* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 2nd June, 2022**
Pronounced on: 12th July, 2022

\+ W.P.(C) 7498/2012

SUJIT GANGOPADHYAY ..... Petitioner

Through: Mr. Meet Malhotra, Sr. Advocate with Mr. Diggaj Pathak, Mr. Ravi S.S. Chauhan, Ms. Pallak Singh, Ms. Shweta Sharma and Ms. Prachi Kohli, Advocates

versus

TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL & ORS ..... Respondents

Through: Mr. Sharath Sampath, Advocate for R-1
Mr. Ruchir Mishra, Mr. Sanjiv K. Saxena, Mr. Mukesh K. Tiwari and Mr. Ramneek Mishra, Advocates for R-2 and 3

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition under Article 226 of the Constitution of India is filed for issuance of writ of mandamus or any other appropriate writ to quash and set aside order dated 26th September 2011 and for

directing the respondents to grant Pay Band-2 with Grade Pay of Rs. 4600, with effect from, 1st January 2006.

FACTUAL MATRIX

2. The petitioner joined as Lower Division Clerk with the Central Government in 1983 and was thereafter, promoted to the level of Upper Division Clerk. After being promoted to the level of Upper Division Clerk, he was promoted to the post of Assistant, which the petitioner is holding as on date with respondent No. l, on regular basis.

3. On 11th September 2006, a proposal was initiated by the respondent no.3 for upgradation of the pay-scale of the Assistants and Personal Assistants (hereinafter "PAs") of Central Secretariat Service (hereinafter "CSS") and Central Secretariat Stenographer Service (hereinafter "CSSS") from the scale of Rs.5500-9000 to that of Rs. 6500-10500 in view of the desirability of parity with the pay-scale of Inspectors and other analogous posts in Central Board of Direct Taxes/Central Board of Excise and Customs (CBDT/CBEC). Thereafter, Sixth Central Pay Commission had recommended that the pre-revised scales of Rs.5000-8000, Rs.5500-9000, Rs.6500-10500 be merged into a revised pay-band of Rs.9300-34800 with Grade Pay of Rs.4200 in pay band PB-II. The Department of Personnel and Training (hereinafter "DoPT") further increased Grade Pay of Rs. 4200-4600 with respect to Stenographers Grade 'C' working in CSSS and Assistants in CSS in terms of the Office Memorandum issued by the office of Department of Expenditure/respondent no.3 on 16th November 2009.

4. The DoPT issued two OMs. One was issued on 21st December 2009 granting the benefit of Grade Pay of Rs.4600 to the Assistants of CSS. The second was issued on 23rd December 2009 granting the benefit of Grade Pay of Rs.4600 to Stenographer Grade 'C' (PA) in CSSS. These benefits were accorded w.e.f. 1st January 2006.

5. To claim the benefits, in pursuance of the proposal by the respondent no. 3 and the OMs issued by the DoPT, the Petitioner made a representation dated 5th January 2007 to respondent no. l seeking Pay Band-2 with Grade Pay of Rs. 4600. Subsequent representations were also made by the petitioner thereafter.

6. On 26th September 2011, respondent no.1 rejected the request for up-gradation of the pay scale from Rs. 5500-9000 to Rs. 6500-10500 and Grade Pay of Rs. 4600 of the petitioner, in light of the letter dated 18th July 2011 of DoPT that since, there has been no direct recruitment through Competitive Examination in the TDSAT to the post of Assistant and the posts are being filled on deputation basis, therefore, the Assistants of TDSAT are not at par with the Assistants of CSS and CSSS.

7. The petitioner is aggrieved by the fact that the respondents denied him the benefit of increased Grade Pay from Rs. 4200 to Rs.4600 which was accorded by the Respondent No.3 to the Assistants and Stenographer Grade 'C' of CSS/CSSS w.e.f 1st January 2006. Hence, the instant petition has been filed by the petitioner seeking the setting aside of order dated 26th September 2011 and for directing the respondents to grant the upgraded pay-scale and Grade Pay.

SUBMISSIONS

8. Mr. Meet Malhotra, learned senior advocate appearing on behalf of petitioner submitted that the OM issued by the DoPT provided for upgradation of pay scale from Rs. 5500-9000 to Rs. 6500-10500 for Assistants of CSS and Stenographers Grade 'C' (PA) of CSSS from 15th September, 2006. Thereafter, on 14th November, 2006, the DoPT issued an OM clarifying therein that the pre-revised pay scale of Rs. 6500-10500, that is, Rs. 5500-9000 shall be applicable to Stenographer Grade 'D' of CSSS and Upper Divisional Clerks of Central Secretariat Clerical Service who had been granted the ACP in the pay-scale of Rs. 5500-9000. Moreover, respondent no. 3 accepted the recommendations made by the Sixth Central Pay Commission after giving careful and due consideration with respect to the civilian employees of the Central Government in Groups 'A', 'B', 'C' and 'D'. It is submitted that the petitioner was entitled to the upgraded pay-scale of Rs. 6500-10500 *inter alia* on the grounds of historical parity including nature of jobs, functional requirements of the posts, nomenclature of the posts, classification of the posts, identical pay scale attached to the posts and promotional hierarchy of the category of posts with its counterparts in CSS/CSSS. Even the conditions of service of the employees of respondent no. 1 stipulated the same. However, despite that the petitioner was not granted the upgraded pay-scale and Grade Pay.

9. It is submitted that prior to the upgradation of Grade Pay from Rs. 4200 to Rs. 4600, Assistants/PAs were in the pay-scale of Rs. 5500-9000 as on 1st January, 2006 and were granted the scale of Rs. 6500-10500 in

September 2006. Then, on 13th November, 2009 the respondent no. 3, issued an OM granting the revised pay-scale of Rs. 4600 in pay-band PB-II to persons who were drawing the pre-revised scale of Rs. 6500-10500 as on 1st January, 2006 and who were granted normal replacement of grade pay of Rs. 4200 in the pay-band PB-II. Thereafter, an OM was issued by the respondent no. 3 on 16th November, 2009 in this regard extending the Grade Pay of Rs. 4600 to all the Assistants and PAs of the CSS amongst other organizations with effect from 1st January, 2006. It is submitted that the pay-scale of the petitioner was not upgraded despite the same being done in respect of Assistants and Stenographers Grade 'C' of CSS/CSSS by the respondent no.2. Furthermore, the petitioner was also denied benefit of upgraded and increased Grade Pay of Rs. 4600 accorded by the respondent no. 3.

