Before Hon'ble R. P. Sethi & R. L. Anand, JJ.

THE STATE OF PUNJAB AND ANOTHER,—*Appellants.*

versus

HARDIAL SINGH AND OTHERS.—*Respondents.*

L.P.A. No. 275 of 1992.

11th March, 1996.

Constitution of India, 1950—Arts. 14 & 226—Regularisation—Employment under scheme—Thereafter scheme abolished—Confers no right upon such employees—Direction of learned Single Judge to adjust employees in another post is only directory and not mandatory.

Held, that it has rightly been contended that by appointment in a Scheme, no right had been conferred upon the writ petitioners which could be enforced in a Court of law and directions issued as has been done by the learned Single Judge. The implementation of such a direction may amount to the taking away the rights of some deserving citizens who may be more qualified and suitable for regular appointment or adjustment in the future. The direction of the learned Single Judge otherwise appears to be advisory and not mandatory. It is, however, made clear that the appellant-State shall not be under any legal obligation to provide job to the writ petitioners or adjust them in any other employment unless they otherwise apply and are found fit and suitable by the competent authority in accordance with the Rules.

(Para 5)

Constitution of India, 1950—Art. 14—Equal work for equal pay—Well established principle.

Held, that the doctrine of equal pay for equal work is not well recognised constitutional guarantee which cannot be deprived to an employee unless the circumstances otherwise warrant. As the writ petitioners succeeded in proving that they were performing similar duties as were being performed by regular supervisors in the department they were rightly held to be entitled to the grant of similar pay scales.

(Para 4)

S. S. Shergill, Addl. A.G. Punjab, *for the Appellant.*

None for the Respondents.

JUDGMENT

R. P. Sethi, J..

(1) "Once the nature and functions and the work of two persons are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work" declared the Supreme Court in *Bhagwan Dass* v. *State of Haryana* (1). It was further held that when the duties and functions discharged and work done by the employees appointed on regular basis and those appointed on temporary basis in a department of the Government are similar, the fact that the Scheme under which temporary appointments were made was a temporary scheme and the posts were sanctioned on year to year basis having regard to the temporary nature of the Scheme could not be a factor which could be invoked for violating "equal pay for equal work" doctrine.

(2) Allured by the aforesaid judgment of the Supreme Court, the respondent-writ petitioners who had been appointed as Supervisors, Adult Education on different dates between 6th June, 1986 and 30th May, 1988 filed the writ petition in this Court praying for the grant of relief of equal pay for equal work and for regularisation of their services. The writ petition was resisted by the appellant-State on various grounds which were detailed in the reply filed. After going through the pleadings of the parties, considering rival contentions and perusing the aforesaid judgment of the Apex Court, the learned Single Judge issued the following directions :

> "The petitioners shall be fixed in the same pay scale as the Supervisors employed on regular basis.
>
> They pay of the petitioner will be fixed having regard to the length of service ignoring any notional break which might have occured during the course of appointment.
>
> The pay fiaxtion shall be made as per the General principles adopted for pay revision and in any case any upward revision has been made in respect of the pay of regular supervisors, such benefits must also accrue to the petitioners.
>
> The arrears of pay calculated on the regular scale upto 30th June, 1991 will be paid to the petitioners within 4 months from today."

(1) A.I.R. 1987 S.C. 2049.

As the Scheme under which the petitioners were working had been abolished, the learned Single Judge directed that the Government shall make an attempt to adjust the petitioners in some suitable employment as expeditiously possible. The writ petition was allowed,—*vide* the judgment impugned with costs quantified at Rs. 1,000.

(3) It has now been argued before us that as the petitioners were not similarly situated as the Supervisors regularly appointed in the department, they were not entitled to the relief granted to them by the learned Single Judge. The argumnet though attractive on the face of it is without any substance in view of the pleadings of the parties and the admitted facts. The learned Single Judge after referring to the cases of the Apex Court in *Bhagwan Dass's case* (supra), *State of U.P.* v. *J. P. Chaurasia* (2), *S. P. Jain* v. *UOI* (3), *and 'Grih Kalyan Kendra Workers Union* v. *UOI* (4), came to the conclusion :—

> "Applying the aforesaid Principles to the facts of the present case, I find that the petition must succeed. As already discussed above, the petitioners satisfy all the tests which allow them to be equated with the regular Supervisors and as such they are entitled to the scale of pay plus allowance of regular supervisors. As a matter of fact it has not been denied by the respondents, that the petitioners and the regular Supervisors are performing identical duties and sharing the same responsibility, the argument of Mr. Saron that a part-time employee or those working on a temporary basis, cannot be said to be as responsible as regular employees, is to be rejected. The responsibility that has to be shouldered is not measured by the tenure of the appointment, but is reflected in the confidence the employer resposes in the employee."

(4) The doctrine of equal pay for equal work is now well recognised constitutional guarantee which cannot be deprived to an employee unless the circumstances otherwise warrant. As the writ petitioners succeeded in proving that they were performing similar duties as were being performed by regular supervisors in

(2) A.I.R. 1989 S.C 19.
(3) A.I.R. 1990 S.C. 334.
(4) A.I.R. 1991 S.C. 1173.

the department they were rightly held to be entitled to the grant of similar pay scales. We do not find any illegality or error of jurisdiction in the judgment to this extent requiring any interference.

(5) The learned counsel for the appellant has, however, argued that in view of the fact that the Scheme under which the writ petitioners were employed had been abolished, the learned Single Judge was not justified in issuing direction to the appellant-State to adjust them in some other suitable employment. It has rightly been contended that by appointment in a Scheme, no right had been conferred upon the writ petitioners which could be enforced in a Court of Law and directions issued as has been done by the learned Single Judge. The implementation of such a direction may amount to the taking away the rights of some deserving citizens who may be more qualified and suitable for regular appointment or adjustment in the future. The direction of the learned Single Judge otherwise appears to be advisory and not mandatory. It is, however, made clear that the appellant-State shall not be under any legal obligation to provide job to the writ petitioners or adjust them in any other employment unless they otherwise apply and are found fit and suitable by the competent authority in accordance with the Rules.

(6) The appeal is accordingly partly allowed by up-holding the judgment of the learned Single Judge in sofaras the manner and direction regarding equal pay for equal work is concerned. The appellants are held not obliged to adjust the writ petitioners in any other employment unless the writ petitioners apply for the post and they are found fit for the same in accordance with the law applicable at the relevant time. No costs.

J.S.T.

Before Hon'ble N. C. Jain & S. S. Sudhalkar, JJ.

B. S. GURAYA,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS.—*Respondents.*

C.W.P. No. 4899 of 1993.

1st March, 1996.

Constitution of India, 1950—*Arts.* 226/227—*Army Rules,* 1970—*Proviso to Rule* 14—*Dismissal from service without show cause*