23rd July, 1999 is hereby quashed. The matter is remanded to the Labour Court with a direction to compute the subsistence allowance payable to the petitioners for the period October, 1996 to December, 1996 in terms of Section 10-A of the Act by ignoring the requirement of attendance stipulated in proviso to Certified Standing Orders 30(d) and (g). No costs. The Labour Court is directed to pass the necessary orders within a period of four weeks of the receipt of a copy of this order.

(19) Copy of this order be given *dasti* on payment of necessary charges.

*R.N.R.*

*Before Amar Bir Singh Gill, Swatanter Kumar and J.S. Narang, JJ*

VIJAY SHARMA AND OTHERS,—*Ptitioners*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. 14050 of 1999

13th December, 2001

*Constitution of India, 1950—Arts. 14, 16, 39-D and 226—Daily wagers having experience varying from 5 to 15 years performing the same work which their counterparts/regular employees perform in the same department—They also possessing the requisite qualifications and experience alike the regular employees and their work performance also satisfactory—Claim for 'equal pay for equal work'—Hon'ble Apex Court taking divergent views on the principle of 'equal pay for equal work'—High Court should normally follow the law laid down by a larger bench of the Hon'ble Apex Court subject to applicability of the principle of ratio decidendi—Petitioners satisfy all the essential ingredients for claiming the benefit of equal pay for equal work—State cannot derive any help from the aspects like lack of funds, different sources of recruitment., nature of employment, qualifications and age limit for denying the relief to the petitioners accuring as a consequence of principles enunciated under Article 14 read with Art. 39(d)—Petitioners held to be entitled to the minimum of the pay scale (basic*

*pay and dearness allowance alone) admissible to their counter-parts working on regular basis in the same department.*

(Ranbir Singh versus State of Haryana, 1998(2) SCT 189 (F.B.), held, does not enunciate the correct law)

*Held,* that where there are divergent views taken by the Hon'ble Apex Court, on the same principle, the High Court should normally follow the law laid down by a larger Bench of the Hon'ble Apex Court. The judgment of the larger bench would have to be given greater weightage and apply to facts of the subsequent cases, particularly when it satisfies the ingredients for application of principle of ratio decidendi.

(Para 20)

Further held, that achievement of the constitutional goal necessarily imposes an obligation upon the State, which is the biggest employer in our country, to avoid disparity of pay to its employees who are discharging similar work and functions. To improvise ways and means to ameliorate the existing affairs of this concept of employment and payment of fair wages, is implicitly duty of the State. For attainment of this object the State has to over-come its limitations and particularly self-created ones. Equal pay for equal work in the present day has emerged not only as a legitimate expectancy on the part of the employee, but is a legitimate legal right, a right which has become enforceable and executable in accordance with law.

(Para 42)

Further held, that the essentials which need to be satisfied for entertaining a claim founded on the principle of 'equal pay for equal work' or equality are that (a) the petitioners ought to be employed by the State as casual or daily rated workers; (b) the employee ought to have worked as such for a fairly reasonable time satisfying the ingredients of continuity in service; (c) the functions being discharged and work being performed by such employee should be similar, (of course, not by mathematical formula), as that being done by a regular employee of the same department; and (d) work performance of the employees should be satisfactory.

(Para 51)

Further held, that there is no disute to the similarity of work and functions and the fact that the petitioners do not lack essential qualifications. The petitioners have working experience and they claim that they even possess the requisite qualifications for appointment to the said post. They have admittedly been working in their respective departments and have experience varying from five to fifteen years. The work or projects where they were appointed are still continuing.

(Paras 36 and 52)

Further held, that the employer and employees' relationship essentially has to be symbiotic. The mutual rights and obligations must correspond to disciplined discharge of duties. Fairness is the foundation of this mutuality. It is moreso, where State itself is the employer. Where the State expects its employees to work and discharge their duties with verve, there the State must transcend and pay fair wages to the employees in adherence to the concept of equal money for equal value of work. Any discimination, muchless hostile discrimination, in payment of wages would not only offend the predicated concept of law but also undermine attainment of the defined constitutional goal, by the State.

(Para 54)

Further held, that the petitioners are satisfying the essential ingredients and are entitled to the minimum of the pay scale (basic pay and dearness allowance alone) admissible to their counter-parts working on regular basis in the same department.

