

CASE NO.:
Appeal (civil) 9244 of 2003

PETITIONER:
Haryana State Minor Irrigation Tubewells Corporation & Ors

RESPONDENT:
G. S. Uppal & Ors

DATE OF JUDGMENT: 16/04/2008

BENCH:
R. V. Raveendran & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 9244 OF 2003
W I T H

CIVIL APPEAL NO. 9239 OF 2003
Haryana State Minor Irrigation Tubewells
Corporation & Ors.

Versus
Chakrawarti Garg

W I T H

CIVIL APPEAL NO. 9248 OF 2003
Haryana State Minor Irrigation Tubewells
Corporation & Ors.

Versus
A. S. Dhir
nt

..... Appellants

..... Respondent

..... Appellants

..... Responde

Lokeshwar Singh Panta, J.

1. These appeals, by special leave, filed by Haryana State Minor Irrigation Tubewells Corporation & Others are directed against the common judgment dated August 22, 2001 passed by the Division Bench of the High Court of Punjab and Haryana in Letters Patent Appeal No. 725/1993 and Civil Writ Petition No. 5946/1994 and Civil Writ Petition No. 834/1996.

2. By the impugned judgment, the Division Bench of the High Court dismissed the Letters Patent Appeal filed by the appellants against the judgment and order dated May, 18, 1993 of the learned Single Judge passed in C.W.P. No.14200/1993 and allowed C.W.P. No. 5946/1994 filed by Chakrawarti Garg and C.W.P. No. 834/1996 of A.S. Dhir, respondents herein.

3. These appeals are similar in nature and they involve identical questions of law and facts and, therefore, they are being decided by this common judgment.

4. The facts giving rise to the filing of these appeals are that the respondents in Civil Appeal Nos. 9244/2003 and 9248/2003, at the time of filing of the writ petitions, were working on the post of Sub-Divisional Officer (SDO), Sub-Divisional Engineer (SDE) and Assistant Engineer (AE) with the Haryana State Minor Irrigation Tubewells Corporation Ltd. (for short 'the Corporation') \026 appellant No. 1, which is a Government company, within the meaning of that expression under the Companies Act, 1956. The respondent in C.A. No. 9239/2003 was working as Law Officer with the Corporation. State of Haryana exercises deep and pervasive control over the Corporation. Secretary, Irrigation Department; Secretary, Agricultural Department; Secretary, Finance Department, to

the Government of Haryana; Chairman, Haryana State Electricity Board and Chief Engineer (Canals), Irrigation Works, Haryana, were the exclusive shareholders in the Corporation at the time of its formation in the year 1970. The Corporation was carved out of the Irrigation Wing of the Public Works Department and since its inception in the year 1970, a number of officers have been appointed to different posts by way of deputation. There were about 27 SDOs on deputation from the Irrigation Department working in Corporation whose nature of duties and responsibilities were similar and identical to the nature and duties of the SDOs working in the equivalent post of Corporation. Their duties were inter-changeable and as such it was the case of the respondents before the High Court that there was no difference whatsoever between the duties and responsibilities expected to be shouldered by a deputationist and by an employee of the Corporation. The respondents pleaded before the High Court that there was no qualitative difference between the duties and responsibilities of persons employed on the posts of SDOs, SDEs, AEs in various departments of Haryana Government, such as Public Works Department (Buildings and Roads), Public Health Departments, various Corporations, Haryana State Electricity Board, Haryana Urban Development Authority and several other Boards. Rule 5.1 of Part V of the Service Bye-Laws of the Corporation reads as under:-

"1) Each post in the Corporation will carry a time scale of pay, the present pay scale being indicated in Appendix II.

2) The pay scale is subject to revision by the Board, which will, however, generally follow the pattern adopted by the Government of Haryana from time to time."

5. The Corporation ever since its inception in the year 1970 has been following the pay scales of the employees of the Haryana Government as revised from time to time in respect of all categories of its employees. As noticed earlier, initially, when the Corporation was formed, almost the entire Engineering staff right from the rank of Chief Engineer to the rank of AEs/SDOs/SDEs was taken on deputation from the Irrigation Department of the State Government till the Corporation recruited its own cadre of AEs. Qualifications and experience for recruitment and promotion to the ranks of AEs, SDOs, Executive Engineers, Superintending Engineers and Chief Engineers are the same as in the Irrigation Department. All those employees who came on deputation on whatever post, were granted pay scales as revised by the Haryana Government from time to time for the Engineers in the Government Departments, like PWD (B & R), Public Health and Irrigation Department. Keeping in view these facts, pay scales of employees of the Corporation including those of Engineers were revised with effect from 01.04.1979 and 01.01.1986 on the pattern of revision of pay scales approved by the Haryana Government for its employees. The revision of pay scales with effect from 01.01.1986 was also approved by the Pay Revision Committee (PRC) constituted by the Haryana Government for revision of pay scales of the employees of various public Undertakings/Boards/Corporations in its meeting held on 21.09.1988. Revision of pay scales were made applicable to the Engineers in the Corporation w.e.f. 01.01.1986, but thereafter the Haryana Government, while removing certain anomalies in the pay scale of the Superintending Engineers, further revised the pay scales of SEs of PWD (B & R), Public Health and Irrigation Department from Rs.3700-5000/- to Rs. 4100-5300/- vide Finance

Department letter No.6/38/3PR(FD) -27 dated 16.05.1989. By another letter of the said Department No. 6/38/PR dated 02.06.1989, salaries of other Engineers, such as AEEs/AEs/SDOs/SDEs (Class-I and Class-II) were also revised with effect from 01.05.1989 by way of removal of anomalies. The Board of Directors of the Corporation in its 94th meeting held on 18.08.1989 decided that in view of the parity in pay scales that had been maintained in the past between the Corporation and their counter parts in the Haryana Government Departments, which was approved by the Finance Department, may be recommended to the Public Enterprises and Investment Cell of the Finance Department, Haryana, for their concurrence. The names of the posts, their existing and revised pay scales are tabulated as below:-

Name of the Post	Existing Scales of pay	Revised Scales of Pay
Superintending Engineer	Rs. 3700-5000	Rs. 4100-5300
Engineers	AEE/AE/SDO/SDE (Class I & II)	Rs.2200-4000
		Rs.2000-3500
		Rs.2200-4000
		Rs.3000-4500
	(After 5 years of regular service)	Rs.4100-5300
	(After 12 years of regular service)	

6. The Haryana Government once again modified pay scales of the Engineers vide letter dated 16.05.1990 with effect from 01.05.1989 as under:-

Name of the Post	Existing Scales of pay	Revised Scales of Pay
Engineers	AEE/AE/SDO/SDE (Class I & II)	Rs.2200-4000
		Rs.2000-3500
	(After 5 years of regular service)	Rs.4100-5300
	(After 12 years of regular service)	
		Rs.2200-4000
		Rs.3000-4500
	(After 5 years of regular satisfactory service)	
Selection Grade		Rs.4100-5300
	(After 12 years of regular satisfactory service) limited to 20% of the cadre posts.	

7. The Board of Directors of the Corporation considered and approved the adoption of the above modified scales of pay w.e.f. 01.05.1989 in respect of the Engineers of the Corporation in 97th meeting held on 25.06.1990, subject to the concurrence of the Finance Department. It was further resolved that any further amendment/modification made by the Haryana Government in the pay scales of the Engineers may also be made applicable in respect of the Corporation employees, subject to the concurrence of the Finance Department. The proposal of the Board of Directors of the Corporation for revision of pay scales of the Corporation Engineers was sent to the Finance Department and in the said proposal, it was brought to the notice of the Standing Committee that the revised pay scales had already been granted to the Engineers of the Haryana Urban Development Authority and that of the Haryana State Electricity Board. The proposal was placed before the Standing Committee in its meeting that was held on 28.05.1992, which approved the pay scales in a selective manner. The revision in the pay scales of the Superintending Engineers, Accounts Officers, Circle Head Draftsmen, Divisional Head Draftsmen, etc. were approved, whereas the revision of pay scales of the AEs/SDOs/SDEs was postponed and it was decided that the matter would be examined separately by the Finance Department. The claim of the respondents with regard to the revision of pay scales, however, was not taken up by the Standing Committee. The respondents submitted repeated representations but they could not get any relief and the respondents were left with no option but to file the writ petitions before the High Court.