10. It is further submitted that there has been historical parity between the Assistants and Stenographer Grade 'C' working in the DoT and its Territorial Circle Unit, the respondent no. 1 and their counterparts working in CSS and CSSS since the inception of the respondent no. 1, however, this parity was tampered with by the refusal of the grant of the upgraded pay-scale and Grade Pay. This parity can be evidently deduced from, firstly, the orders dated 4th September, 2000 and 7th November, 2000 issued by the respondent no. 3 sanctioning creation of temporary posts with respondent no. 1 clearly suggest of the parity of treatment between the posts of the respondent no. 1 and its counterparts in CSS/CSSS, secondly, the Telecom Disputes Settlement and Appellate Tribunal (Salaries, Allowances and other Conditions of Service of

Chairperson and Members) Rules, 2000 (hereinafter "TDSAT Rules"), that regulate the conditions of service of the Chairperson and Members of the respondent no. 1, and stipulate that the pay scale and conditions of service of the Chairperson and Members are to be the same as that of the judges of the Supreme Court and Secretaries to the Government of India, respectively and thirdly, notification of respondent no. 3 dated 2nd August, 2001, that laid down the rules for the Salary, Allowances and Conditions of Service of the Officers and Employees of the respondent no. 1, wherein one category of posts was of Assistants in CSS.

11. It is submitted that when the petitioner was promoted as Assistant, with respondent No. l, the nomenclature of the post was mentioned as Assistant, Central Secretariat Service or "Assistant CSS". It is further submitted that respondent no. 1 follows the same grade structure as is applicable to CSS/CSSS employees. The functions of the Assistants and Stenographer Grade 'C' are similar in nature to their counterparts in CSS/CSSS. There is direct recruitment for the post of Stenographers in the respondent no. 1 which is also in parity with the service conditions in CSS/CSSS. It is, thus, clear that from the very inception of the respondent no. 1 in the year 2000, there has been parity between the employees of respondent no. 1 and CSS/CSSS in terms of pay scales of the posts and promotional hierarchy.

12. It is submitted on behalf of the petitioner that the petitioner made representations to the respondent no. 1, however, vide order dated 26th September 2011, the respondent no. 1 disposed of the said representation summarily without specifying any reasons. In the said rejection order,

reference was made to the orders dated 18th July 2011 whereby the respondent no.3 wrote to the respondent no. 1 that the posts in the respondent no. 1 are filled on deputation basis and there is no element of Direct Recruitment through an All India Competitive Examination. Similarly, the order of respondent no. 1 found mention of order of the respondent no. 3 dated 1st May 2012, wherein it wrote to the respondent no. 1 that the Nodal Ministry, the Ministry of Finance had not found any parity between the Assistants in CSS and Assistants of respondent no. 1. In terms of the said orders, the proposal of upgradation of scale of pay of Assistants/PAs of respondent no. 1 was not accepted.

13. It is submitted that the aforesaid orders are facially unsustainable and unintelligible and there was no reason for rejecting the petitioner's representation more so on the ground that his appointment was on the deputation basis and not through Direct Recruitment.

14. The learned senior counsel submits that it is well settled that when there is complete parity, employees in two organizations cannot be discriminated or treated differently. Coordinate benches of this Court have also held that discrimination cannot be allowed even when the appointment is from two different sources. It is strongly submitted that the mode of recruitment to a post is no ground of denial of the pay-scale, if post is identical with respect to the pay and function. The grant of pay scale with Grade Pay of Rs. 4600 has been granted to all the employees of CSS/CSSS irrespective of the mode of recruitment of the said employees. Reliance has been placed upon the judgments of the Central Administrative Tribunal in ***S.R. Dheer and Others vs. Union of India***

and Others, **OA No. 164/2009** dated 19th February, 2009 as well as ***Sri R. Natrajan and Others vs. The Secretary, Department of Consumer Affairs and Others***, **OA No.2002/2010** dated 11th November, 2011.

15. It is submitted that in light of all the aforesaid submissions, the impugned order may be set aside and the respondents may be directed to give all benefits of the upgraded pay-scale as well as Grade Pay from the respective dates alongwith other benefits that accrued to them from the year 2008.

16. *Per Contra*, learned counsel for the respondent vehemently opposed the instant writ petition and submitted that the same is devoid of any merit and is to be dismissed. It is submitted that Grade Pay of Rs.4600 in Pay Band PB-II was granted to Assistants of CSS only for the reason that there was an element of Direct Recruitment to the post through All India Competitive Examination. Whereas the post of Stenographer 'C' in TDSAT is concerned, it is submitted that as per communication dated 26th February 2002 of the Ministry of Communication and Information Technology the Post of Stenographer Grade 'C' in respondent no. 1 is to be filled up on deputation basis, therefore, the petitioner is not entitled to the grade pay of Rs. 4600/-.

17. It is submitted that the Fifth Central Pay Commission as well as Sixth Central Pay Commission made a clear distinction between Secretariat and Non-Secretariat Organizations, and in that process Sixth Pay Commission vide para 3.1.14 recommended that in the case of ministerial post in Non-Secretariat Offices, the posts of Head Clerks,

Assistants, Steno Grade II, Office Superintendent, Steno Grade I, Private Secretaries and Administrative Officers Grade III in the respective pay scales of Rs.5000- 8000, Rs.5500-9000 and Rs.6500-10500 will stand merged. Accordingly, the Stenographers Grade 'C' and Assistant of respondent no. 1 have been placed in the revised pay structure of Rs.9300-34800, that is, Grade Pay Rs. 4200. Since TDSAT is a Non-Secretariat Organization, therefore OM dated 15th September 2006 and 16th November 2009 did not apply to TDSAT and posts of Assistants/PAs have been rightly placed in the revised pay scale of 9300-34800 PB-2 Grade Pay 4200) as per recommendations of 6th Pay Commission.

