Before G.S. Singhvi & Virender Singh, JJ.

KRISHAN KUMAR & OTHERS—*Appellants*

versus

STATE OF HARYANA & ANOTHER—*Respondents*

L.P.A. No. 104 of 1998

in

C.W.P. No. 6103 of 1993

5th October, 2004

Constitution of India, 1950—Arts. 14, 16 & 226—Punjab Educational Service Class III, School Cadre, Rules, 1955—Punjab Educational Service (Provincialised Cadre) Class III, Rules, 1961—Rl. 3—'Equal pay for Equal work'—Members of the State Cadre seeking parity in the matter of pay scale with the members of the Provincialised Cadre—Two set of employees belonging to distinct cadres—Separate service rules—Members of State Cadre are governed by 1955 Rules whereas members of Provincialised cadre are governed by 1961 Rules—Provincialised cadre is a diminishing cadre—Decision of the State Government to grant higher pay scale to the members of Provincialised Cadre neither discriminatory nor violative of Articles 14 & 16 of the Constitution—Appeal dismissed & order of learned Single Judge rejecting the claim of the appellants upheld.

Held, that recruitment of the members of the State Cadre and their service conditions are governed by the 1955 Rules which were made effective from 13th May, 1957. These rules prescribe qualifications for appointment, specify the recruiting authority, lay down criteria for determination of *inter se* seniority of the members of the service and also prescribe other conditions of service including the pay scales. The members of the Provincialised Cadre are governed by the 1961 Rules which were enforced w.e.f. 1st October, 1957 and which prescribe the qualifications, the mode of recruitment, the method of determination of *inter se* seniority of the members of the service and law down other conditions of service including the pay scales. The fact that the Provincialised Cadre is a diminishing cadre is evident from the plain language of Rule 3 of the 1961 Rules which lays down that whenever a post became available on account of promotion, death or retirement of a member of the Provincialised Cadre, it should be added to the State Cadre.

(Para 26)

Further held, that the decision of the State Government to grant the pay scale of Rs. 700-1250 as a measure personal to the members of the Provincialised Cadre, who had completed 22 years' service does not suffer from any constitutional infirmity. The principle of 'equal pay for equal work' cannot be invoked for directing the State to grant similar pay scale to the members of the State Cadre because the two sets of employees belong to distinct cadres which are governed by separate service rules.

(Para 31)

R.K. Malik, Advocate, for the appellants

Jaswant Singh, Senior Deputy Advocate General Haryana, for the respondents

JUDGMENT

G.S. SINGHVI, J.

(1) This appeal is directed against order dated 9th December, 1996,—*vide* which the learned Single Judge dismissed C.W.P. No. 6103 of 1993 and rejected the claim of the appellants, who are members of the State Cadre for parity in the pay scale vis-a-vis the members of the Provincialised Cadre.

(2) The appellants joined service in the State Cadre in different years between 1962 to 1970. At the time of filing of the writ petition, their service conditions were governed by Punjab Educational Service, Class III, School Cadre, Rules 1955 (for short, the 1955 Rules'). They claimed parity with Masters/Mistresses of Provincialised Cadre, who were governed by the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 (for short, the 1961 Rules') by asserting that the qualifications, the mode of recruitment and the duties of the two posts were identical and yet, the State Government had discriminated them in the matter of pay scale by granting higher scale to the members of the Provincialised Cadre. They also challenged order dated 25th April, 1980,—*vide* which the State Government changed the ratio of promotion between the State Cadre and Provincialised Cadre from 13 : 1 to 50 : 50 for promotion to the posts of Head Masters/Head Mistresses by contending that the action of the government was violative of Section 82(6) of the Punjab Re-organisation Act, 1966 and Articles 14 and 16 of the Constitution of India.