8. The Corporation contested the claim of the respondents before the High Court by filing written statement wherein it has been pleaded that the respondents are seeking revised pay scales on the pattern of Engineers of three wings of PWD of the State Government. The proposal of the Corporation for revision of pay scales of engineering staff was placed for consideration of the Standing Committee in its meeting held on 15.11.1991. The decision taken in the aforesaid meeting reads thus:

"It was decided to constitute a Sub-Committee comprising of Member Secretary, Haryana Bureau of Public Enterprises; Managing Director, Haryana State Minor Irrigation Tubewell Corporation and Joint Secretary Finance (Pay Revision) to review the entire staffing pattern along with pay scale of CORPORATION. Based on the recommendations of the Sub-Committee, the Corporation could submit a fresh proposal for consideration of the Standing Committee, if need be."

The meetings aforesaid of the Sub-Committee were held on 16.01.1992 and 6.02.1992. Minutes of these meetings containing recommendations of the Sub-Committee were placed for consideration of the Standing Committee in its meeting held on 28.05.1992 wherein it was decided as under:-

"The revision of pay scales of posts of AEE/AE/SDO/SDEs was postponed and it was decided that the matter will be examined separately by the Finance Department."

It has further been stated that as the matter was under active

consideration and had not been finally decided by the Finance Department, no cause of action arose to the respondents and, therefore, the writ petition being premature was liable to be dismissed on that sole ground. The main defence of the Corporation in its written statement before the High Court was that there has been a revision of pay scales of Engineers of three wings of Public Works Department only of the State Government who have to carry out more arduous duties under different conditions and constraints because of the development activities undertaken by the State under its phased programme and time-bound schedule, whereas the Engineers employed by the Corporation have been discharging normal routine duties. It was contended that the Corporation is running under loss and because of its financial position, the Corporation is not in a position to equate the pay scales of its Engineers, Law Officers and other employees equivalent to the Engineers of the three wings of PWD and other employees working on the equivalent posts of the State Government.

9. The learned Single Judge, allowed the Writ Petition No. 14200/1993 which was the subject-matter of LPA No. 7525/1993 before the Division Bench of the Punjab and Haryana High Court and held as under:

"In view of the above, it is held that the action of the respondents in not granting the revised scale of pay to the petitioners with effect from May 1, 1989 suffers from the vice of discrimination and is violative of Articles 14 and 16 of the Constitution of India. The next contentions raised by the learned counsel for the petitioners related to the jurisdiction of the Government to interfere in the affairs of the Corporation. The contention is not wholly without merit. However, in view of my decision on the first question, it does not appear to be necessary to examine this matter in detail.

Accordingly, this writ petition is allowed. It is held that the petitioners will be entitled to the revised scales of pay with effect from May 1, 1989 as has been granted to the persons working in the Corporation by way of deputation or in the Public Works Department of the Government. The needful shall be done within 4 months from the date of receipt of a copy of this order. They will be entitled to all consequential benefits. In case, the needful is not done within the aforesaid time, the petitioners shall be entitled to the payment of arrears, etc. along with interest @ 12% per annum from the date of accrual to the date of actual payment. However, in the circumstances of the case, there will be no order as to costs."

