REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1976 OF 2003

STATE OF PUNJAB & ANR. … APPELLANTS

Versus

SURJIT SINGH & ORS. … RESPONDENTS

[With C.A. Nos. 1986, 2032, 2031, 2037-2040, 2090, 1979-1983, 4464, 4350, 7466 of 2003, C.A. No.920 of 2004, C.A. Nos. 3248, 6123 of 2005 and C.A. No. 3025 of 2006]

J U D G M E N T

S.B. SINHA, J.

Applicability of the doctrine of 'equal pay for equal work' is in question in these appeals.

They arise out of the final judgment and order dated 20th December, 2001 passed by a Division Bench of the Punjab & Haryana High court at

Chandigarh in C.W.P. No.6780 of 1999 whereby and whereunder the writ petition filed on behalf of the respondents has been allowed.

Respondents herein were appointed in different capacities by the Public Health Department of the State of Punjab. They were admittedly appointed as daily wager. Only some of them were appointed after their names were requisitioned from the Employment Exchange. No recruitment process was followed. Constitutional norm of equality contained in Articles 14 and 16 of the Constitution of India had not been adhered to. They were paid wages in terms of the offer of appointment made to them. Their names were being maintained in the Muster Roll.

Inter alia, on the premise that the respondents have put in a number of years of service and they were entitled to the benefit of equal pay for equal work, they filed several writ applications.

By reason of the impugned judgment, the said writ applications were allowed.

Relying on or on the basis of a Full Bench decision of the said Court in Ranbir Singh vs. State of Haryana [1998 (2) Service Cases Today 189], the High Court opined:

> " In view of the fact that petitioners who are similarly situated like the present petitioners have been granted the relief, we see no reason to deny the relief to the petitioners even in these petitions. The petitioners have admittedly worked for a considerable period in the department of the State Government continuously uninterrupted and to the satisfaction of all concerned. The State itself is paying different salary on monthly basis to these persons, to some the minimum wages and to some on the basis of the Common Scheduled Rates. We see no reason why the petitioners should not be placed at parity to the limited extent that they should be entitled to the minimum of the pay scale with deafness allowance alone as granted by the Hon'ble Apex Court in the recent cases.
>
> Another factor which we have to notice is that some of the petitioners had not even completed a period of (sic) pronounced by the State dated January 23, 2001. In fact, few of them were employed in the year 1996 and 1997, as such we find it difficult to grant them the relief as aforenoticed even on the date of institution of the writ petitions. It would be just, fair and equitable that the petitioners are granted minimum of the pay scale with dearness allowance alone from the date of the judgment, while the other petitioners would be entitled to the same relief from the date of filing the present petition. The interest claimed by the petitioner is not founded on any reasonable grounds and for the reasons stated in the case of

> Vijay Kumar (supra), we decline the prayer of the petitioners for grant of interest.

Mr. Shyam Divan, learned Senior Counsel appearing on behalf of the appellants would contend that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the principle of 'equal pay for equal work' should not be applied automatically. Drawing our attention to various decisions of this Court, it was urged for the purpose of applicability of the said doctrine, the court is not only required to look to the pleadings of the parties but also must arrive at a decision that all the ingredients therefor are established. It was urged that the principle of 'equal pay for equal work' is not only dependent upon the nature, quality and quantity of the work but equal value therefor. A large number of factors are relevant for the purpose of grant of relief in terms of the said doctrine. For the said purpose, the court must not only arrive at the equal identity of group but also the complete and wholesale identity.

Mr. Manoj Swarup and Mr. Nidhesh Gupta, learned Counsel appearing on behalf of the respondents, on the other hand, urged that the respondents having worked for a long time and as their counter-parts in different departments who were absolutely similarly situated had filed the

writ applications and they have been granted reliefs, there is absolutely no reason as to why they should be differently treated. .

