

CASE NO.:
Appeal (civil) 1532 of 2005

PETITIONER:
S. C. Chandra and others

RESPONDENT:
State of Jharkhand and others

DATE OF JUDGMENT: 21/08/2007

BENCH:
A. K. Mathur & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1532 OF 2005
(With Civil Appeal Nos. 6595, 6602-6603 and 6601 of 2005)

Markandey Katju, J.

1. The facts of the case have been stated in the judgment of my learned brother Hon'ble A.K. Mathur, J. which I have perused. I respectfully agree with him that these appeals deserve to be dismissed. However, I am writing a separate concurrent judgment since I am of the view that the principle of equal pay for equal work needs to be clarified.

2. The principle of equal pay for equal work was propounded by this Court in certain decisions in the 1980s, e.g. Dhirendra Chamoli and another vs. State of U.P. (1986) 1 SCC 637, Surinder Singh vs. Engineer-in-Chief, C.P.W.D. (1986) 1 SCC 639, Randhir Singh vs. Union of India (1982) 1 SCC 618 etc. This was done by applying Articles 14 and 39(d) of the Constitution. Thus, in Dhirendra Chamoli's case (supra) this Court granted to the casual, daily rated employees the same pay scale as regular employees.

3. It appears that subsequently it was realized that the application of the principle of equal pay for equal work was creating havoc. All over India different groups were claiming parity in pay with other groups e.g. Government employees of one State were claiming parity with Government employees of another State.

4. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.

5. Thus, in State of Haryana vs. Tilak Raj (2003) 6 SCC 123, it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity, e.g., a daily rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

6. In State of Haryana and others vs. Charanjit Singh and others

(2006) 9 SCC 321, discussing a large number of earlier decisions it was held by a three-Judge Bench of this Court that the principle of equal pay for equal work cannot apply unless there is complete and wholesale identity between the two groups. Moreover, even for finding out whether there is complete and wholesale identity, the proper forum is an expert body and not the writ court, as this requires extensive evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. Hence in recent decisions the Supreme Court has considerably watered down the principle of equal pay for equal work and this principle has hardly been ever applied in recent decisions.

7. In State of Haryana & another vs. Tilak Raj & others (2003) 6 SCC 123, the Supreme Court considered the doctrine of equal pay for equal work in the context of daily wagers of the Haryana Roadways. After taking note of a series of earlier decisions the Supreme Court observed:

"A scale of pay is attached to a definite post and in case of a daily wager, he holds no post. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of duties of either categories and it is not possible to hold that the principle of 'equal pay for equal work' is an abstract one.

'Equal pay for equal work' is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula".

(Emphasis supplied)

8. In State of U.P. and others vs. Ministerial Karamchari Sangh, AIR 1998 SC 303, the Supreme Court observed that even if persons holding the same post are performing similar work but if the mode of recruitment, qualification, promotion etc. are different it would be sufficient for fixing different pay scale. Where the mode of recruitment, qualification and promotion are totally different in the two categories of posts, there cannot be any application of the principle of equal pay for equal work.

9. In State of Haryana vs. Jasmer Singh and others AIR 1997 SC 1788, the Supreme Court observed that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work of different persons in different organizations. Persons doing the same work may have different degrees of responsibilities, reliabilities and confidentialities, and this would be sufficient for a valid differentiation. The judgment of the administrative authorities concerning the responsibilities, which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally was not open to interference by the court.

10. In Federation of All India Customs and Excise Stenographers (Recognized) and others vs. Union of India and others AIR 1988 SC 1291, this Court observed :

"In this case the differentiation has been sought to be

justified in view of the nature and the types of the work done, that is, on intelligible basis. 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".

11. It may be mentioned that granting pay scales is a purely executive function and hence the Court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the Court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd. vs. Workmen, Indian Drugs and Pharmaceuticals Ltd.* (2007) 1 SCC 408.

12. There is broad separation of powers under the Constitution, and the judiciary should not ordinarily encroach into the executive or legislative domain. The theory of separation of powers, first propounded by the French philosopher Montesquieu in his book 'The Spirit of Laws' still broadly holds the field in India today. Thus, in *Asif Hameed vs. State of Jammu and Kashmir*, AIR 1989 SC 1899 a three Judge bench of this Court observed (vide paragraphs 17 to 19) :

"17. Before advertent to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles* (1958) 356 US 86 observed as under :

"All power is, in Madison's phrase, "of an encroaching nature". Judicial powers is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self restraint\005\005\005\005\005.

Rigorous observance of the difference between limits of power and wise exercise of power between questions of authority and questions of prudence requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do."

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

(Emphasis supplied)

13. In our opinion fixing pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State. Realizing this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay).

14. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide Government of West Bengal vs. Tarun K. Roy and others (2004) 1 SCC 347.

15. Similarly, in State of Haryana and another vs. Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72, the principle of equal pay for equal work was considered in great detail. In paragraphs 9 & 10 of the said judgment the Supreme Court observed that equation of posts and salary is a complex matter which should be left to an expert body. The Courts must realize that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of

parity is a complex matter which is for the executive to discharge. Granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences vide Union of India and others vs. Pradip Kumar Dey (2000) 8 SCC 580.

16. In view of the above, I concur with the conclusion arrived at by my learned brother Hon'ble A.K. Mathur, J. that the appeals preferred by the appellants deserve to be dismissed. Ordered accordingly.

JUDIS