

*Before Arun B. Saharya, C.J. & V.K. Bali, J*

HARYANA STATE MINOR IRRIGATION TUBEWELLS  
CORPORATION AND OTHERS—*Appellants*

*versus*

G.S. UPPAL & OTHERS—*Respondents*

L.P.A. No. 725 of 1993

22nd August, 2001

*Constitution of India, 1950—Arts. 14 & 226—Service Bye-laws of the Corporation—Rl 5.1, Part V—Employees of the Corporation getting the same pay scales as that of the employees of the Haryana Government—Service Bye laws provide that the pay scales of the Corporation are subject to revision by the Board which would generally follow the pattern adopted by the State Government from time to time—Board of Directors recommending the revision of pay scales of all categories equal to the pay scales of the Government employees—Government approving the revision in the pay scales of all categories but declining to only three categories of the petitioners—Power to fix salaries & emoluments for the employees of the Corporation rests with the Directors of the Corporation—Corporation cannot plead financial constraints only with regard to a limited categories of petitioners—Decision of the Government rejecting the proposal of the Board of Directors violates Art. 14 and smacks of individuous discrimination—Petitioners entitled to the revised pay scales on the pattern of the employees of State Government.*

Held, that it is only the category of the petitioners which has been singled out, whereas all other employees, even of the appellant Corporation, have been given increase in their pay scales, as commensurate to their counterparts, i.e. holding the same posts in the Government Department. Not only that, the said increase has been given to the posts held by other Engineers, inasmuch as, even those, who are holding engineering posts above the rank of the petitioners, have also been given a similar pay hike. It is only three categories of the petitioners, which have been left out. There is no justification

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for the same. We find nothing which may justify increase in the pay scale of all other categories of the employees of the Corporation including those, who are holding engineering posts and not the petitioners. Decision of the Government in, thus, rejecting the proposal of the Board of Directors smacks of individual discrimination and straightaway comes within the vice of Article 14 of the Constitution of India.

(Para 20)

Constitution of India, 1950—Arts. 14, 39(d) and 226—Principle of ‘equal pay for equal work’—Revision in the pay scales of Engineers of Government departments—Government declining to increase the pay scales of the Engineers of the Corporation—Two set of employees—Different managements & different establishments—No equation between the posts held by the Engineers of the Corporation and the Government Departments—No data to show that the work and duties of the Engineers of the Government Departments are same as that of the Engineers of the Corporation—The mere fact that posts in the Government Departments and the Corporation at one time carried same pay scales and increase in one also attracted a similar increase in the pay scales in the others is no ground to attract the principle of ‘equal pay for equal work’.

Held, that if two posts are equated and an equation is made out from the rules or orders passed from time to time or for that matter, if it is established that two sets of employees are doing the same work and have same responsibilities, that the principle contained in Article 39(d) of the Constitution of India can be invoked. There are only two judicially recognised grounds to invoke the principle of “equal pay for equal work”. Concededly, posts held by the petitioners have since not been equated with the one held by the Engineers of the three wings of the Government Departments. Infact, such is not even the case of the petitioners that by virtue of some orders these posts have since been equated. It is the positive case of the Corporation and indeed the petitioners have brought no details of their work and duties to compare the same to that of Engineers of the three wings of the Government Departments to make out a case of ‘equal work and equal responsibilities. The mere fact that posts in two different departments at one time carried same pay scales and increase in one also attracted a similar increase in the pay scales in the others, is no ground to attract

the "principle of equal pay for equal work". The cases are not lacking where duties and responsibilities may be same at one time but may change latter. Further the Government in a given case, on its own, may increase pay scales of one set of employees commensurate to the increase to the other set of employees but that in any case is the discretion of the Government and confers no right as such on a citizen.

(Para 18)

Nipin Mittal Advocate

Surya Kant AG (Hy) with C.R. Dahiya DAG (Hy) *for the appellants*

Vivek Bhandari, Advocate *for the repondent.*

### JUDGMENT

V.K. BALI, J

(1) By this common order, we propose to decide Letters Patent Appeal No. 725 of 1993 (H.S.M.I.T.C. and others versus G.S. Uppal and others) as also two connected Civil Writ Petitions bearing No.5946 of 1994 (Chakarvarti Garg versus State of Haryana and others) and 834 of 1996 (A.S.Dhir versus State of Haryana and others) , as common questions of law and fact are involved in all these petitions. The Civil Writ Petitions, mentioned above, were ordered to be heard along with LPA No. 725 of 1993. Learned counsel representing the parties are also ad-idem that all these matters need to be disposed of by a common judgment. The facts have primarily been picked up from Letters Patent Appeal No. 725 of 1993 but some subsequent events, which could find mention only in the civil writ petitions that came to be filed later shall also be mentioned.

(2) The respondents in LPA No. 725 of 1993 are employees of the Haryana State Minor Irrigation Tubewell Corporation (hereinafter referred to as the Corporation) and at the time when petition on behalf of the petitioners came to be filed, they were working on the posts of Sub-Divisional Officers, Sub-Divisional Engineers and Assistant Engineers in the Corporation, which is a company registered under the Companies Act. It has been the case of the respondnets (hereinafter referred to as the petitionres) that the State of Haryana exercises deep

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and pervasive control over the Corporation. The Governor of Haryana ; Secretary to Government Haryana, Irrigation Department; Secretary to Government Haryana, Agricultural Department; Chairman, Haryana State Electricity Board; Secretary to Government Haryana, Finance Department; and Chief Engineer (Canals), Irrigation Works, Haryana, were the exclusive share holders in the Corporation at the time of its formation in the year 1970. The Corporation was carved out of the Irrigation and Power Ministry in the State of Haryana in the year 1970. Inasmuch as, the Corporation came to be carved out of the Irrigation Department, it had to be initially manned by the officers on deputation from the Irrigation Department to work on the posts of Sub-Divisional Officers, Sub-Divisional Engineers and Assistant Engineers. At the time, when the petition came to be file in the year 1992, there were 27 SDOs on deputation from the Irrigation Department. In the Corporation, the nature of duties and responsibilities of the deputationists and the SDOs of the Corporation was the same. Their duties were inter-changeable and as such it has been the case of the petitioners that there was no difference whatsoever between the duties and responsibilities expected to be shouldered by a deputationist and by an S.D.O. of the Corporation. In fact, it has further been the case of the petitioner that there was no qualitative difference between the duties and responsibilities of persons employed on the posts of S.D.Os, S.D.Es and A.Es. in various departments of Haryana Government, such as Public Works Department (Buildings and Roads), Public Health and also various Boards and Corporations, such as the Haryana State Electricity Board, the Haryana Urban Development Authority, etc. Rule 5.1 of Part V of the Service Bye-laws of the Corporation reads as under :—

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

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

(3) Right since the inception of the Corporation in the year 1970, it has been following the pay scales adopted by the Haryana Government as revised from time to time in respect of all classes of

its employees. As mentioned above, initially, when the Corporation was formed, almost entire engineering staff from the rank of Chief Engineer to the rank of Assistant Engineer/Sub-Divisional Officer was taken on deputation from the Irrigation Department, Haryana, till the Corporation recruited its own cadre of Assistant Engineers. Qualifications and experience for recruitment and promotion to the rank of Assistant Engineers, Sub Divisional Officer, Executive Engineers, Superintending Engineers and Chief Engineers are the same as in the Irrigation Department. All those, who came on deputation on whatsoever post, were granted pay scales as revised by the Haryana Government from time to time for the Engineers in the Government Department, like P.W.D., Public Health (B&R) and Irrigation Department. Keeping in view these facts and the established principle of equal pay for equal work, pay scales of employees of the Corporation, including those of Engineers, were revised with effect from 1st April, 1979 and 1st January, 1986 on the pattern of revision of pay scales approved by the Haryana Government for its employees. The revision of pay scales with effect from 1st January, 1986 was also approved by the Pay Revision Committee constituted by the Haryana Government for revision of pay scales of the employees of various public undertakings/Boards/Corporations in its meeting dated 21st September, 1988. On the basis of Clause 81(v) of the Memorandum of Association of the Corporation, reproduced below, it has further been the case of the petitioners that the Board of the Corporation has in its discretion the ultimate power to fix the salary and emoluments of the employees of the Corporation:—

“81(v) to appoint at their discretion, remove or suspend such managers, secretaries, officers, clerks, agents and servants for permanent, temporary or special services, as they may from time to time think fit, and to determine their powers and duties and fix their salaries or emoluments and to require security of such amount as they think fit in such instances. In the first instance, officers and other staff shall be taken on deputation from the Irrigation Department, Haryana, subject to availability.”

(4) On the basis of Clause 95 of the Memorandum of Association dealing with power of Chairman of the Corporation, it has further been the case of the petitioners that if the Chairman refers any

proposal to the Government and the views of the Government with regard to the decision are not received within a period of two months, the Director shall be entitled to act in accordance with the proposal or decision without further reference to the Government.

(5) Revised pay scales were made applicable to the Engineers in the Corporation with effect from 1st January, 1986 but thereafter, the Haryana Government, while removing certain anomalies in the pay scales of the Superintending Engineers, further revised the pay scale of the Superintending Engineers of P.W.D., Public Health (Buildings and Roads) and Irrigation Department from Rs. 3700—5000 to Rs. 4100—5300,—*vide* Finance Department letter No. 6\38\3PR (FD)—27 dated 16th May, 1989 and,—*vide* yet another letter of the said Department No. 6\38\PR dated 2nd June, 1989, salaries of other Engineers such as AEE\SDO\SDE (Class-I and Class-II) were also revised with effect from 1st May, 1989. The Board of Directors of the Corporation in their 94th meeting held on 18th August, 1989 decided that in view of the parity in pay scales that had been maintained in the past between the Corporation employees and their counter parts in the Haryana Government Departments, which was approved by the Finance Department, may be recommended to the Public Enterprises and Investment Cell of the Finance Department, Haryana, for their concurrence :—

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

Haryana State Minor Irrigation Tubewells Corporation 259  
& others v. G.S. Uppal & others  
(V.K. Bali, J.)

(6) The Haryana Government once again modified pay scales of the Engineers,—*vide* letter dated 16th May, 1990 with effect from 1st May, 1989 as under :—

| Name of the Post            | Existing Scales<br>of Pay                                | Revised Scales   |
|-----------------------------|--|--|
| Engineers<br>AEE/AE/SDO/SDE | Rs. 2200—4000  | Rs. 2200—4000  |
|                             | Rs. 3000—4500<br>(After 5 years of<br>regular service)   | Rs. 3000—4500<br>(After 5 years<br>of regular satis-<br>factory service).  |
|                             | Rs. 4100—5300<br>(After 12 years of<br>regular service). | <u>Selection Grade</u><br><br>Rs. 4100—5300<br>(After 12 years of<br>regular satis-<br>factory service)<br>limited to 20% of<br>the cadre posts. |

(7) The Board of Directors of the Corporation considered and approved the adoption of the above modified scales with effect from 1st May, 1989 in respect of the Engineers of the Corporation in their 97th meeting held on 25th June, 1990, subject to the concurrence of the Finance Department. It was further resolved that any further amendment/modification made by the Haryana Government in the pay scales of the Engineers may also be made applicable in respect of the Corporation employees, subject to the concurrence of the Finance Department. The proposal of the Board of Directors of the Corporation for revision of pay scales of the Corporation Engineers was sent to the Finance Department and in the said proposal, it was brought to the notice of the Standing Committee that the revised pay scales had already been granted to the Engineers of the Haryana Urban Development Authority and that the Haryana State Electricity Board had also revised the pay scales of its Engineers. The proposal aforesaid came up before the Standing Committee in its meeting that was held on 28th May, 1992, which approved the pay scales in a selective manner. The revision in the pay scales of the Superintending Engineers,

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Accounts Officers, Circle Head Draftsmen, Divisional Head Draftsmen, etc. were approved, whereas the revision of pay scales of the petitioners, who are AEs/SDOs/SDEs, was postponed and it was decided that the matter would be examined separately by the Finance Department. The matter with regard to the revision of pay scales insofar as the petitioners are concerned, however, was not taken up by the Standing Committee, thus, constraining the petitioners to file repeated representations and when the same did not yield any result, the present petition has been filed.

(8) Cause of the petitioners was contested by the respondents, wherein it has been pleaded that the petitioners are seeking revised pay scales on the pattern of Engineers of three wings of P.W.D. The proposal of the Corporation for revision of pay scales of engineering staff was placed for consideration of the Standing Committee in its meeting held on 15th November, 1991. The decision taken in the aforesaid meeting reads thus :—

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

(9) The meetings aforesaid of the Sub-Committee were held on 16th January, 1992 and 6th February, 1992. Minutes of these meetings containing recommendations of the Sub-Committee were placed for consideration of the Standing Committee in its meeting held on 28th May, 1992, wherein it was decided as under :—

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

(10) It has further been pleaded that as the matter was under active consideration and had not been finally decided, no cause of action arose to the petitioners and, therefore, the writ petition was



Haryana State Minor Irrigation Tubewells Corporation 261  
& others v. G.S. Uppal & others  
(V.K. Bali, J.)

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liable to be dismissed, being pre-mature. It may be mentioned at this stage that at a latter stage, i.e., on 6th March, 1992, a decision was taken by the Government, a copy whereof has been handed over to us during the course of arguments. The same reads thus :—

“I am directed to invite a reference to Haryana Government, Finance Department Circular letter No. 6\38\3PR (FD)—87 dated 2nd June, 1989 and No. 6\38\PR (FD)—87 dated 16th May, 1990,—*vide* which pay scales of the Engineers along with the Doctors of Health Department and Dy. Supdts. of Police were further revised. It is clarified that the revised pay scales, so far as Engineers are concerned, are applicable to the Engineers of PWD (three wings) only.”

(11) It has further been the case of the respondents that there was apparent difference between the duties, reliability and responsibilities of the Engineers of three wings of and H.S.M.I.T.C. The Engineers of PWD have to work under different conditions and constraints because of the development activities undertaken by the State under its phased programmes and time bound schedules. Two fold defence projected in the written statement, as is apparent from the reading of the written statement, is that there has been a revision of pay scales of Engineers of only three wings of PWD and the Engineers employed in the State Government Departments, have to carry out duties, which are far more arduous to the one carried out by the Engineers of the Corporation, where the petitioners have been employed. The fact that the Corporation, where the petitioners are employed, is running under loss, has also been pressed during the course of arguments, on the basis of pleadings made in Civil Misc. No. 2547 of 2001 filed under Section 151 of the Code of Civil Procedure and it has been urged that because of its financial position, the Corporation is not in a position to equate the pay scales of the petitioners to that of the Engineers of the three departments of the Government.

(12) When the matter came up before learned Single Judge, it was urged on behalf of the petitioners that the action of the respondents in treating them differently from those, who were working on deputation, was discriminatory and thus violative of Article 14 of the Constitution of India. Treating deputationists and those, who were originally employed in the Corporation alike, their duties being inter/

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changeable as also the duties being performed by both sets of employees being the same, it was held that there was no valid classification between the petitioners and such SDOs, who were appointed by way of deputation. It has further been held that there were no basis available for any classification between the petitioners, who have continued to work in the pay scale of Rs. 2000—3500 with effect from 1st January, 1986, and their counter-parts in the Government and also the persons, who were posted in the Corporation by way of deputation. The contention based upon loss suffered by the Corporation was rejected on the ground that the Corporation was digging tubewells and undertaking lining of water courses\channels for improving irrigation facilities in the rural areas, cost whereof has to be paid by the land owners and at the time of election, amounts due from the farmers were waived off as a result of which the Corporation was unable even to recover its actual cost. That being the cause of loss suffered by the Corporation, the contention was ignored.

(13) It was also held by the learned Single Judge that sequence of events would clearly depict that the employees of the Corporation had been treated at par with those in Government at the time of revision of pay scales on every occasion and that it was the admitted position that the scales of pay were initially revised with effect from 1st April, 1979 and thereafter on 1st January, 1986 and on both these occasions, the pay scales of the employees of the Corporation were at par with those in Government and further that nothing appears to have happened which may justify differential treatment.

(14) Mr. Surya Kant Sharma, learned Advocate General who appears on behalf of the appellant—State of Haryana, vehemently contends that the duties of the petitioners could not be compared with the Engineers of the three wings of the Government Departments when the latter were working with the appellant Corporation on deputation. The established facts of the cases reveal that functions entrusted to the appellant Corporation were erstwhile carried out by the Irrigation Department of the Government and immediately when the Corporation came into existence, it had to be manned by the employees, who, in the very nature of things, had to be initially brought on deputation from the Irrigation Department of the Government itself. As and when the appellant Corporation started making fresh appointments, the deputationists, it is again a conceded

position, were sent back to their parent department, further contends the learned Advocate General. While on deputation and naturally for a limited period, if the employees of the Government Departments were carrying out the same duties as were being carried out by the original employees of the Corporation, it could not be held that their work was equal so as to attract the principle of 'equal pay for equal work'. It has further been urged by the learned counsel that mere fact that on two earlier occasions pay hike to the engineers of the Government Departments attracted an equal pay hike for the engineers employed with the appellants Corporation is no guide that may conclusively show that nature and duties of the two sets of employees were the same. That being so, a rise in the pay scales of the Government Departments could not attract an equal increase in the pay scales of the engineers of the appellants Corporation on all subsequent occasions. It has further been argued before us that there was no data, at all, before the Court to come to the conclusion that the Engineers employed with the Government Departments were carrying out the same duties and had same responsibilities as that of the engineers employed with the appellants Corporation even when the former were not on deputation with the Corporation. The weak financial position of the appellants Corporation is also being pressed into service during the course of arguments for denying the relief that has been granted to the petitioners by the learned Single Judge.

(15) There appears to be considerable merit in the contention of learned counsel noted above and it appears that the judgment of the learned Single Judge based upon the principle of "equal pay for equal work" or for that matter, discrimination between the same set of employees cannot be possibly sustained, even though on the other points, that have been urged before us on behalf of the petitioners, which we shall refer to in the later part of the judgment, the ultimate result may be the same.

(16) Before we may revert to the facts with regard to same or equal work being carried out by two sets of employees, we would like to deal with the effect of two sets of employees being under different managements and different establishments. It is by now a settled principle of law that discrimination complained of must be with the same establishment of the same management. Inasmuch as, the principle of law, as mentioned above, is not res-integra, we would

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straightway refer to the judgement of the Supreme Court in *Harbans Lal and others vs. The State of Himachal Pradesh and others* (1). While referring to well known decisions of the Supreme Court in *Randhir Singh vs. Union of India*, (2) *State of U.P. vs. J.P. Chaurasia*, (3) and *Mewa Ram Kanojia versus All India Institute of Medical Sciences and another*, (4) as also *All India Customs and Central Excise Stenographers (Recognised) vs. Union of India*, (5) it was held that "a comparison cannot be made with counterparts in other establishments with different management, or even in establishments in different geographical locations though owned by the same master. Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work" cannot be enforced. It was an admitted fact in the pleadings and so was the finding returned by the Supreme Court that the Corporation had no regularly employed Carpenters and even assuming that the petitioners jobs were comparable with their counterparts in the Government service, it was held that the petitioners cannot enforce the right of "equal pay for equal work."

(17) The principle of "equal pay for equal work" concededly is not a fundamental right that might have been expressly guaranteed, even though it has remained equally undisputed that the principle aforesaid is incorporated under Article 39 (d) of the Constitution of India as a Directive Principle of State Policy. It is no doubt, true that in *Randhir Singh Versus Union of India* (*supra*), it was observed by the Hon'ble Supreme Court that principle of "equal pay for equal work" has to be read with Article 14 of the Constitution of India but in the later judgement in *State of U.P. versus J.P. Chaurasia and Mewa Ram Kanojia versus All India Institute of Medical Sciences and another*, it was held that the principle of "equal pay for equal work" has not mechanical application in every case of similar work as also that the principle aforesaid cannot be invoked invariably in every kind of service particularly in the area of professional services.

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(1) 1989 (2) RSJ 509

(2) 1982 (1) SCC 618

(3) 1989 (1) SCC 121

(4) 1989 (2) SCC 235

(5) 1988 (3) SCC 91

(18) Coming to the facts of the case in hand, it may be recalled that the Engineers in the three wings of the PWD or the Irrigation Department, when on deputation only with the appellant Corporation, would have the same duties and responsibilities as were being carried out by the employees of the Corporation but then the fact cannot be lost sight of that such Engineers, who belong to the Government Departments are working, even though on the same posts in the Corporation for a limited time as they had to be initially appointed to carry out the functions of the appellant Corporation. It was diminishing cadre which had to be completely phased out when the posts on deputation were filled by the Corporation itself. Same work carried out by the deputationists as per force of circumstances for such limited period for which they were to remain on deputation and were to carry out the same duties, which would be carried out by the employees of the Government Departments, would not, in our considered view, attract the principle of "equal pay for equal work". Naturally, when such deputationists were to go back to their parent department, they would be carrying out far more arduous duties, as has been urged during the course of arguments. There was no data before the Court, at all, nor in fact it was pleaded but for generally saying that the work and duties of the Engineers of the Government Departments were the same as that of the Engineers of the Corporation and that being so, no finding, at all, could be returned that the Engineers of the Government Departments were carrying the same duties and had responsibilities as that of the Engineers of the Corporation. Reason given by the learned Single Judge that on two earlier occasions, there was similar increase in the pay scales of the Engineers of the Corporation as was given to the Engineers of the Government Departments and that no difference was shown and, therefore, too, the petitioners would get the increased pay scales as compared to the one given to the Engineers of the Government Departments, we may say, with respect, also cannot possibly sustain. No judicial precedent, at all, has been cited before us in support of the said view. On the other hand, string of judicial precedents on the principle of "equal pay for equal work" suggests that only if two posts are equated and as equation is made out from the rules or orders passed from time to time or for that matter, if it is established that two sets of employees are doing the same work and have same responsibilities, that the principle contained in Article 39 (d) of the Constitution of India can be invoked. These are only two judicially

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recognised grounds to invoke the principle of equal pay for equal work”, Concededly, in present case, posts held by the petitioners have since not been equated with the one held by the Engineers of the three wings of the Government Departments, Infact such is not even the case of the petitioners that by virtue of some orders these posts have since been equated. It is the positive case of the appellant and indeed, the petitioners have brought no details of their work and duties to compare the same to that of Engineers of the three wings of the Government Departments to make out a case of equal work and equal responsibilities. The mere fact that posts in two different departments at one time carried same pay scales and increase in one also attracted a similar increase in the pay scales in the others, in our view, is no ground to attract the “principle of equal pay for equal work”. The cases are not lacking where duties and responsibilities may be same at one time but may change later. Further the Government in a given case, on its own, may increase pay scales of one set of employees commensurate to the increase to the other set of employees but that in any case is the discretion of the Government and confers no right as such on a citizen.

(19) Faced with the situation aforesaid, learned counsel representing the petitioners in the Letters Patent Appeal as also in the Writ Petitions, referred to above, vehemently contend that there was no need at all to invoke the principle of “equal pay for equal work”, as the services bye-laws, that have been framed by the department, have necessarily to be followed and by virtue of the said service by laws, the petitioners are entitled to increase in their pay scales that has been given to the Engineers of the Government Departments. It has also been urged that by virtue of the bye-laws aforesaid, the appellant Corporation has since already given an equal increase of pay scales to all other employees in the Corporation itself and it is only the petitioners, who are Engineers, have been singled out that the same is discriminatory and, thus, violative of Article 14 of the Constitution of India.

(20) The Haryana State Minor Irrigation Tubewells Corporation Limited is a company registered under the Companies Act, 1956. It has been specifically pleaded in paragraph 6 of the writ petition that Service Bye-laws have been framed by the Corporation and by virtue of Rule 5.1 of Part V of the Service Bye-laws, each post in the

Corporation will carry a time scale of pay; the present pay scale being indicated in Appendix II and further that the pay scale is subject to revision by the Board, which will, however, generally follow the pattern adopted by the Government of Haryana from time to time. Neither existence nor applicability of the rule aforesaid has been questioned either in the written statement filed on behalf of the respondents or during the course of arguments. It has further been pleaded in paragraph 21 (c) of the writ petition that pay scales of the employees of the Corporation are subject to the revision by the Board, which shall, however, generally follow the pattern adopted by the Government and since its inception in 1970, the employees of the Corporation had been getting the same pay scales as that of the employees of the Haryana Government and the Board of Directors having since already equated the pay scales of the Engineers of the Corporation, the Government is bound to adopt the same. No doubt, by virtue of the Service Bye-laws aforesaid, the Board would generally follow the pattern adopted by the Government of Haryana from time to time but in this case, concededly, an increase in pay scales as demanded by the petitioners commensurate to the pay scales of the Government employees has since already been recommended and it is only the Government which has not concurred with the decision of the Board of Directors. We need not go into the question as to how word generally' has to be interpreted, i.e., would it be interpreted to mean 'invariably' and if not so, the Corporation is bound to give some reasons in not following the same pattern of pay scales, in as much as, the Corporation has indeed granted increase in the pay scales to the categories of the posts held by the petitioners commensurate to the pay scales of the Engineers holding the same post in the three wings of the Government Departments. That being so, the only question would be as to whether Government could decline the aforesaid proposal of the Corporation. By virtue of Article 81 (v) as has been framed by the Corporation, the Directors of the Corporation in their discretion have powers to appoint, remove or suspend such manager, secretaries, officers, clerks, agents and servants for permanent, temporary or special services, as they may from time to time think fit, and to determine their powers and duties and fix their salaries or emoluments and to require security of such amount as they think fit in such instances. The power to fix the salaries or emoluments for the employees, thus, specifically rests with the Directors of the company and by virtue of Rule 5.1 of Part V of the Service Bye-laws, as mentioned

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in the earlier part of the judgement, the Corporation did favourably consider the claim of the petitioners by recommending the same scales for them, as were being given to their counterparts in the service of Government Departments. This has, as mentioned above, since been rejected by the Government. All that has been stated in the order aforesaid, which has been reproduced above, is that the revised pay scales so far as Engineers are concerned, are applicable to the three wings only. It has specifically been pleaded in paragraph 14 of the Writ petition that the proposal of the Board of Directors of the Corporation for revision of pay scales came up before the Standing Committee in its meeting held on 28th May, 1992 and the Standing Committee approved the pay scales in selective manner. The revision in pay scales of the Superintending Engineers, Accounts Officers, Circle Head Draftsmen, Divisional Head Draftsmen, etc. were approved, whereas the revision of pay scales of the petitioners, who are AEs/SDOs/SDEs, was postponed and it was decided that the matter would be examined separately by the Finance Department. A copy of the minutes of the meeting held on 28th May, 1992 has been placed on record,—*vide* Annexure P-6. All that has been stated in the corresponding para of the written statement filed on behalf of the respondents is that in view of the submissions made in the preliminary objections, the contents of this para are admitted. In Civil Writ Petitioner No. 834 of 1996, it has been averred in paragraph 21(ix) that the Board of Directors of the Corporation had recommended the revision of pay scales of all categories of employees subject to the approval of the Finance Department and the said department had approved the revision in pay scales of all categories of employees, such as Superintending Engineers, Accounts Officers, Circle Head Draftsmen, Divisional Head Draftsmen, Ziledars, etc. and that it was a case of clear discrimination insofar as the SDOs/SDEs/AEs were concerned. In the corresponding para of the reply filed on behalf of respondent No. 2, it has been averred that “as already explained in preliminary objection and in preceding paras, the revised pay scales of SDOs/SDEs/JEs were restricted to only 3 wings of PWD so the petitioners are not entitled to the revised pay scales. Doctrine of equal pay for equal work does not apply in this case. So the action of the respondent is not arbitrary, illegal and violative of Article 14 and 39(d) of the Constitution of India.” Pleadings of the parties extracted above, would thus, manifest that it is only the category of the petitioners, which has been singled out, whereas all other employees, even of the appellants Corporation,