18. Learned counsel for the respondent has relied on UO No. 6(12)/E.III(B)/2010 of the Department of Expenditure by which the department has opined as under:-

> *"(i) 5th CPC vide para 46.9 examined the pay scales of Assistants in the Sectt. vis-a-vis Assistants in subordinate offices in terms of RRs, educational qualification, method and recruitment, duties & responsibilities etc. and observed inter-alia, "……we are of the definite view that the pay scale of Assistants in the Non-Secretariat organizations should slightly be lower as compared to pay scale of Asstt. in the Sectt.*
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> *(ii) Pre-revised scales of Assistants of CSS and Assistants in TDSAT were 5500-9000. However, the pay scale of Assistants of CSS was upgraded to 6500-10500 vide this department OM NO.5/2/2004/IC dated 15.09.2006, keeping in view their historical parity with the Inspectors/Analogous posts in CBDT/CBEC, who were granted the scale of pay of Rs.6500-10500 w.e.f. 21.04.2004.*

(iii) As per this department's OM dt. 16.11.2009, the Assistant/Stenographers of CSS/CSSS have been placed in the GP of Rs.4600/- w.e.f. 01.01.2006 keeping in view the fact that there was an element of direct recruitment through All India Competitive Examination. This dispensation has been extended to Assistant/Stenographers working in CSS/CSSS, AFHQS, IFS(B) & RBSS. Therefore, the posts of Assistant/Stenographers Gr. C of TDSAT are not covered by this Department's OM dated 16.11.2009.

(iv) Since, Assistants/PAs of TDSAT were in the pre-revised scale of Rs.5500-9000 as on 01.01.1996/01.01.2006 and TDSAT being non-Secretariat Organization, the OM dated 15.09.2006 and 16.11.2009 will not apply to them. As such, they have been rightly placed in the revised pay scale of Rs.9300-34800 (PB-2 GP 4200) as per recommendations of 6th CPC in para 3.1.14.

(v) The 6th CPC vide para 3.1.14 recommended that in the case of ministerial post in non-Secretariat offices, the post of Head Clerks, Assistants, Office Superintendants and Administrative Officers Grade III in the respective pay scales of Rs.5000- 8000, 5500-9000 and 6500-10500 will stand merged. Accordingly, the Assistants of TDSAT have been placed in the revised pay structure of Rs.9300-34800 (PB-2 Grade Pay 4200).

(vi) As per this Department issued OM dated 13.11.2009, the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 and were granted the normal replacement pay structure of GP of Rs.4200/- in PB-2 have been placed in the GP of Rs.4600. Since, the post of Asstt/Stenographers of TDSAT were not in pre-revised pay scale of Rs.6500-10500 as on 1.1.2006, these post are not covered by this Department's OM dated 13.11.2009.

(vii) Pay Commission is expert body which make recommendations on pay and allowances of Central Govt. staff keeping in view all relevant factors like educational qualification, hierarchy, Duties, functional requirement, pre-revised scales etc. The 5th & 6th CPC, in their considered judgment, made a clear distinction between the pay scales of Secretariat and non Secretariat Staff.

3. As regards the extension benefit of this deptt. OM dated 16.11.2009 in respect of Assistants/Court Master/Stenographer Gr. C in CAT, it is stated that a proposal in this regard in pursuance of CAT Principal Bench dated 9.4.2010 in OA No.1165/2010 and MA No.866/2010 was referred to this deptt. by DoPT for consideration. Keeping in view of the fact that historical parity existed between Stenographer Gr. C/Court Masters/Assistants in CAT vis-à-vis Stenographer Gr C/Assistants in CSSS/CSS, the proposal of DoPT for upgradation of the pay scale of Stenographer Gr. C/Court Masters/Assistants from GP of Rs.4200/- to Rs.4600/- w.e.f. 1.1.2006 was agreed to."

19. It is submitted that the post of Assistant/Stenographers of TDSAT are not covered by the Office Memorandum dated 13th November 2009 as per which the posts which were in the pre-revised pay scale of 6500-10500 as on 1st January 2006 and were granted the normal replacement pay structure of Grade Pay of Rs.4200 in PB-II have been placed in the Grade Pay of 6500-10500. Consequently, the petitioner is not entitled to grant of Grade Pay of Rs.4600 in PB-II. It is further submitted that the posts of Assistants/Pas of TDSAT were in the pre-revised scale of Rs.5500-9000 as on 1st January 1996 to 1st January 2006 and therefore not covered with OM dated 13th November 2009 and 16th November 2009.

20. Learned counsel for the respondent submitted that the judgment relied upon by the petitioner is not applicable in the present case. It is further submitted that the impugned order dated 26th September 2011 was passed on the opinion of Department of Expenditure/respondent no.3 and the said order was not challenged before this Court. It is vehemently submitted that respondent no.1 has rightly rejected the representation on the aforesaid opinion made by both the departments. There is no illegality or error in the said impugned order. Learned counsel for the respondents submitted that the instant writ petition is misconceived and devoid of any merit and therefore liable to be dismissed.

21. Respondents No.2 and 3 filed the counter affidavit in which they have relied on Office Memorandum dated 16th November 2009 and stated that Grade Pay of Rs.4600 in Pay Band PB-2 was granted to Assistants of Central Secretariat Service only for the reason that there was an element of direct recruitment to the post through All India Competitive Examination. In the counter it is categorically stated that the post of Assistant/Stenographers of TDSAT are not covered by the Office Memorandum dated 13th November 2009, the posts which were in the pre-revised pay scale of Rs. 6500-10500 as on 1st January 2006 and which were granted normal replacement pay structure of Grade Pay Rs.4200 in PB-II have been placed in Grade Pay of Rs.4600. Since the post of Assistant/Stenographer of TDSAT were not in the pre-revised pay scale of Rs.6500-10500 as on 1st January 2006, therefore, the same are not covered by the Office Memorandum dated 13th November 2009, consequently not entitled to grant of grade pay of Rs.4600 in PB-2.

22. In the reply, the petitioner has filed the rejoinder affidavit and denied the contentions of counter affidavit. It is contended that the objections raised by the respondents in the counter affidavit are vague, baseless and misconceived. It is also contended that the petitioner is entitled to an upgraded pay scale on the basis of historical parity with his counterparts in the CSS/CSSS as well as on the principles of 'Equal Pay for Equal Work'. Further, it is wrong to suggest that the upgradation in the pay-scale in terms of OMs dated 25th September 2006 and 16th November 2009 does not apply to the petitioner, being an employee with the TDSAT, which is a Non-Secretariat Organisation. Thus, the objection of the Respondent in this regard suffers from manifest infirmity and inconsistency. In any event, the mode of recruitment cannot be the sole criterion for denial of the grade pay of Rs. 4600 to the petitioner.

23. The petitioner has also contended that the respondents have adopted a policy which is patently erroneous and suffers from considerable laches in that the legitimate expectations of the petitioner have not been examined by the respondents fairly and expeditiously. In the rejoinder affidavit it is contended that the rejoinder of the representation vide impugned order dated 26th September 2011 is without application of judicious mind, contrary to law laid down by this Court as well as by the Hon'ble Supreme Court.