In this connection, our attention has been drawn to the order dated 18.4.2009 passed by a Division Bench of the High Court of Punjab & Haryana passed in Civil Writ Petition No. 6162 of 1995 [Gurcharan Singh Kahlon & Ors. vs. State of Punjab & Anr.], wherein it was held as under:

> "For the aforementioned reasons, we allow the writ petition and direct the respondents to pay to the petitioners salary in the regular pay scale by fixing their pay at the minimum of that pay scale with effect from the date of the filing of this writ petition i.e. 26.4.1995. The petitioners shall get the benefit of dearness allowance on the minimum of regular pay scale. Arrears shall be paid to the petitioners within four months of the submission of a certified copy of this order. It is however, made clear that this order shall not entitle the petitioners to claim regularization of service. We also make it clear that it would be open to the respondents to dispense with the service of those employees who do not fulfil the qualifications, but while doing so the respondents shall comply with the requirements of the statutory provisions like the Industrial Disputes Act, 1947."

The learned counsel would contend that Special Leave Petitions preferred thereagainst have been disposed of by this Court by an order dated 26.4.2007 passed in Civil Appeal No. 1269 of 2001 etc. etc., which reads as under:

"1. These appeals are being disposed of by this common order for the sake of convenience facts are being taken from Civil Appeal No. 1269 of 2001.

2. This appeal is directed against the order passed by the High Court of Punjab & Haryana dated 18.4.1996. The Division Bench allowed the Writ Petition and directed respondents to pay to the petitioners salary in the regular pay scale by fixing their pay at the minimum of the pay scale with effect from the date of the filing of the writ petition i.e. 26.4.1995. It was further directed that the petitioners shall get the benefit of dearness allowance on the minimum of pay scale and arrears shall be paid to the petitioners within four months of the submission of a certified copy of this order. It was also mentioned that this order shall not entitle the petitioners to claim regularization of services and it will be open to the respondents to dispense with the services of those employees who do not fulfill qualifications but while doing so the respondents shall comply with the requirements of the statutory provisions like the Industrial Disputes Act, 1947.

3. Aggrieved against this order, this appeal by way of Special Leave Petition was filed but the operation of the order of the High Court was not stayed by this Court. The net result was that the State of Punjab started paying the minimum of pay scale to all those petitioners from the date of the judgment of the High Court. All the writ petitioners are getting the minimum pay-scale from 1996 onwards.

4. Mr. H.S. Munjral, learned counsel appearing for the appellants has invited our attention to

a recent order passed by the State of Punjab on 15.12.2006 whereby after referring to the decision in the case of Secretary, State of Karnataka and others v. Uma Devi (3) and others, (2006) 4 SCC 1, scheme has been prepared and by virtue of that scheme now the services of those persons who have put in 10 years of service as on 10.4.2006 shall be regularized; the employee fulfils the minimum basic qualifications for the post against which he was appointed, it shall be certified by the competent authority that no supernumerary posts were created to retain the employees in service; and it shall be the duty of the Administrative Department that while considering the case of each employee, the orders passed by this court to be implemented that no further appointment shall be made except in accordance with law. Since the scheme has now been framed and the State of Punjab has started considering the regularization of all those persons who have put in 10 years of service as on 10.4.2006, therefore, no useful purpose will be served by interfering with the impugned order. More so, these persons are already getting minimum pay scale from 1996. It will not be proper to put the clock back. However, learned counsel has invited our attention to the decision of this Court in the case of State of Haryana vs. Jasmer Singh (1996) 11 SCC 77. As against this, learned counsel for the respondents has invited our attention to the decision of this court in the case of State of Punjab v. Devinder Singh, (1998) 9 SCC 595. No useful purpose will be served by going into these cases any more as now the decision in the case of Uma Devi (supra), rendered by the Constitution Bench holds the field and it has cut the root that no further temporary/ ad

> hoc appointment shall be made. However, now the Government of Punjab has already framed a scheme dated 15.12.1996 for regularization, we do not propose to interfere with the order passed by the High Court as respondents are already getting the minimum pay scale from 1996 i.e. for the last more than 10 years. Let the services of these persons may now be regularized in terms of the scheme framed by the State of Punjab dated 15.12.2006. Hence, we do not find any merit in these appeals and the same are dismissed. No order as to costs. However, this order shall not be treated as precedent for future."