(3) The respondents contested the claim of the appellants. They pleaded that the Provincialised Cadre was diminishing/dying cadre, whereas the State Cadre was an expanding cadre and the ratio of promotion was equalised to remove the hardship caused to the members of the Provincialised Cadre which was very small as compared to the State Cadre. It was further pleaded that special grades of Rs. 300—600 (unrevised) and Rs. 700—1250/- (revised) had been given as a measure personal to such Masters/Mistresses of the Provincialised Cadre, who had reached the maximum of the selection grade of Rs. 400—500/-. According to the respondents, the State Cadre and the Provincialised Cadre are governed by different sets of rules and the State Government is competent to give benefit of higher scale to the members of the Provincialised Cadre as a measure personal to them.

(4) The learned Single Judge referred to the provisions of the 1955 Rules, the 1961 Rules and the judgment of the Supreme Court in **State of Punjab** *versus* **Joginder Singh (1),** and held that the decision of the State Government to grant higher pay scale to the Masters/Mistresses of the Provincialised Cadre is not violative of Articles 14 and 16 of the Constitution of India. He also held that the change of the ratio of promotion between the members of the State Cadre on the one hand and those of the Provincialised Cadre on the other hand does not suffer from any contitutional or legal infirmity.

(5) Shri R.K. Malik, learned counsel for the appellants strongly relied on the judgment of the Supreme Court in **J.B.T. Rajkiya Adhyapak Sangh and others** *versus* **State of Haryana and others (2),** and argued that the order of the learned Single Judge is liable to be set aside because the reasons assigned by him for rejecting the appellant's claim of parity with the members of the Provincialised Cadre in the matter of pay scale are legally untenable. He submitted that the qualifications, the mode of recruitment and the nature of duties performed by the members of the two cadres are identical and there is no justification, legal or otherwise, to give them different pay scales. Shri Malik further argued that the decision of the State Government to grant the pay scale of Rs. 700—1250 to the members of the Provincialised Cadre with effect from the date of completion of 22 years' service and not to give similar pay scale to the members of

(1) AIR 1963 S.C. 913
(2) 1991 (3) R.S.J. 111

the State Cadre is liable to be declared as discriminatory and violative of Articles 14 and 16 of the Constitution of India because there is no rational reason to classify the members of similar services into two different groups.

(6) Shri Jaswant Singh, Senior Deputy Advocate General, Haryana supported the order of the learned Single Judge and argued that the appellants cannot claim parity with the members of the Provincialised Cadre in the matter of pay scale because they are governed by separate sets of rules. He submitted that the appellants cannot claim equality with the members of the Provincialised Cadre simply because there is similarity between the two cadres in so far as the qualifications. The source of recruitment and the nature of duties are concerned. Shri Jaswant Singh emphasized that the decision of the State Government cannot be dubbed as discriminatory or violative of Articles 14 and 16 of the Constitution of India because it was taken in the backdrop of the fact that the Provincialised Cadre is a diminishing/dying cadre and the opportunities of promotion available to the members of that cadre were negligible.

(7) We have given serious thought to the respective arguments.

(8) On 26th day of January 1950, the People of India gave unto themselves the Constitution of India by making the following declaration :—

> "We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist Secular Democratic Republic and to secure to all its citizens :
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> Justice, social economic and political : Liberty of thought, expression, belief, faith and worship :
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> Equality of status and of opportunity ;
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> and to promote among them all
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> Fraternity assuring the dignity of the individual and the unity and integrity of the Nation."

(9) The Constitution is divided into XXII parts, Part-III enumerates fundamental rights. Articles 14 and 16 find place in this part. Article 14 ensures to every person equality before law and equal protection of the laws and Article 16 lays down that there shall be equality of opportunity for all citizens in matters relating to employment

or appointment to any office under the State. Article 16 is only an instance or incident of the guarantee of equality enshrined in Article 14. It gives effect to the doctrine of equality in the sphere of public employment. The concept of equal opportunity in the matter of employment enshrined in Article 16 permeates the whole spectrum of an individual's employment from appointment to termination of service and includes confimation, seniority, promotion, grant of pay scales, payment of retiral benefits. It gives an expression to the ideal of equality of opportunity and of status which is one of the great socio-economic objectives set out in the Preamble. The constitutional code of equality and equal opportunity, however, does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. To put it differently, the doctrine of equality requires that all persons subjected to any legislation should be treated alike under like circumstances and conditions. Equals have to be treated equally and unequals ought not to be treated equally. While Article 14 forbids class legislation, it does not forbid classification for purposes of implementing the right of equality guaranteed by it. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. In other words, the classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation.