ANALYSIS AND FINDINGS

24. Heard learned counsel for the parties and perused the record.

25. Admittedly, the DoPT, vide OM No. 20/29/2006-CSII dated 25th September, 2006, upgraded the pay-scale to Rs. 6500-10500 from Rs. 5500-9000 in respect of Stenographers Grade 'C' CSSS and Assistants in CSS. Thereafter, the Sixth Central Pay Commission merged three pay-scales, that is, Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 into the revised pay-band of Rs. 9300-34800 with Grade Pay of Rs. 4200 in PB-II. The Respondent No.2 further increased the Grade Pay of Rs. 4200 to Rs. 4600 with respect to Stenographers Grade 'C' working in CSSS and Assistants in CSS in terms of Office Memorandum issued by Department of Expenditure/Respondent no. 3 on 16th November, 2009.

26. The issue before this Court can be simplified and narrowed down to whether there is parity between the position of Stenographers/Assistants in CSSS/CSS and Stenographers Grade 'C' in the respondent no. 1/ Telecom Disputes Settlement and Appellate Tribunal for adjudicating the question as to whether the petitioner is entitled for the benefits arising out of the aforesaid OMs issued by the respondents or not.

27. The word parity, in its simplest and truest sense, means equality or being at par. Such equality can be of position, rank, value or condition when seen in the context of service and the benefits that arise from such service. The test of parity also starts to hold a greater significance when seen on the touchstone of equality, as has been guaranteed under Article 14 of the Constitution of India. The test, hence, is to be considered with the utmost care and consideration when the question of rights of the civilian employees are in question with respect to their work and pay.

more particularly when the benefits accruing to two similarly placed positions are to be evaluated. The principle of equal pay for equal work needs to be kept in mind while considering this expansive interpretation of Article 14 of the Constitution and the rights arising thereto.

28. In ***Federation of All India Customs and Central Excise Stenographers vs. Union of India***, **(1988) 3 SCC 91,** the Hon'ble Supreme Court observed as under on the question of 'Equal Pay for Equal Work':-

> *"**7.** Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the 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 the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right.*
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> ***8.** We may briefly note the principles evolved by this Court in this respect in the backdrop of varied set of facts. Differentiation in implementing the award or the recommendations of Pay Commission without rational basis may amount to discrimination. In Purshottam Lal v. Union of India [AIR 1973 SC 1088 : (1973) 1 SCC 651 : 1973 SCC (L&S) 337] it was held that*

implementation of the revised pay scale in a particular category of servants from a date later than that recommended by the Pay Commission and thus non-implementation of its report only in respect of those persons amounts to violation of Articles 14 and 16 of the Constitution, the Constitution Bench held. In Laljee Dubey v. Union of India [(1974) 1 SCC 230 : 1974 SCC (L&S) 97 : AIR 1974 SC 252 : (1974) 2 SCR 249] this principle was reiterated again. This Court in Randhir Singh v. Union of India [(1982) 1 SCC 618 : 1982 SCC (L&S) 119 : AIR 1982 SC 879 : (1982) 3 SCR 298] had to deal with the case of a driver constable in the Delhi Police Force under the Delhi Administration. The scale of pay in the Delhi Police Force was for non-matriculate drivers Rs 210-270 and for matriculate drivers Rs 225-308. The scale of pay of a driver in the Railway Protection Force was Rs 260-400. The scale of pay of drivers in the non-secretariat offices in Delhi was Rs 260-6-326-EB-8-350, while that of Secretariat offices in Delhi was Rs 260-6-290-EB-6-326-8-366-EB-8-8-8-390-10-400. The scale of pay of drivers in the office of the Language Commission was Rs 260-300 while the drivers of heavy vehicles in the Fire Brigade and the Department of Light House was Rs 330-480. The petitioner and other driver constables made a representation to the authorities that their case was omitted to be considered separately by the Third Pay Commission and that their pay scales should be the same as the drivers of heavy vehicles in other departments. As their claims for better scales of pay did not meet with success, the said application was filed by the petitioner for the issue of a writ under Article 32 of the Constitution. It was allowed by the Court. Chinnappa Reddy, J. speaking for a Bench of three learned Judges of this Court reiterated the following principles:

> *(a) "Equal pay for equal work" is not a mere demagogic slogan but a constitutional goal capable of attainment through constitutional*

remedies, by the enforcement of constitutional rights (under Article 32 of the Constitution of India).

(b) The stand (of the Government of India) that the circumstance that persons belonging to different departments of the government is itself a sufficient circumstance to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities, is unacceptable and untenable.

(c) While equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for the courts, where all things are equal i.e. where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments.

(d) The principle of equal pay for equal work is not an abstract doctrine when applied to government servants performing similar functions and having identical powers, duties and responsibilities.

(e) As matter of interpretation, the Directive Principles, e.g. Article 39(d) of the Constitution, have to be and have been read into the Fundamental Rights, e.g. Articles 14 and 16 of the Constitution. So read, the principle of equal pay for equal work, though not expressly declared by our Constitution to be a fundamental right, is a constitutional goal. Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), the principle of "Equal pay for equal work" is deducible from those articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though

> *those drawing the different scales of pay do identical work under the same employer."*

29. The principle, with reference to similar posts under same organisation, has been discussed by the Hon'ble Supreme Court in ***Mewa Ram Kanojia vs. All India Institute of Medical Sciences*, (1989) 2 SCC 235**, as under:

> *"**5.** While considering the question of application of principle of "Equal pay for equal work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality.*
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> *...*
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> ***8.** There are several decisions of this Court where educational qualifications have been recognised as a valid basis for classification. In State of Mysore v. P. Narasingh Rao [AIR 1968 SC 349 : (1968) 1 SCR 407 : (1968) 2 LLJ 120] , this Court held that higher educational qualifications such as success in SSLC examination are relevant considerations for fixation of higher pay scale for tracers who had passed the SSLC examination and the classification of two grades of tracers in Mysore State, one for matriculate tracers with higher pay scale and the other for non-matriculate tracers with lower pay scale, was held valid. It is pertinent to note that matriculate and non-matriculate*