Before us, the learned counsel urged that on analysis of the decisions rendered by this Court, the following legal positions emerge. We would deal with them in seriatim and as put forward by the learned counsel.

(1) Mode and manner of selection can be a ground of classification.

In S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279] it has been held:

> "27**.** Thus, in State of Haryana v. Tilak Raj 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.
>
> XXX XXX XXX
>
> 30**.** In State of U.P. v. Ministerial Karamchari Sangh 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."

In a given case, mode of selection may be considered as one of the factors which may make a difference. {See State of Haryana v. Charanjit Singh [(2006) 9 SCC 321 Para 15]}.

(2) Daily wager working for a long time should be granted pay on the basis of the minimum of a pay scale. Reliance in this behalf has been placed on Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors. [(2006) 4 SCC 1]. It was furthermore urged that this Court should follow the principle laid down by the Constitution Bench in Uma Devi as such a relief had been

granted by it in respect of daily wagers of the Commercial Taxes Department.

The learned counsel submitted that this Court lately, although made a distinction between a direction to regularize the employees who had been working for some time, but keeping in view the constitutional mandate contained in Article 39A of the Constitution of India directed grant of a salary on a scale of pay, particularly in cases where the conduct of the State had been found to be unreasonable, unjust and prejudiced.

Mr. Gupta has also drawn our attention to a Three Judge Bench decision in Official Liquidator v. Dayanand & Ors. [(2008) 10 SCC 1], Singhvi J, speaking for a Three Judge Bench, while reiterating the principles laid down in Uma Devi, in view of the decision of the subsequent two Judge Benches decision, held as under :

> "**78.** There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In *Mahadeolal Kanodia* v.

Administrator General of W.B. this Court observed:

> "*19.* … If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. *If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court*."
>
> (emphasis added)

In regard to the application of doctrine of 'equal pay for equal work', it was opined:

> "**93.** The respondents' claim for fixation of pay in the regular scale and grant of other monetary benefits on a par with those appointed against the sanctioned posts has been accepted by the High Courts on the premise that their duties and functions are similar to those performed by regular employees. In the opinion of the High Courts, similarity in the nature of work of the company-

> paid staff on the one hand and regular employees on the other hand, is by itself sufficient for invoking the principle of equal pay for equal work. In our view, the approach adopted by the High Courts is clearly erroneous and directions given for bringing about parity between the company-paid staff and regular employees in the matter of pay, allowances, etc. are liable to be upset."

Upon noticing the history, it was opined:

> **"100.** As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor were they paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the Offices of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the Offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company-paid staff in the regular pay scale from the Consolidated Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits on a par with regular employees by applying the principle of equal pay for equal work."

However, upon taking a practical view of the matter, it was directed:

> "**121.** We also feel that the salaries and allowances payable to the company-paid staff should be suitably increased in the wake of huge escalation of living cost. In *Jawaharlal Nehru Technological University* v. *T. Sumalatha* a two-Judge Bench, after taking note of the fact that emoluments payable to the investigators appointed in the Nodal Centre at Hyderabad had not been revised for six years, directed the Union of India to take expeditious steps in that direction. Keeping that judgment in mind, we direct the Official Liquidators attached to various High Courts to move the Courts concerned for increasing the emoluments of the company-paid staff. Such a request should be sympathetically considered by the Courts concerned and the emoluments of the company-paid staff be suitably enhanced and paid subject to availability of funds."

In our opinion, this Court thereby did not lay down any law. In fact, by reason thereof, the Bench refused to apply the doctrine of 'equal pay for equal work'.

Appearing on behalf of the appellants in CA No.2090/2003, Mr. Gupta has drawn our attention to the fact that although appellants had been appointed on a contract basis for 89 days wherefor agreement had been entered into by and between the employer and the employee, but the allegations in the writ petition that they were forced to sign such contracts had not been denied or disputed. It was argued that the appellants having

been appointed by a Committee duly constituted for the said purpose upon calling for their names from the employment exchange and they having the requisite qualifications to hold the said posts of Clerk etc. as is required by the regular employees, this Court may issue similar directions as was done by the Constitution Bench in Uma Devi.