(10) Part-IV of the Constitution enumerates the Directive Principles of State Policy. Article 37 which finds place this part declares that the provisions contained in this part shall not be enforceable in any Court, but the principles laid down therein are nevertheless are fundamental in the goverance of the country and it shall be the duty of the State to apply these principles in making laws.

(11) There has been great deal of debate within the legal fraternity and outside whether the provisions contained in Part-IV of the Constitution can be relied upon for enforcing the rights guaranteed under Part-III. The debate has not ended so far, but there is a broad consensus among the jurists that even though the provisions contained in Part-IV of the Constitution of India are not enforceable, the Courts can, keeping in view the goals set out in the Preamble derive help from the Directive Principles of State Policy while enforcing fundamental rights guaranteed under Part-III.

(12) Article 39(d) of the Constitution ordains the State to direct its policies towards securing equal pay for equal owrk for both men and women. On the face of it, the principle of 'equal pay for equal work' embodied in this Article appear's innocuous, in-as-much as, it requires the State to maintain parity in the matter of pay for both men and women, but application thereof has given rise to voluminous litigation in the last 40 years. The applicability of the principle of 'equal pay for equal work' was considered by the Constitution Bench of the Supreme Court in **Kishori Mohanlal Bakshi** *versus* **Union of India (3).** The petitioner had claimed promotion to the post of Assistant Commissioner of Income Tax. An incidental claim made by him was that there could be no disparity in the pay scale of the officers of Class-II and Class-I because they were discharging similar duties. While rejecting the latter plea, the Supreme Court observed :—

> "The only other contention raised is that there is discrimination between Class-I and Class-II Officers inasmuch as though they do the same kind of work their pay scales are different. This, it is said, violates Art. 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Art. 14. The contention that Art. 14 of the Constitution has been violated, therefore, also fails.'

(13) After 20 years, the issue was considered by a three-Judges Bench in **Randhir Singh** *versus* **Union of India and others (4).** While accepting the plea of the petitioner, who was working as

(3) AIR 1962 S.C. 1139
(4) AIR 1982 S.C. 879

Driver-cum-Constable in Delhi Police Force, that he was entitled to pay at par with drivers employed in other departments/organisations of Delhi Administration, the Supreme Court held :—

> "It is true that the principle of equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Art. 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Art. 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Art 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would means nothing if they are unconcerned with the work they do and they pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mudane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them."

(14) The Supreme Court then referred to the counter-affidavit filed on behalf of the respondents and observed :—

> "The counter-affidavit does not explain how the case of the drivers in the police force is different from that of the drivers in other departments and what special factors weighed in fixing a lower scale of pay for them. Apparently in the view of the respondents, the circumstances that persons belong 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. We cannot accept this view. If this view is to be stretched to its logical conclusion, the scales of pay of officers of the same rank in the Government of India may vary from department to department notwithstanding that their powers, duties and responsibilities are identical. We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, 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. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same." (Underlining is ours).

(15) In **Dhirendra Chamoli** *versus* **State of U.P. (5) Surinder Singh** *versus* **Engineer-in-Chief, CPWD(6), Bhagwan Dass** *versus* **State of Haryana (7),** and **Jaipal** *versus* **State of Haryana (8),** the principle of 'equal pay for equal work' was enforced on the premise that the discrimination was practised between two sets of employees performing same duties and functions without there being any rational classification.