(Para 56)

K.L. Arora, Advocate with Urvashi Arora, Advocate.

Manu Bhandari, Advocate.

A.G. Masih, DAG, Punjab.

**JUDGMENT**

*Swatanter Kumar, J.*

(1) Law whether legislatively enacted or which finds its source as a result of consistent judicial pronouncements, commonly known

as judge made law, is essentially mutable and progressive. The law must be understood and implemented in its correct perspective keeping the constitutional mandate in mind. While enforcing law, attainment of the ultimate legislative object and ends of justice should be the goal. Law with its limitations reflects the vision of the Society and its enforceability is the foundation of its acceptance. The law, as a vision, without the ability to execute, is probably an hallucination.

(2) In the present day to transmute the law into one understandable, executable and in consonance with the ground realities of the society is the implicit obligation of the concerned quarter. A rubric relatable to legislative or judicially enunciated law is required to achieve the Constitutional mandate. All laws must fall in comity to the constitution. The concept and principles of "equal pay for equal work" was held to be deducible from Articles 14 and 16 and 39(d) read in the light of the preamble of the Constitution. It was stated to be a constitutional goal though not expressly declared by the Constitution to be a fundamental right. An employee not regularly appointed by the employer can as a matter of rule claim eual pay for equal work or the liability of the employer would be restricted to making payment of prescribed rate for daily workers. This question has come up for consideration before different courts on different occasions and has been answered differently, thus introducing some element of uncertainty to the judicial precepts for deciding cases involving such question. Consistent variation in judicial verdicts by different benches of this court putatively persuaded a Division Bench of this court to refer the matter to a larger bench. The Bench noticed the Full Bench judgments of this court in the case of Ranbir Singh and the contrary view taken by the Latter Patent Bench in the case of Talwinder Singh. The referring bench also noticed the divergent view taken by the Hon'ble Apex Court in Devinder Singh on the one hand and in the cases of Jasmer Singh and Ghazibad Development Authority on the other hand.

(3) A Division Bench of this court,—vide its order dated 18th December, 1999 directed the matter to be placed before Hon'ble the Chief Justice to constitute a larger Bench at an early date for answering the point of reference. This Full Bench was, thus, constituted to

answer the question formulated by the referring bench in the opening lines of the referring order, which read as under :—

> "The core question which arises for consideration and determination is as under :—
>
> "Whether the petitioners who are working on daily wages as Chowkidars are entitled to the minimum of pay scale, which is admissible to a regularly employed Chowkidar ?
>
> Learned Counsel for the petitioners has contended that the petitioners are entitled to the minimum of the pay scale paid to a regular employee as has been held in the judgment rendered by the Apex Court in Civil Appeal No. 4942 of 1997 titled as *State of Punjab and others* versus *Devinder Singh and others,* decided on July 21, 1997 (Copy Annexure P6). Reliance has also been placed on the two judgments rendered by the learned Single Judge of this Court in C.W.P. No. 7533 of 1995 (Talwinder Singh *versus* State of Punjab) decided on March 18, 1998 and CWP No. 10017 of 1995 (Kulbir Singh *verses* State of Punjab) decided on 20th August, 1998 by relying upon the judgement of the Apex Court in Devinder Singh's case (supra). Against one of the judgements in Talwinder Singh's case (supra), LPA No. 292 of 1998 had been filed by the State which was disposed of by a Division Bench of this Court,—*vide* order dated 19th July, 1998. The Division Bench made reference to two different judgments rendered by the Apex Court but on facts relied upon the judgment rendered in Devinder Singh's casee (supra).
>
> The judgment rendered by the Apex Court in Devinder Singh's case (supra), is in the following terms :—
>
> "Leave granted.
>
> By consent of learned counsel for the parties the appeal is taken up for final hearing.

The short question is whether the High Court was justified in directing the appellant—State to pay to the respondents—petitioners before the High Court the salary and allowances as are being paid to the regular employees holding similar posts and whether the respondents could be held entitled to the payment of difference of the scale for the period of last three years from the date of filing of the writ petition. It is not in dispute and cannot be disputed that the respondents are daily wage ledger keepers/ledger clerks. Their contention before the High Court was that they were doing the same work as regular ledger clerks who are recruited by the employer. Consequently, they must be paid equal pay on the ground of equal works. In our view, the principle of "Equal pay of Equal work".