In any event, Mr. Gupta contended that a circular letter having been issued by the State itself that any direction issued by the High Court to grant pay on a regular pay scale should be implemented across the board, there was no reason as to why the State would refrain from applying the said principle in the case of the respondents.

Mr. Kapoor, appearing for the appellants in CA No.7466 had also drawn our attention to the fact that although the writ petition has been dismissed, still a special leave petition has been filed.

In our constitutional scheme, the doctrine of 'equal pay for equal work' has a definite place in view of Article 39(d) of the Constitution of India read with Article 14 thereof. Although as an abstract principle the existence of the applicability of the said doctrine cannot be ignored, the question which arises for our consideration is as to whether the said doctrine could have been mechanically applied as has been done by the High Court in the instant case.

We must also place on record the fact that in different phases of development of law by this Court, relying on or on the basis of the said principle, a clear cleavage of opinion has emerged. Whereas in the 1970s and 1980s, this Court liberally applied the said principle without insisting on clear pleadings or proof that the person similarly situated with others are equal in all respects; of late, also this Court has been speaking in different voices as would be evident from the following.

This has been noticed specifically by a Division Bench of this Court in S.C. Chandra & Ors. v. State of Jharkhand & Ors. [(2007) 8 SCC 279], wherein it was held:

> "21. Learned counsel for the appellants have relied on Article 39(d) of the Constitution. Article 39(d) does not mean that all the teachers working in the school should be equated with the clerks in BCCL or the Government of Jharkhand for application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in State of Haryana v. Charanjit Singh wherein Their Lordships have put the entire controversy to rest and held that the principle, "equal pay for equal work" must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical

> and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in Charanjit Singh all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL."

Katju, J. in his separate but concurrent judgment opined as under:

> "26. 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.
>
> xxx xxx xxx
>
> 35. 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. Realising 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)."

The Bench in arriving at the said finding specifically relied upon a three Judge Bench decision of this Court in Charanjit Singh (supra), wherein it was held:

"9. In State of Haryana v. Tilak Raj it has been held that the principle of equal pay for equal work is not always easy to apply. It has been held that there are inherent difficulties in comparing and evaluating the work of different persons in different organisations or even in the same organisation. It has been held that this 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. It has been held that the problem about equal pay cannot be translated into a mathematical formula. It was further held as follows:

> "11. 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 the duties of either categories and it is not possible to hold that the principle of 'equal pay for equal work' is an abstract one."

xxx xxx xxx

17. In Bhagwan Dass v. State of Haryana this Court held that if the duties and functions of the temporary appointees and regular employees are similar, there cannot be discrimination in pay merely on the ground of difference in modes of selection. It was held that the burden of proving similarity in the nature of work was on the aggrieved worker. We are unable to agree with the view that there cannot be discrimination in pay on the ground of differences in modes of selection. As has been correctly laid down in Jasmer Singh case persons selected by a Selection Committee on the basis of merit with due regard to seniority can be granted a higher pay scale as they have been evaluated by the competent authority and in such cases payment of a higher pay scale cannot be challenged. Jasmer Singh case has been noted with approval in Tarun K. Roy case.

xxx xxx xxx

19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle

> must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.
>
> xxx xxx xxx
>
> 22. One other fact which must be noted is that Civil Appeals Nos. 6648, 6647, 6572 and 6570 of 2002 do not deal with casual or daily-rated workers. These are cases of persons employed on contract. To such persons the principle of equal pay for equal work has no application. The Full Bench judgment dealt only with daily-rated and casual workers. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service. In State of Haryana v. Surinder Kumar persons employed on contract basis claimed equal pay as regular workers on the footing that their posts were interchangeable. It was held that these persons had no right to the regular posts until they are duly selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging the same duties. It was held that the very object of selection is to test the eligibility and then to make appointment in accordance with the rules. It was held that the respondents had not been recruited in accordance with the rules prescribed for recruitment."