tracers both constituted the same service performing the same duties and functions, yet the Court held that higher pay scale prescribed for the matriculate tracers on the basis of higher educational qualification was not violative of Articles 14 and 16 of the Constitution. In Union of India v. Dr. (Mrs) S.B. Kohli [(1973) 3 SCC 592 : 1973 SCC (L&S) 136] , classification made on the basis of educational qualification for purposes of promotion was upheld by this Court on the ground that the classification made on the basis of such a requirement was not without reference to the objectives sought to be achieved and there could be no question of discrimination. In State of Jammu and Kashmir v. Triloki Nath Khosa [(1974) 1 SCC 19 : 1974 SCC (L&S) 49] cadre of Assistant Engineers included degree-holders and diploma-holders, they constituted one class of service but for promotion to the post of Executive Engineer only those Assistant Engineers were eligible for promotion who possessed Bachelor's Degree in Engineering and the diploma-holders were eligible only if they had put in 7 years' minimum service no such restriction was prescribed for degree-holders. The diploma-holder Assistant Engineers challenged the validity of the rule on the ground that it denied them equal opportunity of promotion, in violation of Articles 14 and 16 of the Constitution. On a detailed consideration a Constitution Bench of this Court upheld the classification on the ground of difference in educational qualification. The Court held that clasification founded on the basis of educational qualification had a reasonable nexus to achieve administrative efficiency in Engineering Services. The Court approvingly referred to the decisions of the Court in State of Mysore v. Narasingh Rao [AIR 1968 SC 349 : (1968) 1 SCR 407 : (1968) 2 LLJ 120] , Ganga Ram v. Union of India [(1970) 1 SCC 377 : (1970) 3 SCR 481] and Union of India v. Dr. (Mrs) S.B. Kohli [(1973) 3 SCC 592 : 1973 SCC (L&S) 136] . The Court upheld

the classification and refused to grant any relief to diploma-holder Engineers. In Mohd. Shujat Ali v. Union of India [(1975) 3 SCC 76 : 1974 SCC (L&S) 454: (1975) 1 SCR 449] another Constitution Bench of this Court upheld the classification of Supervisors into two classes, graduates and non-graduates for the purpose of promotion to the post of Assistant Engineers on the ground of educational qualification although both the class of supervisors constituted the same service. In Federation of All India Customs & Central Excise Stenographers (Recognised) v. Union of India [(1988) 3 SCC 91 : 1988 SCC (L&S) 673 : (1988) 7 ATC 591] claim of Personal Assistants and Stenographers attached to the Heads of Departments in the Customs and Central Excise Department of the Ministry of Finance for equal pay in parity with the Personal Assistants and Stenographers attached to the Joint Secretaries and officers above them in the Ministry of Finance was rejected by this Court on the ground of the functional requirement of the work done, training and responsibility prescribed for the two posts. In State of U.P. v. J.P. Chaurasia [(1989) 1 SCC 121 : 1989 SCC (L&S) 71 : (1988) 8 ATC 929] the question arose whether it was permissible to have two different pay scales in the cadre of Bench Secretaries, for persons performing the same duties and having the same responsibilities. In the light of the various decisions of this Court it was held that the principle of "equal pay for equal work" has no mechanical application in every case of similar work. Articles 14 and 16 permit reasonable classification founded on rational basis, it is, therefore, permissible to provide two different pay scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority. The Court held that in such a situation the principle of equal pay for equal work did not apply."

30. Further, in ***Union of India vs. Dineshan K.K.,*** **(2008) 1 SCC 586**, the following observations were made by the Hon'ble Supreme Court:-

> *"**12.** The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the directive principles of the State policy in Article 39(d) of the Constitution. In Randhir Singh v. Union of India [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] a Bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Articles 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] . Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed status of a fundamental right.*
>
> ***13.** Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realising its cascading effect on other cadres, in subsequent decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the executive and expert bodies like the Pay Commission, etc. It has been emphasised that a carefully evolved pay structure ought not to be ordinarily disturbed by the court as it may upset the balance and cause avoidable ripples in other cadres as well. (Vide Secy., Finance Deptt. v. W.B.*

Registration Service Assn. [(1993) Supp (1) SCC 153 : 1993 SCC (L&S) 157 : (1993) 24 ATC 403] and State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [(2002) 6 SCC 72 : 2002 SCC (L&S) 822]) Nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the executive, the court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the executive or the legislature, as is sought to be canvassed on behalf of the appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is ex facie irrational, arbitrary or unjust, it is open to the court to intervene.

14. *In SBI v. M.R. Ganesh Babu [(2002) 4 SCC 556 : 2002 SCC (L&S) 568] a three-Judge Bench of this Court, dealing with the same principle, opined that principle of equal pay is dependent 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. The functions may be the same but the responsibilities do make a difference. It was held that 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, was not open to interference by the court.*

15. *In State of Haryana v. Tilak Raj [(2003) 6 SCC 123: 2003 SCC (L&S) 828] it has been observed that the principle of "equal pay for equal work" is not always easy to apply as 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 reiterated 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 emphasised that the problem about equal pay cannot be translated into a mathematical formula."*

31. While considering the issue of "Equal Pay for Equal Work" and parity in employment, the Hon'ble Supreme Court in the case of ***Govt. of W.B. vs. Tarun K. Roy,*** **(2004) 1 SCC 347**, held as under:

> *"**14.** Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied.*
>
> *XXX*
>
> ***20**. Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equality clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentia."*

32. Other important considerations have been observed by the Hon'ble Supreme Court while passing the judgement in ***Official Liquidator vs. Dayanand*****, (2008) 10 SCC 1** that can be found in the following paragraphs as reproduced hereunder:-

*"**94.** The principle of equal pay for equal work for men and women embodied in Article 39(d) was first considered in Kishori Mohanlal Bakshi v. Union of India [AIR 1962 SC 1139] and it was held that the said principle is not capable of being enforced in a court of law. After 36 years, the issue was again considered in Randhir Singh v. Union of India [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] , and it was unequivocally ruled that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India.*

***95.** The ratio of Randhir Singh v. Union of India [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] was reiterated and applied in several cases—Dhirendra Chamoli v. State of U.P. [(1986) 1 SCC 637 : 1986 SCC (L&S) 187] , Surinder Singh v. CPWD [(1986) 1 SCC 639 : 1986 SCC (L&S) 189] , Daily Rated Casual Labour v. Union of India [(1988) 1 SCC 122 : 1988 SCC (L&S) 138 : (1987) 5 ATC 228] , Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902] and Jaipal v. State of Haryana [(1988) 3 SCC 354 : 1988 SCC (L&S) 785 : (1988) 7 ATC 771] and it was held that even a daily-wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in Federation of All India Customs and Central Excise Stenographers v. Union of India [(1988) 3 SCC 91 : 1988 SCC (L&S) 673 : (1988) 7 ATC 591] , Mewa Ram Kanojia v. AIIMS [(1989) 2 SCC 235 : 1989 SCC (L&S) 329 : (1989) 10 ATC 51] , V. Markendeya v. State of A.P. [(1989) 3 SCC 191 : 1989 SCC (L&S) 454 : (1989) 11 ATC 3] , Harbans Lal v. State of H.P. [(1989) 4 SCC 459 : 1990 SCC (L&S) 71 : (1989) 11 ATC 869] , State of U.P. v. J.P. Chaurasia [(1989) 1 SCC 121 : 1989 SCC (L&S) 71 : (1988) 8 ATC 929] , Grih Kalyan Kendra Workers' Union v. Union of India [(1991) 1 SCC 619 : 1991 SCC (L&S) 621 : (1991) 16 ATC 507]*