Where to the respondent to the limited extent that when they were found to have been giving similar works as Ledger Clerks/Ledger Keepers they could have been paid the minimum of the pay scale of a Ledger Keeper which was available to regularly appointed Ledger Keepers/Ledger Clerks. Learned counsel for the respondents could not successfully contend that such an order should not have been passed. We, therefore, allow this appeal to the limited on the principle of "Equal pay for Equal work" to get the salary available to the Ledger Keeper/Ledger Clerks who are regularly recruited, they would be entitled to the minimum of the pay scale of the ledger keepers which may be available to the regularly appointed Ledger Keepers and they cannot be straight way paid the running time scale as they were not regularly appointed as ledger Keepers/Ledger Clerks. If the respondents claim to be regularised, it will be open to the respondents to approach the appellants for the same which request obvioulsy will be considered by the appellants on its own merits. The direction issued by the High Court in favour of the respondents entitling them to get salary and allowances as regularly appointed employees is set aside and instead it is directed that the respondents will be entitled to get the minimums of the pay scale available to the Ledger Keepers/Ledger Clerks with permissible allowances on that basis and the difference between the emoluments already paid to each of the respondents and those payable to the respondents for a period of three years prior to filing of the writ petition and thereafter minimum salary in the time of scale of Ledger Keepers/Ledger Clerks with appropriate allowances thereon shall be available to the respondents as long they work as daily wage Ledger

Keepers/Ledger Clerks. In view of the present order if in case any amount is found to have been paid to the respondents in excess, it will be adjusted in a phased and reasonable manner so that the respondents may not be put out of pocket to a large extent. No costs.

The judgment rendered by the Division Bench of this Court in *Talwinder Singh's case* (supra), LPA No. 292 of 1998, decided on July 19, 1998, is in the following terms :—

> Application under section 5 of the Limitation Act praying that the delay of 53 days in filing the L.P.A. may kindly be condoned for the sake of justice.

By the impugned judgment, the learned Single Judge has found that the concerned workmen were appointed in the department of P.W.D. Public Health, on daily wages, and they had been working as such since several years. Their demand for payment of equal pay for equal work has been allowed and a direction has been issued for payment of arrears for the period of three years prior to the filing of the writ petition and thereafter for payment of minimum salary to them in the time scale in which each of the workmen was employed. The learned Single Judge has relied upon the decision of the Supreme Court in the case of *State of Punjab* versus *Devinder Singh* (C.A. No. 4492 of 1997), dated July 21, 1997 (Annexure A-2).

Learned Counsel for the appellant has cited 1997 (I) S.L.R. 143, A.I.R. 1997 Supreme Court 2129 and 1996(7) S.C.C. 34 to contend that the Supreme Court has taken a different view in certain cases.

> We find that the facts of the present case are covered by the judgment of the Supreme Court in *Devinder Singh's* case (supra). Since we find no merit in the appeal, we are not inclined to go into the question of 53 days delay in filing the appeal.
>
> Dismissed."
>
> Learned counsel for the petitioners had also relied upon an interim order dated March 22, 1999 of the Apex Court passed in Civil Appeal No. 4867 of 1998 titled as *State*

*of Punjab and others* versus *Talwinder Singh and others,* which is as under :—

We have heard the counsel for the parties on the prayer for interim relief. We direct that during the pendency of the appeal, respondents be paid minimum of the pay scale applicable to the particular category of posts on which they have been working. They will also be paid usual allowances with effect from March 1, 1999, subject to the ultimate decision of the appeal. The application for interim relief is finally disposed of."

However, the Apex Court rendered a judgment in *State of Haryana and others* versus *Jasmer Singh and others,*CA No. 14223 of 1996 decided on 7th November, 1996, reported as 1997(1) RSJ 445, by which a bunch of appeals were decided. The Apex Court had dealt with this point and had considered number of judgments rendered by the Apex Court itself including the latest judgments rendered by the Apex Court in *Ghaziabad Development Authority and others* versus *Vikram Chaudhary and others,* 1995(5) SCC 210. The excerpt of the decision on the point is as under :—

It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be difference 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 the efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of

such jobs for the purpose of pay-scale must be left to expert bodies and unless there are any *mala fides,* his evaluation should be accepted.