10. Being aggrieved, the Corporation carried the matter in intra-court appeal before the Division Bench. During the hearing of Letters Patent Appeal, a copy of the final decision taken by the Government had been handed over to the Bench vide which the Finance Committee of the Government decided that pay scales of the Engineers along with the doctors of Health Department and Deputy Superintendents of Police were

further revised. It has also been clarified that the revised pay scales, so far as engineers were concerned, were applicable to the Engineers of PWD (three wings) only. Shri Chakrawarti Garg, Law Officer working with the Corporation, filed Civil Writ Petition No. 5946/1994 and Shri A.S. Dhir, SDO of the Corporation filed Civil Writ Petition No. 834/1996 before the Division Bench of the High Court claiming revision of pay scales at par with the other employees discharging same and similar duties and responsibilities at equivalent posts with the State Government, Boards and Corporations. The Division Bench by impugned order dated August 22, 2001 dismissed the Letters Patent Appeal of the Corporation and allowed the Civil Writ Petitions filed by Shri Chakrawarti Garg and Shri A.S. Dhir respondents herein. Hence, the Corporation and others have filed these appeals questioning the correctness and validity of the common judgment of the Division Bench of the High Court.

11. We have heard learned counsel for the parties. Mr. Neeraj Kumar Jain, learned Additional Advocate General appearing for the appellants, vehemently contended that the pay scales of the respondents could not be compared and equated with the Engineers and other employees of the three wings of the PWD and other employees of the State Government. He submitted that there is apparent difference between the duties, responsibilities and reliability of the Engineers working in the three wings of Public Works Department as they have to work under difficult conditions and constraints because of the developmental activities as compared to those Engineers working in the Corporation. As such, the findings of the High Court granting different pay scales to the engineers and other employees of the Corporation in violation of Articles 14 and 16 of the Constitution of India cannot be justified and sustained. It was also urged that mere fact that on two earlier occasions, pay hike to the engineers of the Government Departments attracted an equal pay hike for the Engineers employed with the Corporation is no guide that may conclusively show that nature and duties of the two sets of employees were the same. The weak financial position of the Corporation is also being pressed into service during the course of arguments for denying the relief that has been granted to the respondents by the High Court.

12. The learned Additional Advocate General, in support of his submissions, placed reliance on the judgments of this Court in *State Bank of India & Anr. v. M.R. Ganesh Babu & Ors.* [2002] 4 SCC 556; *State of Haryana v. Haryana Civil Secretariat Personal Staff Association* [2002] 6 SCC 72 and *Union of India v. S.B. Vohra* [2004] 2 SCC 150.

13. We have gone through these decisions of this Court. In *State Bank of India's* case (supra), this Court held that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be same but the responsibilities make a difference. Often the difference is a matter of degree and 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, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, is not open to

interference by the court.

14. In S.B. Vohra's case [supra], this Court dealing with the fixation of pay scales of officers of the High Court of Delhi (Assistant Registrars) held that the fixation of pay scales is within the exclusive domain of Chief Justice, subject to approval of President/Governor of the State and the matter should either be examined by an Expert Body or in its absence by the Chief Justice and the Central or State Government should attend to the suggestions of the Chief Justice with reasonable promptitude so as to satisfy the test of Article 14 of the Constitution of India. Further, it was observed that financial implications vis-a-vis effect of grant of a particular scale of pay may not always be a sufficient reason and differences should be mutually discussed and tried to be solved.

15. In State of Haryana's case (supra), this Court held that the High Court was in error in allowing the parity in pay scale to State Civil Secretariat PAs with Central Secretariat PAs merely because the designation was same, without comparing the nature of their duties and responsibilities and qualifications for recruitment and without considering the relevant rules, regulations and executive instructions issued by the employer and governing the cadre concerned.

16. There is no dispute nor can there be any to the principle as settled in the above-cited decisions of this Court that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well-settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. [see K.T. Veerappa & Ors. v. State of Karnataka & Ors. (2006) 9 SCC 406].