, GDA v. Vikram Chaudhary [(1995) 5 SCC 210 : 1995 SCC (L&S) 1226 : (1995) 31 ATC 129] , State of Haryana v. Jasmer Singh [(1996) 11 SCC 77 : 1997 SCC (L&S) 210] , State of Haryana v. Surinder Kumar [(1997) 3 SCC 633 : 1997 SCC (L&S) 844] , Union of India v. K.V. Baby [(1998) 9 SCC 252 : 1998 SCC (L&S) 539] , State of Orissa v. Balaram Sahu [(2003) 1 SCC 250 : 2003 SCC (L&S) 65] , Utkal University v. Jyotirmayee Nayak [(2003) 4 SCC 760 : 2003 SCC (L&S) 598] , State of Haryana v. Tilak Raj [(2003) 6 SCC 123 : 2003 SCC (L&S) 828] , Union of India v. Tarit Ranjan Das [(2003) 11 SCC 658 : 2004 SCC (L&S) 160] , Apangshu Mohan Lodh v. State of Tripura [(2004) 1 SCC 119 : 2004 SCC (L&S) 10] , State of Haryana v. Charanjit Singh [(2006) 9 SCC 321 : 2006 SCC (L&S) 1804] , Hindustan Aeronautics Ltd. v. Dan Bahadur Singh [(2007) 6 SCC 207 : (2007) 2 SCC (L&S) 441] , Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara [(2007) 5 SCC 326 : (2007) 2 SCC (L&S) 143] and Canteen Mazdoor Sabha v. Metallurgical & Engg. Consultants (India) Ltd. [(2007) 7 SCC 710 : (2007) 2 SCC (L&S) 758] , the Court consciously and repeatedly deviated from the ruling of Randhir Singh v. Union of India [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need, etc.

***96.** In State of Haryana v. Jasmer Singh [(1996) 11 SCC 77 : 1997 SCC (L&S) 210] the two-Judge Bench laid down the following principle : (SCC p. 81, para 8)*

> *"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."*

97. *In Harbans Lal v. State of H.P. [(1989) 4 SCC 459 : 1990 SCC (L&S) 71 : (1989) 11 ATC 869] the Court held that the claim of carpenters employed by an incorporated company for parity in wages payable to their counterparts in government service is unsustainable.*

98. *In Jawaharlal Nehru Technological University v. T. Sumalatha [(2003) 10 SCC 405 : 2004 SCC (L&S) 219] it was held that the respondents who were employed under a scheme known as National Technical Manpower Information System, which was sponsored by the then Ministry of Education and Culture, cannot claim parity with the regular government employees in the matter of pay scale.*

99. *In Canteen Mazdoor Sabha v. Metallurgical & Engg. Consultants (India) Ltd. [(2007) 7 SCC 710 : (2007) 2 SCC (L&S) 758] another two-Judge Bench held that*

simply because some employees of a contractor of the alleged head employer are performing the task or duties similar to the employees of the head employer, it will not entitle such employees to claim parity."

33. The Hon'ble Supreme Court in ***State of Punjab vs. Jagjit Singh,*** **(2017) 1 SCC 148,** has extensively dealt with the issue at hand in case of temporary and regular employees and referring to several precedents, it has observed as under:

*"**42.** All the judgments noticed in paras 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of "equal pay for equal work". The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them were against the same post for which a higher pay scale was being allowed in other government departments. Or alternatively, their duties and responsibilities were the same as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of "equal pay for equal work" was invoked and considered, it would be just and appropriate to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of "equal pay for equal work". Our consideration, has led us to the following deductions:*

***42.1.** The "onus of proof" of parity in the duties and responsibilities of the subject post with the reference post under the principle of "equal pay for equal work" lies on the person who claims it. He who approaches the court*

has to establish that the subject post occupied by him requires him to discharge equal work of equal value, as the reference post (see Orissa University of Agriculture & Technology case [Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188 : 2003 SCC (L&S) 645] , UT Chandigarh, Admn. v. Manju Mathur [U.T. Chandigarh, Admn. v. Manju Mathur, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348] , SAIL case [SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] and National Aluminium Co. Ltd. case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353]).

42.2. *The mere fact that the subject post occupied by the claimant is in a "different department" vis-à-vis the reference post does not have any bearing on the determination of a claim under the principle of "equal pay for equal work". Persons discharging identical duties cannot be treated differently in the matter of their pay, merely because they belong to different departments of the Government (see Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] and D.S. Nakara case [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145]).*

42.3. *The principle of "equal pay for equal work", applies to cases of unequal scales of pay, based on no classification or irrational classification (see Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982 SCC (L&S) 119]). For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see Federation of All India Customs and Central Excise Stenographers case [Federation of All India Customs and Central Excise Stenographers v. Union of India, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] , Mewa Ram Kanojia case [Mewa Ram*

Kanojia v. All India Institute of Medical Sciences, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] , Grih Kalyan Kendra Workers' Union case [Grih Kalyan Kendra Workers' Union v. Union of India, (1991) 1 SCC 619 : 1991 SCC (L&S) 621] and S.C. Chandra case [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943]).

42.4. *Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay and cannot claim the benefit of the principle of "equal pay for equal work" (see Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] , State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822] and Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]). Therefore, the principle would not be automatically invoked merely because the subject and reference posts have the same nomenclature.*

42.5. *In determining equality of functions and responsibilities under the principle of "equal pay for equal work", it is necessary to keep in mind that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see Federation of All India Customs and Central Excise Stenographers case [Federation of All India Customs and Central Excise Stenographers v. Union of India, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] and SBI case [SBI v. M.R. Ganesh Babu, (2002) 4 SCC 556 : 2002 SCC (L&S) 568]). The nature of work of the subject post should be the*

same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of "equal pay for equal work" (see State of U.P. v. J.P. Chaurasia [State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121 : 1989 SCC (L&S) 71] and Grih Kalyan Kendra Workers' Union case [Grih Kalyan Kendra Workers' Union v. Union of India, (1991) 1 SCC 619 : 1991 SCC (L&S) 621]).