This Court in the case of *Harbans Lal and others* versus *State of Himachal Pradesh and others* (supra) further held that daily-rated workmen who were before the Court in that case were entitled to be paid minimum wages admissible to such workmen as prescribed and not the minimum in the pay scale applicable to similar employees in regular service unless the employer had decided to the daily-rated workmen. The same position is reiterated in the case of *Ghaziabad Development Authority* versus *Vikram Chaudhary and others* (supra).

*The respondents, therefore, in the present appeal who are employed on daily wages cannot be treated as on par with persons in regular service of the State of Haryana holding similar posts.* Daily rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirements relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as regorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. *They cannot, therefore, be equated with regular workman for the purposes for their wages. Nor can they claim the minimum of the regular pay-scale of the regularly employed.*

The High Court was, therefore not right, in directing that the respondents should be paid the same salary and allowances as are being paid to regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wage is

prescribed for such workers, the respondents would be entitled to it if it is more than what they are being paid." (emphasis supplied).

xx xx xx xx

xx xx xx xx

In the premises, the appeals are allowed and judgments and orders of the High Court are set aside. There will however, be no order as to costs."

Apart from the above, the principle of "Equal pay for equal work" vis-a-vis the petitioners working on daily wage basis had also been referred to a larger bench and the Full Bench answered the reference in CWP No. 10658 of 1994, *Ranbir Singh* versus *State of Haryana,* decided on 3rd February, 1998 (reported as 1998(2) Service Cases Today 189). The Full Bench of this Court concluded by observing that the point of reference stood answered by a decision rendered by the Apex Court in *Ghaziabad Development Authority's* case (supra).

The judgment rendered in *Jasmer Singh's* case *(supra)* by the Apex Court was not considered by the Apex Court in *Devinder Singh's* case *(supra).* We find that the directions given in the said case are at variance with Jasmer Singh's case *(supra).* In the Letters Patent Appeal in Talwinder Singh's case *(supra),* there is a reference to *Jasmer Singh's case* but there is no discussion regarding the import of the judgment. Moreover, the said judgment in *Talwinder Singh's* case is under consideration in appeal by the Apex Court.

Since the judgment of the Apex Court rendered in *Ghaziabad Development Authority's* case *(supra)* had been duly noticed and relied upon by the Full Bench judgment of this Court and was further noticed by the Apex Court in *Jasmer Singh's* case and by following the same, the effect and import of the same has been explained and in view of the other judgments noticed

above, we are of the opinion that the question framed in the opening paragraph of this order requires consideration by larger Bench as the same is arising and is likely to arise again and again. The office is directed to place the papers of this case before Hon'ble the Chief Justice to constitute a larger Bench at an early date for answering the point of reference."

(4) Before we proceed to discuss the various aspects which require consideration of the court to enable it to answer the question formulated above, it is necessary for us to notice judgments of the Apex Court other than the ones referred in the reference order and where somewhat divergent views have been taken. Detailed reference to some of the pertinent judgments of the Apex Court where one or the other view has been predicated for a considerable time, would help to resolve the controversy. In the cases of *Randhir Singh* versus *Union of India and others, (1)* and *Bhagwati Parshad* versus *Delhi State Mineral Corporation (2),* a Bench of three Hon'ble Judges of the Apex Court had enunciated the principle that right to equal pay for equal work if not equatable to a fundamental right was certainly the constitutional goal of a democratic, social and republic set up like our country. This view has been followed in various judgments and in fact till recently in the case of *Food Corporation of India* versus *Shyamal K. Chatterjee (3),* and *Special Leave Petition (Civil) No. 6285 of 1997, Chandigarh Administration and others* versus *Ved Pal and others* decided on October 17, 2000.

(5) On the other hand, a two Judges Bench of the Hon'ble Supreme Court in the case of *Ghaziabad Development Authority and others* versus *Sri Vikram Chaudhary and others (4)* and *in the case of State of Haryana* versus *Jasmer Singh and others (5),* (again two judges Bench of Hon'ble Supreme Court) took the view that the casual workers or daily rated workers cannot be equated to the regular employees discharging somewhat similar function to get regular pay scale or minimum thereof. In other words, the petitioners were not

(1) AIR 1982 SC 879
(2) AIR 1990 SC 371
(3) 2000 (4) SCT 689
(4) AIR 1995 SC 2325
(5) AIR 1997 SC 1788

granted any relief on the strength of the principle of equal pay for equal work.