This Court, in particular, noticed a decision of another three Judge Bench in Government of W.B. v. Tarun K. Roy & Ors. [(2004) 1 SCC 347] in which one of us (S.B. Sinha, J.) was a Member, to hold:

> "36. It is well settled by the Supreme Court that only because the nature of work is same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide Govt. of W.B. v. Tarun K. Roy."

This Court in Charanjit Singh (supra) furthermore expressed its difference of opinion with a decision of this Court in State of Punjab & Ors. v. Devinder Singh & Ors. [(1998) 9 SCC 595], holding:

> "15. In State of Punjab v. Devinder Singh it was noted that the ledger clerks concerned were found to have been given similar work as regular ledger clerks. This Court without any further discussion or consideration held that the ledger clerks concerned would be entitled to the minimum of the pay scale of ledger clerks. It was directed that this be paid for a period of three years prior to the filing of the writ petition. It seems that attention of this Court was not brought to the earlier authorities, which lay down when the principle of equal pay for equal work can apply. Also we are unable to accept the finding that for similar work the principle of equal pay applies. Equal pay can only be given for equal work of equal value."

It overruled Devinder Singh (supra) in part.

This Court therein expressly followed State of Haryana v. Jasmer Singh [(1996) 11 SCC 77], wherein it was held :

> "**8.** 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 scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

We may also place on record that the Full Bench of the Punjab and Haryana High Court in Ranbir Singh v. State of Haryana [(1998) 2 PLR 221], and Vijay Sharma v. State of Punjab [2002 (1) SCT 931], wrongly relied upon Devinder Singh (supra) which, as noticed hereinbefore, has been partly overruled in Charanjit Singh (supra). The High Court in the impugned judgment even refused to consider this aspect of the matter and chose to adopt a short cut.

Mr. Swarup may or may not be entirely correct in projecting three purported different views of this Court having regard to the accepted principle of law that ratio of a decision must be culled out from reading it in its entirety and not from a part thereof. It is no longer in doubt or dispute that grant of the benefit of the doctrine of 'equal pay for equal work'

depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity.

This Court, even recently, in Union of India & Anr. v. Mahajabeen Akhtar [(2008) 1 SCC 368], categorically held as under :

> "**9.** The question came to be considered in a large number of decisions of this Court wherein it unhesitantly came to the conclusion that a large number of factors, namely, educational qualifications, nature of duty, nature of responsibility, nature of method of recruitment, etc. will be relevant for determining equivalence in the matter of fixation of scale of pay. (See *Secy., Finance Deptt.* v. *W.B. Registration Service Assn.*; *State of U.P.* v. *J.P. Chaurasia*; *Union of India* v. *Pradip Kumar Dey* and *State of Haryana* v. *Haryana Civil Secretariat Personal Staff Assn.*)
>
> **24.** On the facts obtaining in this case, therefore, we are of the opinion that the doctrine of equal pay for equal work has no application. The matter may have been different, had the scales of pay been determined on the basis of educational qualification, nature of duties and other relevant factors. We are also not oblivious of the fact that ordinarily the scales of pay of employees working in different departments should be treated to be on a par and the same scale of pay shall be recommended. The respondent did not opt for her services to be placed on deputation. She opted to stay in the government service as a surplus. She was placed in list as Librarian in National Gallery of Modern Art. She was designated as Assistant Librarian and Information Assistant. Her pay scale

> was determined at Rs 6500-10,500 which was the revised scale of pay. Her case has admittedly not been considered by the Fifth Pay Revision Commission. If a scale of pay in a higher category has been refixed keeping in view the educational qualifications and other relevant factors by an expert body, no exception thereto can be taken. Concededly it was for the Union of India to assign good reasons for placing her in a different scale of pay. It has been done. We have noticed hereinbefore that not only the essential educational qualifications are different but the nature of duties is also different. Article 39(*d*) as also Article 14 of the Constitution of India must be applied, inter alia, on the premise that equality clause should be invoked in respect of the people who are similarly situated in all respects.