42.6. *For placement in a regular pay scale, the claimant has to be a regular appointee. The claimant should have been selected on the basis of a regular process of recruitment. An employee appointed on a temporary basis cannot claim to be placed in the regular pay scale (see Orissa University of Agriculture & Technology case [Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188 : 2003 SCC (L&S) 645]).*

42.7. *Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay scales. Such as — "selection grade", in the same post. But this difference must emerge out of a legitimate foundation, such as — merit, or seniority, or some other relevant criteria (see State of U.P. v. J.P. Chaurasia [State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121 : 1989 SCC (L&S) 71]).*

42.8. *If the qualifications for recruitment to the subject post vis-à-vis the reference post are different, it may be difficult to conclude that the duties and responsibilities of the posts are qualitatively similar or comparable (see Mewa Ram Kanojia case [Mewa Ram Kanojia v. All India Institute of Medical Sciences, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] and State of W.B. v. Tarun K. Roy [State of W.B. v. Tarun K. Roy, (2004) 1 SCC 347 :*

2004 SCC (L&S) 225]). In such a case the principle of "equal pay for equal work" cannot be invoked.

42.9. *The reference post with which parity is claimed under the principle of "equal pay for equal work" has to be at the same hierarchy in the service as the subject post. Pay scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see Union of India v. Pradip Kumar Dey [Union of India v. Pradip Kumar Dey, (2000) 8 SCC 580 : 2001 SCC (L&S) 56] and Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).*

42.10. *A comparison between the subject post and the reference post under the principle of "equal pay for equal work" cannot be made where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see Harbans Lal case [Harbans Lal v. State of H.P., (1989) 4 SCC 459 : 1990 SCC (L&S) 71]). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see Official Liquidator v. Dayanand [Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943]).*

42.11. *Different pay scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of "equal pay for equal work" would not be applicable. And also when the reference post includes the responsibility to take crucial decisions,*

and that is not so for the subject post (see SBI case [SBI v. M.R. Ganesh Babu, (2002) 4 SCC 556 : 2002 SCC (L&S) 568]).

42.12. *The priority given to different types of posts under the prevailing policies of the Government can also be a relevant factor for placing different posts under different pay scales. Herein also, the principle of "equal pay for equal work" would not be applicable (see State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822]).*

42.13. *The parity in pay, under the principle of "equal pay for equal work", cannot be claimed merely on the ground that at an earlier point of time the subject post and the reference post, were placed in the same pay scale. The principle of "equal pay for equal work" is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see State of W.B. v. Minimum Wages Inspectors Assn. [State of W.B. v. W.B. Minimum Wages Inspectors Assn., (2010) 5 SCC 225 : (2010) 2 SCC (L&S) 1]).*

42.14. *For parity in pay scales under the principle of "equal pay for equal work", equation in the nature of duties is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see U.T. Chandigarh, Admn. v. Manju Mathur [U.T.*

Chandigarh, Admn. v. Manju Mathur, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348]).

42.15. *There can be a valid classification in the matter of pay scales between employees even holding posts with the same nomenclature i.e. between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]), when the duties are qualitatively dissimilar.*

42.16. *The principle of "equal pay for equal work" would not be applicable, where a differential higher pay scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).*

42.17. *Where there is no comparison between one set of employees of one organisation, and another set of employees of a different organisation, there can be no question of equation of pay scales under the principle of "equal pay for equal work", even if two organisations have a common employer. Likewise, if the management and control of two organisations is with different entities which are independent of one another, the principle of "equal pay for equal work" would not apply (see S.C. Chandra case [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] and National Aluminium Co. Ltd. case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353])."*

34. In ***Union of India vs. Manoj Kumar,*** **2021 SCC OnLine SC 646,** while overturning the impugned judgment granting parity, the Hon'ble Supreme Court observed as under:

> *"**20.** We are fortified in the view we are seeking to adopt in interpreting the aforesaid paragraphs of the Pay Commission by the observations in Union of India v. Tarit Ranjan Das,[7] where it was opined that the principle of equal pay for equal work cannot be applied merely on basis of designation. While dealing with the 5th Pay Commission recommendations with respect to functional requirements, it was held that there was no question of any equivalence on that basis. The said case dealt with Stenographers of the Geological Survey of India. While observing that as a general statement it was correct to state that the basic nature of work of a Stenographer remained by and large the same whether they were working for an officer in the Secretariat or for an officer in a subordinate office; it was held that Courts ought not to interfere if the Commission itself had considered all aspects and after due consideration opined that absolute equality ought not to be given.*
>
> ***21.** In the end we would like to reiterate that the aspect of disparity between the Secretariat and the field offices was a matter taken note of by the Commission itself while making the recommendations. Yet to some extent, a separate recommendation was made qua Secretariat Organizations and non-Secretariat Organizations. Once these recommendations are separately made, to direct absolute parity would be to make the separate recommendations qua non-Secretariat Organizations otiose. If one may say, there would have been no requirement to make these separate recommendations if everyone was to be treated on parity on every aspect."*

35. The Hon'ble Supreme Court, most recently in ***State of Madhya Pradesh & Ors. vs. Seema Singh***, **Civil Appeal No. 3892 of 2022** on 12th May 2022, while adjudicating a similar question which is before this Court, observed as under:-

> *"In Ramesh Chandra Bajpai (supra), this Court further held that it was well-settled that the doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced in every way. Mere similarity of designation or similarity or quantum of work was not determinative of equality in the matter of pay scales. The Court had to consider all the relevant factors such as the mode of recruitment, qualifications for the post, the nature of work, the value of work, responsibilities involved and various other factors.*
>
> *19. In the instant case, it would be pertinent to note that the eligibility criteria for appointment of Museum Assistant-cum- Librarian under the 1987 Rules was different from the eligibility criteria of appointment of Librarian under the 1990 Rules. Under the 1987 Rules, the minimum qualification for the post of Museum Assistant cum Librarian was graduate but under the 1990 Rules, the minimum qualification was post graduate degree."*

36. The abovementioned precedents lay down the several considerations to be borne in mind while deciding the issue of parity between two posts, whether in the same organisation or across different organisations/departments. There is definitely no mathematical application of the principle of parity and 'Equal Pay for Equal Work' and it is the Courts of the country that have laid down various factors for deciding the question of parity amongst different designations. While similar nature of work, responsibilities, duties and reliabilities are

relevant considerations, qualifications, mode of recruitment as well as merit have also been observed to be significant factors while evaluating parity and consequent question of equality of pay scale. Parity between two or more positions may be drawn when there is no intelligible differentia found in the nature of work and responsibilities of the two. The position of law is also settled when a person claiming parity of pay scales with the class or category had been situated in the past at par in the equivalent pay scale with the counterparts with whom such parity is claimed, the question of historical parity amongst such counterparts may be said to be established.