(5) (1986) 1 S.C.C. 637
(6) (1986) 1 S.C.C. 639
(7) (1987) 4 S.C.C. 634
(8) (1988) 3 S.C.C. 354

(16) In the later decisions, the Supreme Court recognised the right of the State to classify the employees holding apparently similar posts into different groups for the purpose of grant of pay scales and fixation of pay on the basis of the qualifications, nature of duties (qualitative as well as quantitative), functions, measure of responsiblity and efficiency of the administration. In **Federation of All India Customs and Central Excise Stenographers (Recognised)** *versus* **Union of India (9),** Hon'ble Sabyasachi Mukharji, J. (as his Lordship then was) speaking for the Court, observed as under :—

> ".....there may be qualitiative differences as regards reliablity. 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 judgement 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 imporant to emphasise that equal pay for equal work is a concomitant of Article 14 of the Consititution. But it follows naturally that equal pay for unequal work will be a negation of that right.
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> The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less....it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived *mala fide* either in law or in fact."

(9) (1988) 3 S.C.C. 91

(17) In **State of U.P.** *versus* **J. P. Chaurasia, (10),** the Supreme Court upheld the prescription of two pay scales for the cadre of Bench Secretaries of Allahabad High Court, who were governed by Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976. Their Lordships referred to the earlier judgments in Randhir Singh's case *(supra)*, Bhagwan Das *versus* State of Haryana *(supra)*, Jaipal *versus* State of Haryana *(supra)*, Federation of All India Customs and Central Excise Stenographers (Recognised) *versus* Union of India *(supra)*, and observed :—

> "The answer to the question whether two posts are equal or should carry equal pay depends upon several factors. It does not just depend upon either the nature of work or volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of post. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

(18) In **Mewa Ram Kanojia** *versus* **All India Institute of Medical Science and others, (11)** the Supreme Court reiterated that even though, the doctrine of equal pay for equal work embodied in Article 39(d) is not expressly declared as a fundamental right, if read with Articles 14 and 16 of the Consitution, it enjoins upon the State that where all things are equal and persons holding identical posts, performing identical and similar duties under the same employer, should not be treated differently in the matter of pay scales. At the

(10) AIR 1989 S.C. 19
(11) AIR 1989 S.C. 1256

same time, the Supreme Court held that the doctrine of 'equal pay for equal work' is not abstract one and it is open to the State to prescribe different pay scales for different posts having regard to the educational qualifications, duties and responsibilities. It was further held that if the classification made by the State in the matter of pay scales has reasonable nexus with the object sought to be achieved, then the Court will have no occasion to interfere. In that case, the Supreme Court refused to invoke the doctrine of 'equal pay for equal work' for bringing about parity in the pay scales of Hearing Therapists and Audiologists employed in the All India Institute of Medical Sciences by observing that their qualifications and duties were not similar.

(19) In **V. Markendeya and others** *versus* **State of Andhra Pradesh and others, (12),** the Supreme Court upheld the classification of employees for the purpose of grant of different pay scales. The appellants, who were diploma holders and were members of Andhra Pradesh Engineering Subordinate Service and were holding the post of Supervisors in Category I of the Engineering Branch, claimed parity in the matter of pay scale with degree-holders. The cadre of Supervisors consisted of diploma holders as well as degree holders. Both performed similar duties and functions in the Engineering Branch. However, their claim for parity was negatived by the Supreme Court. Their Lordships referred to the judgment in **State of Mysore** *versus* **P. Narasing Rao, (13)** in which deferentiation in the matter of pay scale between matriculate and non-matirculate tracers was upheld and another judgment in **Mohd. Shujat Ali** *versus* **Union of India (14)** and laid down the following propositions :—

> "Article 39(d) contained in Part IV of the Constitution, ordains the State of direct its policy towards securing equal pay for equal work for both men and women. Provisions contained in the chapter on Directive Principles of State Policy cannot be enforced by courts although the principles contained therein are fundamental in nature for the governance of our country. The court has no power to direct the legistature to frame laws to give effect to the Directive Principles as contained in Part IV of the Constitution or to