How the said principle is to be applied in different fact situation is the only question. Whereas this Court refused to apply the said principle as the petitioners therein did not have the requisite qualification; in Union of India v. Dineshan K.K. [(2008) 1 SCC 586], the application of the rule was advocated to be left to an expert body, stating :

> "**16.** Yet again in a recent decision in *State of Haryana* v. *Charanjit Singh* a Bench of three learned Judges, while affirming the view taken by this Court in *State of Haryana* v. *Jasmer Singh*, *Tilak Raj*, *Orissa University of Agriculture & Technology* v. *Manoj K. Mohanty* and *Govt. of W.B.* v. *Tarun K. Roy* has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that

> the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled."

It may be that in Charanjit Singh (supra), Variava J, speaking for the Three Judge Bench, has used the word 'may' in regard to the source of recruitment but the same has to be considered as a relevant factor as the operative part of the judgment shows. Charanjit Singh (supra), therefore, does not militate against the other decisions of this Court where the mode and manner of appointment has been considered to be a relevant factor for the purpose of invocation of the said doctrine. We are bound by the aforementioned three Judge Bench decision.

This brings us to Uma Devi (supra). It is accepted at the Bar that Uma Devi (supra) talks about regularization. In relation to the employees of the Commercial Taxes Department, however, same directions have been issued. Some observations have also been made in the matter of doctrine of 'equal pay for equal work' which we may notice:

> "**44.** The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after *Dharwad decision* the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had

continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

xxx xxx xxx

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa*, *R.N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion

within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

xxx xxx xxx

55. In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment…."

Emphasis supplied.

While laying down the law that regularization under the Constitutional scheme is wholly impermissible, the Court had issued certain directions relating to the employees in the services of Commercial Taxes Department as noticed hereinbefore. The employees of the Commercial Taxes Department were in service for more than 10 years. They were appointed in 1985-1986. They were sought to be regularized in terms of a scheme. Recommendations were made by the Director, Commercial Taxes for their absorption. It was only when such recommendations were not acceded to, the Administrative Tribunal was approached. It rejected their claim. The High Court, however, allowed their prayer which was in question before this Court. It was stated:

> "It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in *Dharwad*

> *District PWD Literate Daily Wage Employees Assn.* v. *State of Karnataka* and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts."

It is in the aforementioned factual backdrop, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India, directed:

> "Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs

> Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

We, therefore, do not see that any law has been laid down in paragraph 55 of the judgment. Directions were issued in view of the limited controversy. As indicated, the State's grievances were limited.

Reliance placed by Mr. Gupta on Haryana State Minor Irrigation Tubewells Corpn. v. G.S. Uppal [(2008) 7 SCC 375 at 384] is equally meritless. In that case, the question involved was application of the recommendations of the Pay Revision Committee. As a discriminatory treatment was meted out to the appellants therein, this Court interfered opining that the decision of the Government is unreasonable, unjust and prejudicial.

Further contention of Mr. Gupta is that his clients had been appointed upon undertaking the due process of recruitment. It was not so, as while making appointments, the recruitment rules had not been followed. There had been no advertisement. How and in what manner the names were called

from the employment exchange has not been disclosed. Ordinarily a large number of people would not be interested in applying for appointment against a Class III or Class IV post so long the appointment is contractual. Interviews were also taken by a Committee which was not competent therefor as appointment in the post of Clerk and above were required to be made by the Public Service Commission.

Yet again, we may also notice that another Bench of this Court in State of Haryana v. Tilak Raj & Ors. [(2003) 6 SCC 123] has clearly laid down the law in the following terms:

> "11. A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. 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 the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.
>
> 12. "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."

Reliance placed by the High Court is Civil Appeal Nos. 1979-83 of 2003 – State of Punjab & Ors. vs. Rakesh Kumar & Ors. – is also misplaced.