17. Mr. M.N. Krishnamani, learned senior counsel assisted by Shri Raj Kumar Gupta and Shri A.N. Bardiya appearing for respondents in C.A. Nos. 9244/03 and 9248/03; Mr. Rishi Malhotra, Advocate appearing for respondents in C.A. 9239/2003, in support of the judgment of the Division Bench, contended that no exceptions can be taken to the well-reasoned judgment recorded by the Division Bench of the High Court. They submitted that the Division Bench has analysed in great detail the factual situation and legal proposition covering the field of controversy, therefore, there is apparently no infirmity or perversity in the judgment impugned in these appeals inviting interference by this Court.

18. In order to appreciate the rival contentions of the learned counsel for the parties, we have scrutinized the judgment of the Division Bench of the High Court in the backdrop of the factual situation of the case as well as in the light of the principle enunciated in the above-cited decisions.

19. It is well-settled that the State can make reasonable classification if it has a nexus with the object sought to be achieved. It is admitted position in the present case that posts of SDOs/SDEs/AEs can be filled up by the Corporation by any one of the three known methods, namely, direct recruitment, on promotion or by transfer/deputation. Once a person is appointed to a post in a particular cadre, the source of his recruitment or the method of his appointment becomes irrelevant. The Corporation has framed its Service Bye-Laws and by virtue of Rule 5.1 of Part-V of the Service Bye-Laws, each post in the Corporation will carry a time scale of pay; the present pay scale being indicated in Appendix-II and further that the pay scale is subject to revision by the Board, which

will, however, generally follow the pattern adopted by the Government of Haryana from time to time. The employees of the Corporation, since its inception in 1970, had been getting the same pay scales as that of the employees of the Haryana Government and the Board of Directors having already equated the pay scales of the Engineers of the Corporation commensurate to the pay scales of the Government employees, but the State Government has not concurred with the decision of the Board of Directors. By virtue of Clause 81(v) of the Memorandum of Association of the Corporation, the Directors of the Corporation in their discretion have powers to appoint, remove or suspend such Managers, Secretaries, Officers, Clerks, Agents and Servants of permanent, temporary or special services, as they may from time to time think fit, and to determine their powers and duties and fix their salaries or emoluments and to require security of such amount as they think fit in such instances. The power to fix the salaries or emoluments of the employees of the Corporation, thus, specifically rests with the Directors of the Corporation and by virtue of Rule 5.1 of Part-V of the Service Bye-Laws, as mentioned in the earlier part of the judgment, the Corporation had favourably considered the claim of the respondents by recommending the same scales for them, as were being given to their counterparts in the service of the Government Departments. The proposal of the Board of Directors of the Corporation for revision of pay scales to its employees came up before the Standing Committee in its meeting held on 28.05.1992 and the Standing Committee approved the pay scales in a selective manner. The revision in pay scales of the Superintending Engineers, Accounts Officers, Circle Head Draftsmen, Divisional Head Draftsmen, etc. were approved, whereas the revision of pay scales of the respondents, who are AEs/SDOs/SDEs, was postponed and it was decided that the matter would be examined separately by the Finance Department.

20. The State of Haryana in its written statement filed before the High Court admitted that although the technical qualifications of incumbents on the posts of AEs/SDOs/SDEs in various Government Departments, Boards and Corporations are identical, yet the nature of duties and responsibilities, quantum of workload and level of technical expertise involved do vary from organization to organization depending upon the nature of activities undertaken by the respective organizations. It is further contended that the salary and allowances of the deputationists of the Corporation are governed by the terms and conditions of their deputation as decided by the Government from time to time. Therefore, the respondents cannot be treated and equated at par with the similar categories of employees of the State Government.

21. The learned Single Judge of the High Court as also the learned Judges of the Division Bench have considered the controversy in detail in their judgments holding the respondents entitled for the revision of pay scales at par with their counter-parts working in the State of Haryana.