(12) (1989) 3 S.C.C. 191
(13) AIR 1968 S.C. 349
(14) AIR 1974 S.C. 1531

injunct the legislature from making any such law. But while considering the question of enforcement of fundamental rights of a citizen it is open to the court to be guided by the Directive Principles to ensure that in doing justice the principles contained therein are maintained. The purpose of Article 39(d) is to fix certain social and economic goals for avoiding any discrimination amongst the citizens doing similar work in matters relating to pay. If the court finds that discrimination is practised amongst two sets of employees similarly situated in matters relating to pay, the court must strike down discrimination, and direct the State to adhere to the doctrine of 'equal pay for equal work' as enshrined in Article 39(d) of the Constitution. Fundamental rights, and the directive principles constitute "conscience of the Constitution." The Constitution aims at bringing about a synthesis between "Fundamental Rights" and "Directive Principles of State Policy" by giving to the former a place of pride and to the latter a place of permanence, together they form core of the Constitution. They constitute its true conscience and without faithfully implementing the Directive Principles it is not possible to achieve the welfare State contemplated by the Consititution, see Kesavananda Bharti *versus* State of Kerala, (1973) 4 S.C.C. 225.

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The principle of 'equal pay for equal work' is not an abstract one, it is open to the State to prescribe different scales of pay for different cadres having regard to nature, duties, responsibilities and educational qualifications. Different grades are laid down in service with varying qualifications for entry into particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing different pay scales for different cadres. The application of doctrine arises where employees are equal in every respect, in educational qualifications, duties functions and measure of responsibilities and yet they are denied quality in pay. If the classification for prescribing different scales of pay is

founded on reasonable nexus the principle will not apply. But if the classification is founded on unreal and unreasonable basis it would violate Articles 14 and 16 of the Constitution and the principle of 'equal pay for equal work' must have its way".

(20) In **State of Madhya Pradesh and another** *versus* **Parmod Bhartiya and others, (15)** the Supreme Court reversed the order of Madhya Pradesh Administrative Tribunal and rejected the claim of the respondents for grant of parity in the matter of pay scale by observing that even though, the qualifications prescribed for lecturers in Higher Secondary Schools and Non-technical lecturers in Technical Schools are the same and their service conditions and status of the schools are also the same, but there was no material to show that the functions and responsibilities of both the cadres are similar.

(21) In **State of Haryana and others** *versus* **Jasmer Singh and others, (16),** the Supreme Court highlighted the difficulty in enforcing the doctrine of 'equal pay for equal work' and observed :—

"The principle of 'equal pay for equal work' is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organisation. 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. The 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."

(15) (1993) 1 S.C.C. 539
(16) (1996) 11 S.C.C. 77

(22) The same view was echoed in **State Bank of India and another** *versus* **M. R. Ganesh Babu and others, (17),** in the following words :—

> "The principle of equal pay for equal work has been considered and applied in many decisions of the Supreme Court. It is well settled that equal pay must depend on the nature of work done, it cannot be judged by the mere volume of work there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Often the difference is a matter of degree and there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made *bona fide*, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The judgment of administrative authorities concering the responsibilities which attach to the post, and degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at *bona fide,* reasonably and rationally, is not open to interference by the court."

(23) In **Government of A.P. and another** *versus* **P. Hari Prasad and others (18),** the Supreme Court observed that while exercising writ jurisdiction under Article 226 of the Constitution of India, the High Court cannot delve deep into the nature of duties of employees in two different services and grant parity of pay on the assumption that the posts were identical and the two sets of employees perform similar duties.

(24) In **State of Orissa and others** *versus* **Balram Sahu and others (19),** the Supreme Court allowed the appeal filed by the State against the order of the High Court and held that though "equal pay for equal work" is a concomitant of Article 14 as much as "equal pay for unequal work" will also be negation of that right, equal pay

(17) (2002) 4 S.C.C. 556
(18) (2002) 7 S.C.C. 707
(19) (2003) 1 S.C.C. 250

would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference.

(25) The principles which can be culled out from the aforementioned decisions are :—

(1) Equal pay for equal work for both men and women is a constitutional goal capable of being achieved through constitutional remedies.

(2) Even though, the doctrine of 'equal pay for equal work' embodied in Article 39(d) is not expressly declared as a fundamental right under the Constitution, it can be read with Articles 14 and 16 to compel the State to grant similar pay scale to persons holding identical posts, performing identical duties under the same employer.

