

PETITIONER:
GRIH KALYAN KENDRA WORKERS' UNION

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 09/01/1991

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
OJHA, N.D. (J)

CITATION:
1991 AIR 1173 1991 SCR (1) 15
1991 SCC (1) 619 JT 1991 (1) 60
1991 SCALE (1) 1

ACT:

Constitution of India 1950-- Articles 14 and 16--Equal pay for equal work--Principle--Grih Kalyan Kendra employees --Treatment on par with employees of Union of India, New Delhi Municipal Committee and Delhi Administration--Whether arises.

HEADNOTE:

Grih Kalyan Kendra is a Society registered under the Societies Registration Act 1960. It is a welfare organization working under the aegis of the Department of Personnel and Administrative Reforms, Ministry of Home Affairs. Its object is to establish Kendras to help needy Government servants especially those belonging to the lower income group by providing to their dependents opportunity of gainful work and training during their leisure time so that the dependents of such Government servants may be able to supplement to the meagre income of the family and to acquire skill and experience for obtaining employment elsewhere. In furtherance of this object, the kendra has set up nursery centres, craft centres, and creches etc. In Delhi and other cities where the work of imparting necessary training is carried on. The management of the Kalayan Kendras vests in the Board which consists of officers of the Department of Personnel and in order to augment its resources the Ministry gives grant to the kendras. The terms and conditions or tenure of service of its employees have not been regulated by any Rules framed by the kendra. The staff of the Kendras fall in two categories viz. (i) regular staff taken on deputation from other central government offices who draw their salaries in regular scales of pay with the deputation and other allowances as admissible to the central government employees and (ii) employees employed at the various centres of the kendra on ad-hoc basis, some of whom have been working an fixed salary called honorarium while others are working on the piece rate wages, without any gratuity or pension or Provident fund.

The Workers' Union of the Kendra has filed this writ petition for a declaration that the kendra wherein the workers are employed is a 'State' within the meaning of Article 12 of the Constitution and such it is prayed by them

that a writ of mandamus be issued directing the respondents to pay regular pay scale on par with other employees-

16

performing similar work under the Union of India, New Delhi Municipal Committee and other Departments of the Delhi Administration, as according to them wages paid to them are low as compared to the employees performing identical duties in the said Departments. Their contention is that the Kendra being a 'State', the respondents are under constitutional obligation to pay them higher scale of pay prescribed for the Government Departments, on the principle "equal pay for equal work". They have raised claim to pension, gratuity and provident fund etc. also. The respondents contest their claim on the plea that the employees working in the kendra are not regular employees and the duties performed by them are not comparable to any of the employees working under NDMC or any other DEPARTMENT OF THE Delhi Administration or Union of India, the Status of the Kendra being unique.

Dismissing the writ petition the Court,

HELD: There being no other Government or semi-Government employees who can be regarded, even broadly, as being situated similarly as the employees of the Kendra, the principle of equal pay for equal work cannot be said to be violated by the payment of mere honorarium to these employees. [27E]

The findings recorded by the former Chief Justice to whom the matter was referred earlier clearly shows that there has been no discrimination as the petitioners are not being discriminated from those who are situated equally. The petitioner's claim for the benefit of equal pay for equal work, therefore must fail. Their claim for the issue of direction to the respondents to provide for the pension, gratuity and provident fund for the employees of the Grih Kalyan must also fail. [27H; 28A-B]

Ramana Dayaram Shetty v. International Airport Authority of India and ors., [1979] 3 SCC 489; P.K. Ramachandra Iyer & Ors. v. Union of India and Ors., [1984] 2 SCC 141; B.S. Minhas v. Indian Statistical Institute and Ors., [1983] 4 SCC 582; Bihar State Harijan Kalyan Parishad v. Union of India and ors., [1985] 2 S.C.C. 644; Surya Narain Yadav & Ors. v. Bihar State Electricity Board and Others, [1985] 3 SCC 38; Randhir Singh v. Union of India, [1982] 1 SCC 618; Daily Rated Casual Labour Employed under P JUDGMENT:

Dhirendra Chamoli v. State of U.P., [1986] 1 SCC 637, Engineer-in-Chief, CPWD R.D. Gupta v. Lt. Governor, Delhi Administration, [1987] 4 SCC 505; Bhagwan Dass v. State of-

17

Haryana, [1987] 4 SCC 634; Jaipal v. State of Haryana, [1988] 3 SCC 354; Dharwad District P.W.D. Literate Daily Wage Employees Association and Ors. v. State of Karnataka and Others, [1990] 2 SCC 396; Federation Of all India Customs and Central Excise Stenographers v. Union of India, [1989] 3 SCC 1, referred to.

&

ORIGINAL JURISDICTION: Writ Petition No. 869 of 1988.

(Under Article 32 of the Constitution of India.)

Govind Mukhoty, Naresh Kaushik and Ms. Lalitha Kaushik for the Petitioner.

V.C. Mahajan, Girish Chandra and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by SINGH, J. This is a petition under Article 32 of the Constitution of India, filed by the petitioner Union or Behalf of the employees of the Grih Kalyan Kendra for a declaration the Girh Kalayan Kendra wherein the Workers are employed is 'State' within the meaning of Article 12 of the Constitution and for the issuance of a writ of mandamus directing the Union of India and the respondents to pay regular pay scales in parity with other employees performing similar work under the Union of India like New Delhi Municipal Committee and other Departments of Delhi Administration.

Grih Kalyan Kendra is a Society registered under the Societies Registration Act 1860. Its objectives as set out in the memorandum of Association are as follows:

- "(a) To promote social, economic, cultural and educational activities for the betterment of the Central Government employees and their families;
- (b) To impart technical and vocational training in home crafts and other house-hold arts for useful utilisation of leisure time; and
- (c) To organise and promote economic activities that may provide opportunities for gainful employment to families Central Government employees for supplementing family incomes."

18

For attaining the aforesaid objectives, the Kendra has been conducting various activities including; (i) holding of craft classes for training in cutting, tailoring and embroidering for the house-wives and grown-up girls during their leisure hours; (ii) imparting nursery education for children in the age group of 3 to 7 years; (iii) running of creches or day-care centres for children between the age of 90 days and 7 years; (iv) providing the recreational facilities like T.V. shows, libraries, gymnasias and in-door games and sports at the samaj sadans (Community Halls); (v) conducting stitching of liveries for Class III (Group C) and Class IV (Group D) employees of Government Departments and Public Sector Undertakings. The Kendra runs 29 nursery centres out of which 21 are in Delhi, 3 in Dehradun and one each at Faridabad, Nagpur, Jaipur, Bombay and Madras. It also runs 43 crafts centres out of which 23 are in Delhi, 5 in Bombay, 8 in madras, 2 in Dehradun and one each at Jaipur, Nagpur, Faridabad, Narela and Bahadurgarh. The Kendra also runs 19 centres for day-care called creches out of which 16 are in Delhi and one each at Faridabad, Madras and Jaipur. The Kendra conducts two production centres, one located at Delhi and the other at madras. In these centres stitching of liveries for class III and Class IV employees of Government Departments and Public Sector Undertakings are undertaken with a view to provide gainful employment for dependent ladies members of the Government servants.

The Grih Kalyan Kendra is a welfare organisation working under the aegis of the Department of Personnel and Administrative Reforms, Ministry of Home Affairs. The purpose and object of establishing the Kendras were to help needy Government servants especially those belonging to the lower income group by providing to their dependents opportunity of gainful work or training during their leisure time. The scheme stipulated to ensure that the dependents of such Government servants should be able to supplement to meagre income of the family and to acquire skill and experience for obtaining employment elsewhere. Initially, the employees of Kendra were paid honorarium only and at no time they had any regular scales of pay. Some of the

employees who work at the Centres are paid on piece rate basis. The control and management of the Kendras vest in a board which consist of officers of the Department of Personnel. The Union of India supplements the income of the Kendras by providing grants and monetary support. The employees of the Grih Kalyan Kendra fall in two broad categories; (i) regular staff taken on deputation from other Central Government offices who draw their salaries in regular scale of pay alongwith the deputation and other allowances as admissi-

19

ble to the Central Government employees; (ii) employees employed at the various centres of the kendra on ad-hoc basis some of whom have been working on fixed salary called honorarium while others are working on the piece rate wages at the production centres without there being any provision for any scale of pay and other benefits like, gratuity, pension, provident fund etc. The terms and conditions of tenure of service have not been regulated by any Rules framed by the Kendra. The services of the employees falling in the second category are terminable at any time at the sweet will of the officers of the Kendras.

The petitioner has asserted that the employees of the Kendra are paid low wages and their salaries are far less than what is paid to the employees doing similar nature of work in the organisations like NDMC and other Departments of the Delhi Administration. It is asserted that the Kendra is a 'State' within the meaning of Article 12 of the Constitution and therefore the respondents are under constitutional obligation to prescribe similar scales of pay as applicable to the employees of NDMC and Delhi Administration and who are doing the same work as performed by the employees of the Kendra. The petitioner has claimed relief for declaring the kendra to be an instrumentality of State and for the issue of a direction directing the respondents to pay equal pay as paid to the similar employees doing similar work in NDMC and other Departments of Delhi Administration, along with other benefits like gratuity, pension and provided fund. The petitioner's claim for equal pay as paid to the employees of NDMC and Delhi Administration is contested by the respondents. In the counter-affidavit filed on behalf of the respondents, it is asserted that the Grih Kalyan Kendra was started as a welfare society with the aim of helping the needy Government servants especially those belonging to lower income group by providing to their dependents opportunity of gainful work, so that, they might be able to supplement the meagre income of their family and at the same time they may also gain skill and experience in order to improve their career elsewhere. Grih Kalyan Kendra was expected to be a stepping stone for such dependents of the poor Government servants and there was no intention to provide them with any regular employment. it is further stated that in the nature of things and in consonance with original aim the employees of the Grih Kalyan Kendra were expected to leave the organisation once they have acquired skill and experience and seek other opportunity of employment for the betterment of their career elsewhere. The employees of the Kendra were expected to leave the organisation once they lost the status of dependent of low paid-

20

Government employees. However, the employees of the Kendra have not met any of these expectations. Some of the employees once inducted into the organisation have continued for a number of years. The employees working in the Kendra

are not regular employees and the duties performed by them are not comparable to any of the employees working under NDMC or any Department of Delhi Administration or under the Union of India. The status of the kendra is a unique one where the work and duties performed by its employees are quite different in nature than those performed by the employees of NDMC and Delhi Administration.

Shri Govind Mukhoty learned counsel for the petitioner contended that though the Grih Kalyan Kendras are managed by the Board as contemplated by the Rules of the Registered Societies, the Union of India have the pervasive control over its functions, it is an instrumentality and agency of the Union Government and therefore it is a State within the meaning of Article 12 of the Constitution. He placed reliance on decisions of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India & Ors.*, [1979] 3 SCC 489; *P. K. Ramachandra Lyer & Ors. v. Union Of India & Ors.*, [1984] 2 SCC 141; *B.S. Minhas v. Indian Statistical Institute & Ors.*, [1983] 4 SCC 582; *Bihar State Harijan Kalyan Parishad v. Union of India & Ors.*, [1985] 2 SCC 644 and *Surya Narain Yadav & Ors. v. Bihar State Electricity Board & Ors.*, [1985] 3 SCC 38. WE do not think it necessary to consider this question in detail as in our opinion given on an assumption that the Grih Kalyan Kendra is an instrumentality of a State within the meaning of Article 12 of the Constitution and the petitioners are entitled to enforce their fundamental rights against it, it is difficult to uphold this contention that the respondents have violated any of the fundamental rights of the petitioners. We accordingly proceed on the assumption that the Grih Kalyan kendra is a State for the purposes of Chapter IV of the Constitution and consequently this petition under Article 32 of the Constitution is maintainable and the petitioners are entitled to invoke the jurisdiction of the Court for the enforcement of their fundamental right founded on the principle of equal pay for equal work.

Equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in Article 39(d) of the Constitution "Equal pay for equal work" has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution. Equal pay for equal-

21

work and providing security for service by regularising casual employment within a reasonable period has been accepted by this Court as a constitutional goal to our socialistic pattern. It has ceased to be a judge made law as it is the part of the constitutional philosophy which ensures a welfare socialistic pattern of a State providing equal opportunity to all and equal pay for equal work for similarly placed employees of the State. This Court has zealously enforced the fundamental right to equal pay for equal work in effectuating the constitutional goal of equality and social justice in a number of decisions. See: *Randhir Singh v. Union of Ind*, [1982] 1 SCC 618; *Daily Rated Casual Labour Employed under P & T Department v. Union of India*, [1988] 1 SCC 122; *Dhirendra Chamoli V. State of U.P.*, [1986] 1 SCC 637; *Surinder Singh v. Engineer-in-Chief CPWD*, [1986] 1 SCC 639; *R.D. Gupta v. Lt. Governor Delhi Administration*, [1987] 4 SCC 505 *Bhagwan Dass v. State of Haryana*, [1987] 4 SCC 634; *Jaipal v. State of Haryana*, [1988] 3 SCC 354 and *Dharwad District P.W.D. Literate Daily Wage Employees Association & Ors. v. State of Karnataka &*

Ors., [1990] 2 SCC 396. Therefore, the principle of equal pay for equal work even in an establishment which is an instrumentality of a State is applicable to its full vigour.

The question then arises whether the respondents have practised discrimination in denying the employees of the kendra pay which the Union of India has been paying to other similarly placed employees doing the same or similar work. This question is of primary importance which requires investigation of facts. Unless, it is demonstrated that the employees of the Grih Kalyan Kendra are discriminated in matters relating to pay and other emoluments with the other similarly placed employees, the principle of equal pay for equal work cannot be applied. While considering this question, it is not necessary to find out similarity by mathematical formula but there must be a reasonable similarity in the nature of work, performance of duties, the qualification and the quality of work performed by them. It is permissible to have classification in services based on hierarchy of posts, pay scale, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the object sought to be achieved. In *Federation of All India Customs and Central Excise Stenographers v. Union of India*, [1988] 3 SCC 91. Sabyasachi Mukharji, J. (as he then was) observed:

"There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that-

22

often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonable or an intelligible criteria which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work if a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right."

Elaborating the aforesaid observation the learned Judge further observed thus:

"The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less--it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact."

The petitioners have referred to the scale of pay paid to the similar employees of NDMC and Delhi Development Authority under the Delhi Administration for the various employees to demonstrate that the employees of the Kendra are being discriminated as they are paid lower amount of salary although they perform the same duties and functions as performed by corresponding employees holding

corresponding posts under the NDMC and Delhi Administration.
The chart as set out in the petition is as under:

S. No.	Designation	GKK	Salaries NDMC	per month DDA/C.Govt.
1.	Incharge Creche	788	1139	1380
2.	Creche Attendants	758	1139	1139
3.	Creche Ayahs	592	792	792
4.	Craft Teachers	786	1260	1444
5.	Nursery Teachers	712	1260	1260
6.	Nursery Ayahs	430	792	792
7.	Office Incharge of Crech Centre etc.	-	1140	-
8.	Office Asstt./Typist	880	1140	-
9.	i) Cutters (Tailors)	-	1140	-
	ii) Stitchers (Checker)	870	1140	-
	iii) Drivers	565	1140	-
	iv) Peons	-	1140	-
	v) Chowkidars	750	792	-
10.	Sweepers	225	-	-

In 1984 the employees filed Writ Petition No. 13924 of 1984 in this Court claiming relief for the payment of wages on the principle of equal pay for equal work, seeking parity with the employees of NDMC and other Departments of Delhi Administration and Union of India. Since, the matter involved investigations of facts, this Court with a view to find out as to which other employees similarly situated were paid more than the employees working in the Kendra and also to ascertain whether the principle of equal pay for equal work was being violated by the kendra, on the suggestion of the parties referred the matter to Former Chief Justice Shri Y.V. Chandrachud, for his report and recommendation. The Court requested the Former Chief Justice make recommendations taking into account the following matters:

"1. Whether other similarly situated employees (engaged in similar comparable work, putting in comparable hours of work, in a comparable employment) are paid higher pay and if so what should be the entitlement of the complaining employees in order not to violate the equal pay for equal work principle;

2. If there is no other comparable employment, whether the remuneration of the complaining employees deserves-

24

to be revised on the ground that their remuneration is unconscionable or unfair and if so to what extent.

3. The organisation is not disabled from continuing its benign motivity and even extending it."

Pursuant to the directions of the Court, the parties including the petitioners appeared before the Former Chief Justice. After hearing the parties and considering the entire material placed before him, the Former Chief Justice submitted and elaborate report to the Court making comprehensive suggestions. The respondents to the writ petition agreed to implement the recommendations made by the Former Chief Justice. Thereupon the writ petition was disposed of by an order dated 6 th May 1988 stating that the employees of the Kendra are entitled to the benefits recommended in the Report of the Former Chief Justice. In order to appreciate the controversy, we consider it necessary to refer to the concluding part of the Report

which contains the recommendations, it is as follows:

"Having given a careful thought to these unusual considerations, I am of the opinion that until such time as the Government formulates a new scheme for giving an orderly shape to the Kendra so that, by the application of a rational policy the remuneration of the Kendra employees could be fixed on a fair basis, an ad-hoc method of stepping up their meagre honorarium should be adopted, linked to the length of service put in by the employees. No other test seems feasible since, especially, the Kendra employees are not prohibited from taking any other employment, they are not recruited through an open competition, there is no age bar for their recruitment or retirement and since, being dependents of Government servants, they are eligible in that capacity for receiving other benefits like free medical aid and leave travel concessions. In view of these circumstances, to place the Kendra employees on par with other employees would be treating unequals as equals which would conceivably draw a constitutional challenge.

For the foregoing reasons, I recommend that the employees of the Kendra belonging to category (b) described earlier in this Report should be paid a fixed monthly honorarium according to the following scale:

25

1. Employees who have put in a service of 20 years or more should be paid 100% (one hundred per cent) more of the honorarium which is paid to them at present.

2. Employees who have put in a service of 15 to 20 years should be paid 90% (ninety per cent) more of the honorarium which is paid to them at present.

3. Employees who have put in a service of 10 to 15 years should be paid 80% (eighty per cent) more of the honorarium which is paid to them at present.

4. Employees who have put in a service of 5 to 10 years should be paid 70% (seventy per cent) more of the honorarium which is paid to them at present.

5. Employees who have put in a service of 1 to 5 years should be paid 60% (sixty per cent) more of the honorarium which is paid to them at present.

These recommendation should operate retrospectively with effect from 1st August 1986, being the date on which the Supreme Court passed its order referring the matter to me. The delay in making these recommendations is not due to any default on the part of the employees. The employees of the Kendra of the (b) category should be paid arrears of honorarium upon the revised basis, before 31st October, 1987."

The Court accepted the Report of the Former Chief Justice and disposed of the petition on a statement made on behalf of the respondents that they would implement the recommendations made in the Report of the Former Chief Justice. There is no dispute that the recommendations made by the Former Chief Justice have been implemented and the employees of the Kendra are being paid remuneration accordingly. The Former Chief Justice's recommendation for ad-hoc method of stepping up of honorarium until such time as the Government formulates a new scheme for giving orderly shape of the Kendra has been accepted by the respondents and

a Sub-Committee has been set up by the Grih Kalyan Kendra Board to review the organisational and operational arrangements in the Kendra at the headquarters and in the cities and to suggest measures for the improvement of its functioning. The Committee has been directed-

26

with reference to the original objectives of Kendra of imparting skills to a steady stream of dependents of Government employees and to make suggestions for making further improvements. The Committee has not yet submitted its report. We hope and trust that the Committee will submit its report and the Grih Kalyan Kendra will take steps to improve the functioning of the Kendras including the remuneration of its employees.

