

PETITIONER:
GARHWAL JAL SANSTHAN KARMACHARI UNION & ANOTHER

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 27/03/1997

BENCH:
K.S. PARIPOORNAN, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This Civil Appeal by Special Leave is filed by the appellants challenging the correctness of the judgment dated April 18, 1995 rendered by the Division Bench of the Allahabad High Court. The first respondent is the State of Uttar Pradesh. The second respondent is Garhwal Jal Sansthan, Dehradun.

2. By way of a writ petition under Article 226 of the Constitution of India, The appellants challenged the legality and correctness of the communication/order dated 5th march, 1984 passed by the State Government. A further relief was sought for issuance of a writ of mandamus or direction to the respondents not implement the order dated 5th March, 1984 and instead to implement the resolution dated 4th June, 1983 passed by the second respondent.

3. The claim set out by the appellants in their writ petition was that they are entitled for the same pay scales which are given to the employees of Jal Nigam. In short, the appellants claim is based on the principle of equal pay for equal work and it arises under the following circumstances.

4. The State of Uttar Pradesh in the year 1975 enacted the U.P Water Supply and Sewerage Act, 1975 (for short 'the Act'). Prior to the passing of this Act, it appears that there were two departments (1) Local self Engineering Department which was entrusted including proper water supply and sewer age service and (2) after installation of such projects, they used to be handed over to the Nagar Palikas and Municipal Boards for maintenance by their respective employees. From the record it further appears that the services and the pay scales in these two departments were not identical and the former was directly under the control of government whereas the latter was under the control of local bodies such as Maha palikas or Municipal Boards.

5. The Government of Uttar Pradesh under the Act created two separate and distinct Corporations. U.P Jal Nigam has been constituted under section 3 of the Act being a body corporate having jurisdiction all over the territory of Uttar Pradesh. Jal Sansthans have been established under section 18 having jurisdiction over the local area or any

part thereof , of one or more local bodies as the State Government may specify in the notification. Jal Sansthan is again a body corporate and is deemed to be the local authority. Under section 31 of the Act with effect from June 18, 1975, all properties, assets, liabilities and obligations of U.P. Local self Government Engineering Department stood vested under Jal Nigam and Consequently the employees of this department stood allocated and transferred to the Uttar Pradesh Jal Nigam. From the scheme of the Act , it appears that Jal Nigam (corporation) is vested with the jurisdiction all over the State and is fully controlled by the State Government. As against this, Jal Sansthans which are established under Section 18 of the Act exercised their jurisdiction in respect of the local area or any part thereof, of one or more local bodies as specified by the state Government by notification. It is, therefore, quite apparent that Jal Nigam has got a wider jurisdiction than Jal Sansthan, although some of the duties and obligations are similar. The nature of work discharged by Jal Nigam and Jal Sansthan is also to some extent similar but having regard to the scheme of the Act, it cannot be said that both of the discharged the same duties and functions. The distinction between them is again noticed from the provisions contained in Section 16 of the Act wherein Jal Nigam is empowered to call for such reports and information from Jal Sansthan or local body whenever it may be considered necessary and after considering the reports and information may issue such directions to Jal Sansthan or local Body as may be found necessary. Section 17 of the Act in fact confers supervisory powers on Jal Nigam. The duties and the work assigned to Jal Nigam and jal sansthan, inter alia, provide for formulation of the projects and schemes relating to the water supply and sewerage. The functions of Jal Nigam have been specifically set out in Section 14 of the Act whereas functions of Jal Sansthan have been enumerated in Section 24. After going through the various provisions of the Act, it appears to us that Jal Nigam and Jal Sansthan are two distinct body corporates although some of the functions are overlapping and of similar nature. It is the claim of the appellants that the duties , obligations and the work discharged by the employees of both these Corporations being identical, they are entitled for parity in pay scales on the principle of equal work. The appellants sought to justify their claim on the basis of the resolution dated 4th June, 1983 passed by Jal Sansthan, Dehradun approving the pay parity with the employees of Jal Nigam . The resolution dated 4th June, 1983 was sent to the State Government for its approval, however, the State Government vide its communication dated 5th March, 1984 did not accord permission to implement the said resolution and as a result thereof, they were required to file the aforesaid writ petition in the High Court for the aforesaid reliefs.

6. The high Court after considering the pleadings and materials on record held that the employees of jal sansthan cannot be equated in the matter of pay scales with the employees of Jal Nigam. The High court , inter alia noticed the following of differences between the two corporations; (1) Jal Sansthan was constituted under section 18 of the Act and it is a local authority . The Nature of work of the employees is the same as that of local bodies, (2) Jal Sansthans are under the purview of pay commission for the local bodies, (3) there is a basic difference in the Jal Nigam and Jal Sansthan and (4) Jal Nigam is a separate corporation and the employees are under the purview of separate commission. Consistent with these findings, the

High Court declined to grant any relief to the appellants (writ petitioners).