22. It is not in dispute that a deputationist holds the post in a particular cadre office for the duration he remains on deputation and is a part of that cadre. No material has been placed on record by the appellants to show that the deputationists are appointed against only certain particular posts or that they cannot be posted or transferred to the posts held by the respondents. In fact, it is an admitted position that the posts are mutually inter-changeable. In this situation, it is reasonable to infer that a deputationist performs the same duties as those performed by other persons working in the cadre. It is also an admitted position that the

qualifications laid down for recruitment in the Corporation are identical to those prescribed in the Departments of the Government. It is further clear that the respondents have continued to work in the pay scale of Rs.2000-3500 w.e.f. 01.01.1986. As against this, their counter-parts in the Government and also the persons, who are posted in the Corporation by way of deputation, would get the scale of Rs.3000-4500 on completion of five years of service and are placed in the scale of Rs.4100-5300 (to the extent of 20% of the posts) on completion of 20 years of service. The respondents were obviously placed at a disadvantageous position. The decision of the Government in rejecting the proposal of the Board of Directors suffers from the vice of invidious discrimination and cannot be sustained because the very same decision of the Board with regard to all other employees has since been accepted and approved by the State Government. On the scrutiny of the material on record, it is clear that the appellants did not produce any evidence on record to establish that the working conditions, responsibilities and nature of duties, etc. of the respondents are different to their counter-parts working in the same categories in the State Government, Boards and other Corporations, etc. and also the persons who are working with the Corporation on deputation.

23. A careful examination shows that the issue was not really about grant of pay scales to Corporation Engineers on par with PWD Engineers. When the pay revision took place, the revised pay scales that were given to the Engineers of the State Government were also given to the engineers of the Corporation with effect from 1.1.1986 thereby maintaining the parity. What was not extended to the Corporation employees, which is the subject matter of the grievance, is the further revision by way of 'removal of anomaly in pay scales' given to AEE/AE/SDO/SDE of the State Government with effect from 1.5.1989 vide circular dated 2.6.1989 of the Finance Commissioner. The real question would be whether what is given by way of anomaly removal in the case of Engineers of State Government, should automatically be extended to the corresponding categories of engineers of the Corporation. When, after a pay revision, an anomaly is found in the pay scale given to a class of Government servants and such anomaly is rectified, it is not a new pay revision but a correction of the original pay revision, or an amendment to the pay scale that has already been granted. Therefore, where the pay revision extended to the government servants has already been extended to the employees of the Corporation also, it follows that any correction of anomaly in the revised pay scale given to the government servants should also be made in the case of those who were earlier given parity by extending the pay scale which is the subject matter of the correction. It should be borne in mind that the question whether Corporation engineers were on par with PWD Engineers and should be given parity in pay scales was already decided when the pay scale revision granted to Government (PWD) engineers was extended to the corporation Engineers also with effect from 1.1.1986. That question did not again arise when the anomaly in the pay revision was rectified with reference to the Government engineers. When the anomaly in the pay scale of Government engineers was rectified, the rectification should apply to Corporation engineers also to maintain the parity.

24. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of

the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in *M.M.R. Khan v. Union of India* [1990 Supp. SCC 191] and *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union* [(2000) 4 SCC 245]. However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events, discussed above, clearly shows that the employees of the Corporation have been treated at par with those in Government at the time of revision of scales of pay on every occasion. It is an admitted position that the scales of pay were initially revised w.e.f. April 1, 1979 and thereafter on January 1, 1986. On both these occasions, the pay scales of the employees of the Corporation were treated and equated at par with those in Government. It is thus an established fact that both were similarly situated. Thereafter, nothing appears to have happened which may justify the differential treatment. Thus, the Corporation cannot put forth financial loss as a ground only with regard to a limited category of employees. It cannot be said that the Corporation is financially sound insofar granting of revised pay scales to other employees, but finds financial constraints only when it comes to dealing with the respondents, who are similarly placed in the same category. Having regard to the well reasoned judgment of the Division Bench upholding the judgment and order of the learned Single Judge, we are of the view that the impugned judgment warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us.

25. In the result, for the reasons stated above, we find no merit in these appeals. The appeals are dismissed accordingly. However, the parties are left to bear their own costs.