Therein the leave was granted purported to be on the basis of the benefit of regular pay-scale granted by other department in terms of the decision of the High court in Gurmukh Singh vs. State of Punjab [C.W.P. No. 9623 of 1993 decided on 12.4.1994]. The main plank of the case of the workmen therein was that they had been not only working for a long time it was urged that their regular counter-parts were holding similar posts and their postings are being inter-changed with them. The High Court noticing the allegation of the writ petitioners that they had been discharging absolutely similar functions with the same element of responsibility and having similar qualifications as are being discharged by the regularly appointed persons which having not been specifically controverted opined as under:

> "However, no material has been placed before this Court to show as to what is the real difference between the duties being performed by the petitioners (daily wagers) and regular employees. The statement containing the date of joining of the petitioners shows that all of them have rendered service between one to eleven years as on the date of the filing of the petition. The fact that they are continuously in service has not been controverted by the respondents. Therefore, merely because 64

> petitioners have remained absent for different durations cannot be a ground for taking the view that all the 973 petitioners are discharging duties without proper responsibility. Absence from duty may constitute a misconduct but that by itself cannot lead to an inference that whole body of employees does not discharge its duties with responsibility. In fact on a query made by the court, learned Deputy Advocate General stated at the bar that the Government is not in a position to dispense with the services of the petitioners because the same are necessary for maintaining the distribution and supply of the drinking water to the people in rural as well as urban areas. From this, it can safely be inferred that the nature of the work being performed by the petitioners is not of a casual nature or of a fixed duration. They might have been posted to work against particular projects, but, these projects are perennial in character and there is no indication that the projects are going to be wound up by the Government. Continuous engagement of a large number of employees for years together is also indicative of the requirement of the man-power. Therefore, merely because the Government has not thought it proper to sanction regular posts, it cannot be held that there is a marked distinction between the functions of the petitioners and the regular employees."

The High Court noticed that this Court in several decisions had arrived at an opinion that the principle of 'equal pay for equal work' cannot be applied blindly but chose to rely upon the decision of this Court in Dhirendra Chamoli & Anr. v. State of U.P. [(1986) 1 SCC 637].

With utmost respect, the principle, as indicated hereinbefore, has undergone a sea change**.** We are bound by the decisions of large benches. This Court had been insisting on strict pleadings and proof of various factors as indicated hereto before.

Furthermore, the burden of proof even in that case had wrongly been placed on the State which in fact lay on the writ petitioners claiming similar benefits. The factual matrix obtaining in the said case particularly similar qualification, interchangeability of the positions within the regular employees and the casual employees and other relevant factors which have been noticed by us also had some role to play.

This Court in Gurcharan Singh Kahlon (supra) although noticed the Constitution Bench decision of this Court in Secretary, State of Karnataka & Ors.v. Umadevi (3) & Ors. [(2006) 4 SCC 1] declined to interfere with the order of the High Court having regard to the fact that no order of stay having been passed, the State of Punjab had implemented the order of the High Court. Furthermore, a scheme of regularization had already been drawn up. It is of some significance to notice that similar orders passed by some Benches of this Court relying on or on the basis of Paragraph 53 in Uma Devi (supra) vis-à-vis Para 43 and other paragraphs thereof, has been

severally criticized by this Court in Official Liquidator (supra). We are bound by the law laid down therein.

We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by appointing an Expert Committee as to whether the principles of law laid down herein, viz., as to whether the respondents satisfy the factors for invocation of the decision in Charanjit Singh (supra) in its entirety including the question of appointment in terms of the recruitment rules have been followed. It has a positive concept.

We would, however, before parting make an observation that the submission of the learned counsel that only because some juniors have got the benefit, the same by itself cannot be a ground for extending the same benefit to the respondents herein. It is now well known that the equality clause contained in Article 14 should be invoked only where the parties are similarly situated and where orders passed in their favour is legal and not illegal. It has a positive concept.

However, as writ petition No.14045 of 2001 was dismissed as it had become infructuous, the special leave petition filed thereagainst was not maintainable. Civil Appeal No.7466 of 2003 is, therefore, dismissed with

costs payable by the State to the respondent. In other cases, the appeals are allowed without any direction to pay costs.

…….J.
[S.B. Sinha]

..…….J.
[Deepak Verma]

New Delhi;
August 4, 2009