7. Mr. G.L. Sanghi, Learned Senior Advocate appearing in support of this appeal urged that both these Corporations have been created under the Act and the nature of work discharged by the employees being similar, there is no justification to deny the parity in the pay scales of the employees of Jal Nigam and Jal Sansthan. He draw our attention to Annexures II, III, IV and 'A' and contended that the Garhwal Jal Sansthan had been creating posts from time to time by passing resolutions and extended the benefit of leave encashment, reimbursement of medical expenses etc. to its employees in the same manner as were made applicable to the employees of the Jal Nigam. In this Context, counsel drew our attention to the resolution dated 4th June, 1983 passed by the Jal Sansthan recommending and seeking sanction from the State Government, to bring parity in respect of the pay scales of the employees of Jal Sansthan with Jal Nigam. Counsel therefore, urged that the High Court was totally wrong in denying the reliefs to the appellants.

8. As indicated earlier, some of the duties and functions discharged by the employees of Jal Nigam and Jal Sansthan are similar but the question is whether that by itself is a decisive factor to hold that the employees of the first appellant union are entitled for the parity of pay scales with the employees of Jal Nigam. Can the principle of equal pay for equal work be applied to the two sets of employees in different organisations who are discharging the duties and functions to some extent similar without reference to the qualitative commonality thereof? From the scheme of the Act, the duties and functions assigned to the employees of Jal Nigam and Jal Sansthan, are in many respects qualitatively different. Jal Nigam is a corporation fully controlled by the state and extending the jurisdiction all over the territory of Uttar Pradesh whereas the duties and functions of Jal Sansthans are restricted to local area and under the control of local bodies. From the material produced before us, we are constrained to say that there is qualitative difference in the duties and functions discharged by the employees of Jal Nigam and Jal Sansthan and, therefore, the claim of equal pay for equal work on the plea of discrimination under Articles 14 and 16(1) of the Constitution is without any foundation. The principle of equal pay for equal work would not be applicable where qualitative difference in functions and responsibilities is apparent. This Court in State of Madhya Pradesh and another vs. Pramod Bhartiya and others, 1993(1) SCC 539 had an occasion to consider the application of this principle. After careful consideration of various decisions on this subject, this Court held as under:-

"It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further as pointed out by Mukharji, J. (as he then was) in Federation of All India Customs and 1983(3) SCC 91, the quality of work may vary institution to institution. We cannot ignore or overlook this reality, It is not a matter of assumption but one of proof. The respondents (original petitioners) have failed to establish that

their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that distinction between their scales of pay and that of non-technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by mala fides, either in law or in fact (see the approach adopted in Federation case). It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden, the original petitioners (respondents herein) have failed to discharge."

In state of Haryana and others Vs. Jasmer Singh and others, 1977(1) Supreme 137, this Court observed that 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 organizations, or even in the same organization. This Court observed as follows:-

"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-consideration which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purpose of pay-scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

In view of the settled position of law, we are of the considered view that the appellants have not brought on record any material which justify their claim based on the principle of equal work.

9. Mr. Sanghi, Learned Counsel for the appellants drew our attention to the decision of this Court in Babu Lal, Convenor and anr. Vs. New Delhi Municipal Committee and anr.

1994 suppl. (2) SCC 633. The dispute in this case was in respect of the pay scales of SWD Beldars and SWD Mates Vis-a-Vis the work of Sewermen/Sewermates and SWD Lorry Beldars-class IV employees working under the New Delhi Municipal Committee. On the basis of the pleadings and record of the said case, this Court found that the work of SWD Beldars and SWD Mates is almost similar to the work of SWD Sewermen/Sewermates and SWD Lorry Beldars. This decision, in our opinion, is based upon the facts of that case and, therefore, it is distinguishable. Mr. Sanghi then drew our attention to another decision of this Court in Kshatrapal Sharma and others Vs. Lt. Governor and others. 1993 Suppl, (3) SCC 206. This decision again proceeds on the footing that there is commonality of work among the employees in each department of New Delhi Municipal Committee and if this be so, granting benefit of Shiv Shanker Committee to certain categories although, there is commonality of work is discriminatory. This decision is again distinguishable on facts.

10. It was contended on behalf of the appellants that the second respondent vide its resolution dated 4th June, 1983 resolved to pay the same pay-scales as are paid to the employees of Jal Nigam, to its employees after considering financial implication thereof. The second respondent has only sought the approval of the State Government to its resolution dated 4th June, 1983 passed by the second respondent. This submission need not detain us any longer because the State Government exercises a supervisory power and if the State Government finds that the appellants's claim based on principle of equal pay for equal work is unsustainable, it cannot be said that the government decision is either arbitrary or suffers from any vice.

11. In view of our above conclusions, we are of the opinion that the judgment of the High Court suffers from no infirmity. The appeal to stand dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs.