wages as were being paid to

regularly appointed LDCs w.e.f the dates of initial appointment till 24th September 1996.

(ii) The impugned Award, to the extent it allows Bhagwan Dass and Kanwar Pal regular pay of LDC w.e.f dates of their initial appointment is, however, set aside in part. It is held that Bhagwan Dass and Kanwar Pal would be entitled to pay, at par with regularly appointed LDCs, from the dates of their initial appointment till 31st March 1989. No benefit would accrue to either of the said two workmen for the period after 1st April 1989.

(iii) As a result of the above directions, if any payment would become due to any of the respondent-workmen, the petitioner is directed to disburse the said payment, within a period of two weeks from the date of receipt of the certified copy of this judgment. Failure to do so would entail liability to pay interest @ 12 % per annum.

51. Parties are directed to bear their own costs.

C. HARI SHANKAR
(JUDGE)

NOVEMBER 9, 2017
Gayatri