In the instant writ petition the petitioners have raised precisely the same question as raised in the earlier Writ Petition 13924 of 1984. Their grievance of discrimination in matters relating to payment of scale of pay and other emoluments was examined in the earlier writ petition and the Former Chief Justice held that there was no employment comparable to the employment held under the Grih Kalyan Kendra and therefore they could not seek parity with other employees working under NDMC or the Delhi Administration or Union of India. We consider it necessary to refer to the relevant part of the Report of the Former Chief Justice, which is as under:

"The first consideration which I am required by the Supreme Court to take into account is "whether other similarly situated employees (engaged in similar comparable work, putting in comparable hours of work, in a comparable employment) are paid a higher pay and as to what should be the entitlement of the complaining employees in order not to violate the equal pay for equal work principle."

The facts and the statistical data set out above will show that the employment in the Kendra is unique in character, that is to say, it is not comparable with any other employment. Its motivation and genesis coupled with the absence of rules governing service conditions elude even a broad comparison between the employees of the Kendra and the employees of other organisations holding somewhat similar post, that is, posts bearing similar duties and designation. It is difficult to conceive of any other service which one can enter at any age, regardless of educational qualifications, and from which one can retire when one chooses. It is something like "come if you like, go when you please". Since there is no other employment which can bear a reasonable comparison with employment in the service of the Kendra, it is difficult to perceive employees similarly situated as those in the service of the Kendra.

27

Therefore, the fact that those other employees may be drawing higher pay will not justify the conclusion that the employees of the Kendra of Category(b), with whom alone we are concerned are denied the benefit of the principle "Equal pay for equal work". It is trite that the concept of equality implies and requires equal treatment for those who are situated equally. One cannot draw comparisons between unequals. If the facts of a given case fail to establish that persons who are

aggrieved are not situated equally with others, the benefits available to those others cannot ipso facto be given to the former though, of course, the question as to whether persons are situated equally has to be determined by the application of broad and reasonable tests and not by the application of a mathematical formula of exactitude. Try howsoever as one may be applying broad and reasonable criteria, the conclusion is inescapable that there are no other employment comparable to the employment in the (b) category of the Kendra, that means that the aggrieved employees are not situated similarly as any others.

This then in my answer to the first question referred by the Supreme Court for my consideration. Putting it briefly, there being no other Government or semi-Government employees who can be regarded, even broadly, as being situated similarly as the employees of the Kendra with whom we are concerned, the principle of equal pay for equal work cannot be said to be violated by the payment of mere honorarium to these employees."

The above findings recorded by the Former Chief Justice are findings of facts founded on the material placed before him by the parties. These findings were accepted by this Court and the Writ petition was accordingly disposed of by an order dated 6th May 1988. Now it is not open to the petitioner to reopen the same question by means of the present writ petition. In the Supplementary affidavit filed on behalf of the petitioner an attempt was made to dispute the findings recorded by the Former Chief Justice but in fairness, Shri Govind Mukhoty made a candid statement before us during the course of the arguments that the findings of the Former Chief Justice are not disputed. The findings recorded by the Former Chief Justice clearly show that there has been no discrimination as the petitioners are not being discriminated from those who are situated equally. The petitioners' claim

28

for the benefit of equal pay for equal work, therefore must fail.

Since the petitioner's claim for parity in pay with regard to the employees working in the New Delhi Municipal Committee and other Departments of the Delhi Administration and Union of India has failed, their claim for the issue of direction to the respondents to provide for the pension, gratuity and provident fund for the employees of the Grih Kalyan Kendra must also fail.

In the result the petition fails and is accordingly dismissed. There will be no order as to costs.

Y.Lal

Petition dismissed.

29