37. Although the Hon'ble Supreme Court has reiterated time and again that 'Equal Pay for Equal Work' is a constitutional goal, and by and large the precedents have also acknowledged and resolved the issue of disparity amongst and across institutions, there is no absolute application of the principle by default, within or across organisations/departments. Organisations as well as the government have the liberty to set different pay-scale, where they make a reasonable, valid and intelligible classification for employees placed at similar grades and work profiles. However, it is crucial that this classification does not discriminate between employees who have identical work, in terms of nature of such work, responsibility involved, confidentiality, qualifications, mode of recruitment and other such significant factors. Irrational classification and apparent discrimination cannot be justified where employees placed at an identical position are treated differently, whether working under the same employer or placed in different public departments.

38. The fundamental of the principle, hence, is how closely a nexus or similarity can be found between two post/positions in different organisations/departments and how this nexus should affect the pay for the employees appointed in this position. The above laid principles by the Hon'ble Supreme Court are also to be read in consonance with the Reports of the Sixth Central Pay Commission as well as the Seventh Central Pay Commission. The Sixth Pay Commission observed that the field offices are at the cutting edge of administration and may, in most cases, determine whether a particular policy turns out to be a success or a failure in terms of actual benefit to the consumer. It noted that time has come to grant parity between similarly placed personnel employed in field offices and in the Secretariat but with due attention to hierarchy and career progression as well as the functional considerations and relativities. The Commission consolidated different cadres and placed them under one pay scale and also strongly recommended parity between organisations that have historical parity. The Report of the Sixth Central Pay Commission thereby recommended full parity between Secretariat Offices.

39. Reference is deemed necessary to be made to the Report of the Seventh Central Pay Commission as well which discussed the issue of parity between the Secretariat and field offices. The relevant part is reproduced hereunder:-

> *"The Commission accordingly strongly recommends parity in pay between the field staff and headquarter staff up to the rank of Assistants on two grounds- firstly the field staff are recruited through the same examination*

and they follow the same rigour as the Assistants of CSS and secondly there is no difference in the nature of functions discharged by both. Therefore to bring in parity as envisaged by the VI CPC, this Commission recommends bringing the level of Assistants of CSS at par with those in the field offices who are presently drawing GP 4200. Accordingly, in the new pay matrix the Assistants of both Headquarters as well as field will come to lie in Level 6 in the pay matrix corresponding to pre revised GP 4200 and pay fixed accordingly. Similarly the corresponding posts in the Stenographers cadre will also follow similar pay parity between field and headquarter staff. The pay of those Assistants/Stenographer who have in the past, been given higher Grade pay would be protected.

Recently, through a government order similar 'edge in pay' has also been extended to the Upper Division Clerks belonging to CSS in the Secretariat by way of grant of non-functional selection grade to GP 4200 (available to 30 percent of UDCs). It is expected to lead to further resentment at the level of UDCs in the field as well as with other non-secretariat posts with which they had parity before. Since as per the recommendation of this Commission, Assistants have now come to lie in Level 6 of the pay matrix which corresponds to pre revised GP 4200, this Commission recommends withdrawal of non-functional selection grade to GP 4200 in respect of Upper Division Clerks belonging to CSS."

40. The Central Pay Commission being the expert body for deciding the matters of pay scale and pay grades also recommends that there should be parity between similarly placed employees. However, it lays down certain conditions and factors that help to ascertain whether there is a nexus or parity between two otherwise apparently similar posts and mentions two grounds, that is, similar mode of recruitment and nature of

work. The expert Commission thereby lays down reasonable and legitimate classification while deciding whether such parity even exists.

41. In the instant matter, parity is being sought in terms of position of employment and the subsequent benefits that accrue to the employees carrying out similar duties and having equal or identical conditions, nature and degree of work while holding the said position of employment at the Telecom Disputes Settlement and Appellate Tribunal and the Secretariat.

42. The petitioner was placed in the pay scale of Rs. 5500-6000, whereas, it has been alleged that counterparts in the CSSS have been placed under the pay-scale of Rs. 6500-10500. However, keeping in view the recommendations of the Commission as well as the opinion of the Hon'ble Supreme Court, it is found that to establish parity in employment, more significant factors including qualifications and mode of recruitment are to be given equal consideration. The question, hence, is whether the process of recruitment for the concerned position of Stenographers in CSSS and respondent no. 1 is on the same footing or not. It is the case of the respondents that the position under the CSSS is filled by way of direct recruitment by way of clearing the All-India Competitive Examination whereas under the respondent no. 1 the position is to be occupied on deputation basis, without passing of any competitive examination.

43. For any benefit to be accrued to an employee, even for promotions etc., qualifications and merit are few of the crucial considerations. A

discrimination, which is irrational without any intelligible differentia cannot be invidiously placed upon a person in the matter of pay scale. However, qualification and mode of recruitment cannot be said to be irrationally placed factors. Moreover, it cannot be said that the petitioner working at the respondent no. 1 has the same rigours as that of the Secretariat in terms of the requirement for recruitment, since, an employee being deputed cannot be placed at par with an employee appearing for and clearing a competitive examination where only a selected few fill up the position at Ministerial organisation from amongst thousands of those appearing for the examination. A classification based on selection and qualification as well as merit cannot be said to be unreasonable and therefore, the parity sought by the petitioner is beyond the scope as interpreted by the Hon'ble Supreme Court.

CONCLUSION

44. Keeping in view the above facts and circumstances, the position of law and precedents as well as the fact that there is an apparent disparity between the position held by the petitioner with the respondent no. 1 and his counterparts at the CSS, this Court is of the considered view that the petitioner is not entitled to any benefit sought and prayed by him of an upgraded pay scale. For the reasons as aforestated, this Court does not find any error in the order dated 26th September 2011 passed by the respondent no. 1 rejecting the representation by the petitioner.

45. Accordingly, the instant petition stands dismissed for being devoid of any merit.

46. Pending application, if any, also stands disposed of.

47. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JULY 12, 2022
Aj/Ms