(3) While Article 14 prohibits class legislation, it does not debar the State frommaking valid classification for the purpose of implementing the right to equality.

(4) Classification can be based on some qualities and characteristics of the persons grouped together which make them distinct from those, who are left out. Of course, all those qualities an characteristics must have a reasonable relation to the objects sought to be achieved.

(5) Different pay scales can be prescribed for employees belonging to the same cadre or service and if the differentiation is founded on factors, like educational qualifications, experience, nature of duties/functions attached to the particular post, degree of responsibility and efficiency of administration, the Court cannot invoke the doctrine of equality and nullify the classification or compel the State/public employer to grant similar pay scale simply because of apparent similarity in the nomenclature of the two posts, mode of recruitment and nature of duties/ functions.

(6) The apparent similarity in the nature of duties with reference to quality of work cannot be made basis for grant of equal pay scales. There may be qualitative difference as regards the reliability and responsibility. Often the difference is a matter of degree and there is an element of

value judgment by those, who are charged with the duty of fixing the scales of pay. So long as such value judgment is made *bona fide,* reasonably and there is an intelligible criterion which has reasonable nexus with the object of differentiation, the Court cannot interfere with the judgment of administrative authorities.

(7) The burden to specifically plead discrimination and produce material to substantiate this charge is always on the petitioner.

(8) In exercise of jurisdiction under Article 226 of the Constitution of India, the High Court cannot ordinarily interfere with the recommendations made by the Pay Commission or sit in judgement of the Executive in the matter of pay scales of different cadres/posts/services.

(26) In the light of the above discussion, we shall now consider whether the learned Single Judge erred in rejecting the appellants claim for parity with the members of the Provincialised Cadre in the matter of pay scale. Admittedly, recruitment of the members of the State Cadre and their service conditions are governed by the 1955 Rules, which were made effective from 13th May, 1957. These rules prescribe qualifications for appointment specify the recruiting authority, lay down criteria for determination of *inter se* seniority of the members of the service and also prescribe other conditions of service including the pay scales. The members of the Provincialised Cadre are governed by the 1961 Rules which were enforced w.e.f. 1st October, 1957 and which prescribe the qualifications, the mode of recruitment, the method of determination of *inter se* seniority of the members of the service and lay down other conditions of service including the pay scales. The fact that the Provincialised Cadre is a diminishing cadre is evident from the plain language of Rule 3 of the 1961 Rules which lays down that whenever a post became available on account of promotion, death or retirement of a member of teh Provincialised Cadre, it should be added to the State Cadre. The constitutionality of some of the provisions of the 1961 Rules was challenged before this Court in C.W.P. No. 1559 of 1960. A Division Bench struck down Rules 2(d), (e) and 3 of the 1961 Rules. On appeal by the State, a Constitution Bench of the Supreme Court reversed the order of the High Court in **State of Punjab**

versus **Joginder Singh *(supra).*** The observations made by the Supreme Court on the issue of discrimination are as under :—

> "The two services started as independent Services. The qualifications prescribed for entry into each were different ; the method of recruitment and the machinery for the same were also different and the general qualifications possessed by and large by the members of each class being different, they started as two distinct classes. If they were distinct services, there was no question of *inter se* seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Art. 14 or Art. 16(1). They started dis-similarly and they continued, dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity."

(27) While dealing with the plea of discrimination in the matter of pay scale, the Supreme Court referred to the earlier judgment of the Constitution Bench in **Kishori Mohanlal Bakshi** *versus* **Union of India *(supra)*** and held that the State had the discertion to prescribe different pay scales for the members of the two services. The extracts of paragraph 21 of the judgment which contains discussion on this topic are reproduced below :—

> "It now remains to consider a point which was raised that the State cannot constitute two Services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service and that the consitution of such services would be violative of Article 14. Underlying this submission are two postulates (1) equal work must receive equal pay, and (2) if there be equality in pay and work there have to be equal conditions of service. So far as the first proposition is concerned it has been definitely ruled out by this Court in **Kishori Mohanlal** *versus* **Union of India, AIR 1962 SC 1139, Das Gupta, J,** speaking for the Court said :—
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> > "The only other contention raised is that there is discrimination between Class I and Class II officers inasmuch as though they do the same kind of work

their pay scales are different. This, it is said, violates Art. 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Art. 14. The contention that Art. 14 of the Constitution has been violated, therefore, also fails."