Haryana State Minor Irrigation Tubewells Corporation 269  
& others v. G.S. Uppal & others  
(V.K. Bali, J.)

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have been given increase in their pay scales, as commensurate to their counterparts, e.e., holding the same posts in the Government Departments. Not only that, the said increase has been given to the posts held by other Engineers, inasmuch as, even those, who are holding engineering posts above the rank of the petitioners, have also been given a similar pay hike. It is only three categories of the petitioners, which have been left out. Is there any justification for the same, is, thus, the only question to be determined? We find nothing at all mentioned in the written statement or that might have been urged during the course of arguments, which may justify increase in the pay scales of all other categories of the employees of the Corporation including those, who are holding engineering posts, and not the petitioners. Decision of the Government in, thus, rejecting the proposal of the Board of Directors smacks of individuous discrimination and thus straightaway comes within the vice of Article 14 of the Constitution of India. All that could be said in the defence is based upon Article 135 of the Articles of Association, which reads thus :—

“135. Notwithstanding anything contained in any of the Articles, the Government may, from time to time, issue such directives as they may consider necessary in matter of board policy and in like manner may vary and annual and such directive. The company shall give immediate effect to directives so issued.”

(21) First of all, giving a pay scale to its employees by virtue of powers so conferred by Article 81(v) as also 5.1 of Service Bye-laws does not appear to be a policy decision that might have been taken by the Board and even if the same be so, it cannot possibly be sustained, as the petitioners alone have been singled out, whereas the same very decision of the Board with regard to all other employees has since been accepted or concurred with the Government.

(22) Insofar as, pleadings pertaining to the financial position of the appellant Corporation in the writ petition and one contained in Civil Misc. bearing No. 3547 of 2001 filed during the course of arguments are concerned, suffice it to say that it is not the case of the appellant that it is not financially viable. It may be true that at present some banks might have filed various applications in the Debt Recovery Tribunal for recovery of Rs. 96 crores against the appellant, as is the pleading in the Misc. Application aforesaid but it is the case

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of the Corporation itself that it shall not be able to pay the said debuts without financial assistance of the State Government. If the State is to financially help the Corporation, it can do so in paying the wages to the employees. That apart, the Corporation cannot plead financial loss only with regard to a limited categories of employees. It cannot be said that it is financially sound insofar as other employees are concerned but finds financial constraints only insofar as the petitioners are concerned.

(23) In view of the discussion made above, we find no merit in the Letters Patent Appeal and dismiss the same, thus, upholding the order passed by the learned Single Judge, even though on the grounds different than that prevailed with the learned Single Judge. The connected Civil Writ Petitions are allowed. Be it Letters Patent Appeal or the writ petitions, the parties are left to bear their own costs.

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**R.N.R.**

*Before N.K. Sodhi, K.S. Kumaran & Swatanter Kumar, JJ*

**RAM NIWAS BANSAL—Petitioner**

*versus*

**STATE BANK OF PATIALA & ANOTHER—Respondents**

C.M. No. 1965 OF 2001

in C.W.P. No. 4929 OF 1986

23rd November, 2001

*Constitution of India, 1950— Art, 226— High Court setting aside the order of dismissal and remanding the matter to the authorities with liberty to proceed further in the departmental enquiry in accordance with law— Supreme Court dismissing the appeal against the judgment of the High Court— Disciplinary authority failing to pass any appropriate orders till date— Petitioner continues to be in service as neither he was ever placed under suspension nor he was dismissed from service in accordance with law— Petitioner has a right to claim back wages which accrues as a matter of course resulting from*