The second also, is, in our opinion, unsound. If, for instance, an existing service is recruited on the basis of a certain qualification, the creation of another service for doing the same work, it might be in the same way but with better prospects of promotion cannot be said to be unconstitutional, and the fact that the rules framed permit free transfers of personnel of the two groups to places held by the other would not make any difference. We are not basing this answer on any theory that if a Government servant enters into any contract regulating the conditions of his service he cannot call in aid the constitutional guarantees because he is bound by his contract. But this conclusion rests on different and wider public grounds, viz., that the Government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the administration and that the limitations imposed by the Constitution are not such as to preclude the creation of such services. Besides, there might for instance, be a temporary recruitment to meet an exigency or an emergency which is not expected to last for any appreciable period of time. To deny to the Government the power to recruit temporary staff drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by different rules and conditions of service, it might be including promotions, would be to impose restraints on the manner of administration which we believe was not intended by the Constitution."

(28) In view of the judgment of the Constitution Bench of the Supreme Court in **Joginder Singh's case (supra),** it must be held that the members of the State cadre and the Provincialised Cadre constitute different classed and dissimilar treatment to them in the matter of pay scale cannot be regarded as discriminatory *per se.*

(29) A reading of the order under appeal shows that the learned Single Judge made a comparative table of the pay scales of Masters/Mistresses of the State Cadre and those belonging to the Provincialised Cadre and then observed :—

> "A perusal of the above charg shows that from October 1, 1957 to September 30, 1974 there was complete parity in the scales of pay granted to the Masters/Mistresses in the State Cadre as well as the Provincialised Cadre. With effect from October 1, 1974, the selection grade of Rs. 400—500 was admissible to the Masters in the State Cadre to the extent of 15 per cent of the posts. However, the members of the Provincialised cadre would get the selection grade only on completion of 18 years of service. This position was mariginally altered in the case of the members of the State Cadre with effect from April 1, 1979, inasmuch as the selection grade was granted to the extent of 20 percent of the cadre posts. However, the position which existed on October1, 1974, was maintained in rspect of the members of the Provincialised Cadre. With effect from October 12, 1979, even though the position with regard to the members of the State Cadre continued to be the same, there was a marginal change in the case of persons belonging to the Provincialised Cadre. It was provided that such members who had reached the maximum of Rs. 500 in the selection grade of Rs. 400—500 would be placed in the scale of Rs. 700—1250 as a measure personal to them. The persons who were placed in the scale of Rs. 700—1250 were placed in the scale of Rs. 1600—2660 with effect from January 1, 1986. Those in the time scale were placed at par with the members of the State Cadre. This position has been brought out by the respondents in the written statement filed in civil Writ Petition No. 6103 of 1993 which has not been controverted by the petitioners.

Since the teachers working in the two cadres belong to two different services and their conditions of service are governed by separate rules, it cannot be said that the mere grant of different scales of pay is violative of Articles 14 and 16 of the Constitution. It is the admitted postition that the members of the State Cadre had better chances of promotion than those belonging to the Provincialised Cadre. If in view of this position the State Government has chosen to give a marginally higher scale of pay to the persons who were not likely to get promotion to the higher post, it cannot be said that the State has treated equals as unequals. In fact, as observed by their Lordships of the Supreme Court, the two classes were never equal. They had started dissimilarly and continued to be dissimilar.

Thus, the grant of different scales of pay is not violative of Articles 14 and 16 of the Constitution."

(30) The learned Single Judge then dealt with the plea of the applicants that there was no justification to deny the higher pay scale of Rs. 700—1,250 to the Masters/Mistresses of the State Cadre, who had completed 22 years service and rejected the same by assigning the following reasons :—

"Factually, the members of the Provincialised Cadre had worked for some years before the schools were taken over by the State Government on 1st October, 1957. These teachers were given no benefit of their service which they had rendered up to 30th September, 1957. Still further, the mere fact that a marginally higher scale of pay was given to them in the year 1979 does not mean that the State Government had laid down a rule that a member of the service shall be placed in the Headmasters scale on completion of 22 years of service. In fact, it appears that the teachers in the State Cadre were granted selection grade of Rs. 400—500. This scale was admissible to the teachers irrespective of the number of years for which they had served. The members of the Provincialised Cadre became eligible for this scale on completion of

18 years of service. In the year 1979, the members of the State Cadre were entitled to be placed in the selection grade of Rs. 700—1,150 to the extent of 20 percent of the cadre posts. However, in the case of members of the Provincialised Cadre a marginal increse of Rs. 100 was allowed and it was provided that such teachers who had reached the stage of Rs. 500 in the scale of Rs. 400—500 shall be placed in the scale of Rs. 700—1,250 as a measure personal to them. It was for the purposes of compensating them for the denial in the chances of promotion. The scale was not being given on completion of a particular period of service. It deserves notice that the selection grade of Rs. 400—500 was sanctioned in both the cadres in the year 1967. Consequently, it is not unlikely that a person would have remained stuck at Rs. 500 without earning any increment for a sufficiently long time. To undo this hardship the State Government had provided that such persons shall be placed in the scale of Rs. 700—1,250 while those in the State Cadre were to get the selection grade of Rs. 700-1,150. This marginal difference did not imply that the teachers in the State Cadre were being automatically granted promotion to the rank of Headmaster on completion of 22 years of service."

(31) We are in complete agreement with the learned Single Judge that the decision of the State Government to grant the pay scale of Rs. 700—1,250 as a measure personal to the members of the Provincialised Cadre, who had completed 22 years service does not suffer from any constitutional infirmity. The principle of equal pay for equal work cannot be invoked for directing the State to grant similar pay scale to the members of the State Cadre because the two sets of employees belong to distinct cadres which are governed by separate service rules.

(32) The judgment of the Supreme Court in **J.B.T. Rajkiya Adhyapak Sangh and others** *Versus* **State of Haryana and others** ***(supra)*** cannot be made basis for accepting the claim of the appellants. In that case, the controversy related to the grant of

selection grade to the teachers of the State Cadre. In the written statement filed on behalf of the State of Haryana, it was pleaded that the selection grade had been abolished with effect from 1st January, 1966 and J.B.T. Teachers had promotional avenues to be Head Teachers in schools and they had 50% quota *vis-a-vis* B.Ed., teachers. On the issue of grant of selection grade, it was pleaded that J.B.T. Teachers of the Provincialised Cadre were given selection grade with effect from 1st October, 1974 in order to remove the hardship caused to them and that the said benefit was restricted to those, who had completed 18 years service. Their Lordships of the Supreme Court felt that similar benefit should be given to J.B.T. Teachers of the State Cadre on completion of 18 years service. It is not clear from the order of the Supreme Court whether the services of J.B.T. Teachers belonging to the State Cadre were governed by one set of rules and those belonging to the Provincialised Cadre were governed by another set of rules. Therefore, it is not possible to read that order as laying down a proposition of law that the State cannot treat the members of two cadres differently in the matter of grant of pay scale.

(33) There is another reason for our disinclination to grant relief to the appellants on the basis of the judgment of the Division Bench of the Supreme Court in J.B.T. Rajkiya Adhayapak Sangh's case *(supra)*, It appears that earlier judgment of the Constitution Bench in **Joginder Singh's case (supra)** was not brought to the notice of the Supreme Court. Therefore, it is not possible to entertain the claim of the appellants by ignoring the law laid down by the Constitution Bench of the Supreme Court which directly concerns the appellants.

(34) No other point has been argued.

(35) For the reasons mentioned above, the appeal is dismissed.

R.N.R.