(6) In order to discernly decipher the fine distinction made by their Lordships of the Hon'ble Apex Court, while expressing the above, somewhat divergent views, this court is obliged to see in the first instance as to what is the appropriate course to be adopted by the court in such a situation. The fundamentals governing the field of judicial proprietary, precedents and doctrine of stare decisis operate homogeneously and in a harmonious manner. These principles implicitly cast a duty upon the court to follow the view expressed by a larger Bench of this court or higher court, as the case may be, then the view taken by smaller bench of the same court. Of course, further provided that precedent is squarely applicable to the subsequent case on its ratio decidendi. The principle of State decisis has not been accepted as an absolute bar, in law, for a court to change or alter its decision in relation to interpretation, otherwise when the situation so justifies it or the public good demands or where it is necessary for proper dispensation of justice.

(7) The Court bows to the lessons of experience and the force of better reasoning, recognising that the process of trial and error is so fruitful in the physical sciences is so also appropriate in judicial function.

(8) In order to maintain consistency and comity in judicial opinion and to satisfy the linch pin of judicial properiety in legal system, it is pertinent to follow the judicial precedents. The view point expressed by the larger bench normally should be followed and the principle enunciated therein adhered to and more particularly when such view does not relate to an interpretation of a statute which is patently erroneous. Circumstances have drastically changed and demand a vital change. A full Bench of this Court, in the case of *Krishan Kumar Singla* versus *State of Haryana (6),* while following the principle enunciated by the Hon'ble Supreme Court held as under :—

> "From the above well enunciated principles of law, we are of the considered view that the judicial propriety expects that the decision of a larger Bench normally could not

(6) 2000 (2) ICC 385

be subjected to the appellate or referral jurisdiction before a smaller Bench of the same Court lest it destroys the golden principle of judicial discipline, restraint and respect for judgment of the lartger Bench(es). Certainly ingenuity of the submission of the counsel does not constitute a valid and proper ground for invoking such jurisdiction unless it is unequivocally and manifestly shown that the judgment was contrary to the law of the land, or where co-equal Bench has taken directly, a contrary view or thirdly, the judgment is per incuriam. With respect, we follow the views taken in the aforesaid judgment and we are of the considered view that the present case falls in neither of the three classes aforestated".

In regard to judicial discipline, the Hon'ble Supreme Court of India in the case of *Assistant Collector of Estate Duty, Madras* versus *Smt. V. Devaki Ammal, Madras,* JT 1994(7) S.C. 543, where the Bench of equi-strength had differed with the judgment of the earlier Division Bench on the question of constitutionality and validity of statutory provisions and had not referred the matter, the Hon'ble Supreme Court held as under :—.

"We are at a loss to understand how, once one Division Bench of a High Court has held a particular provision of law to be constitutional and not violative of Article 14, it is open to another Division Bench to hold that the same provision of law is unconstitutional and violative of article 14, judicial discipline demands that one Division Bench of a High Court should, ordinarily, follow the judgment of another Division Bench of that High Court. In extraordinary cases, where the latter Division Bench finds it difficult, for stated reasons, to follow the earlier Division Bench Judge, the proper course is to order that the papers be placed before the learned Chief Justice of the High Court for constituting a larger Bench. Certainly, where one Division Bench has held a statutory provision to be constitutional it is not open to another Division Bench to hold otherwise".

(9) Three judges Bench of Hon'ble Supreme Court in the case of *The State of U.P.* versus *Ram Chandra Trivedi (7)* , emphasised that the proper course to the High Court was to follow the larger bench in preference to the smaller Bench of the same court. Ther Lordships held as under :—

> ".....Even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case is to try to find out and follow the opinion expressed by larger benches of the Supreme Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself, 1976 U.J. (SC) 717, Foll."

(10) In the case of *Krishena Kumar* versus *Union of India and others (8),* declaring the judicial policy of the court, the Hon'ble Apex Court held that the court must stand by precedent and not to unsettle the settled point, once the court has laid down the principle of law applicable to certain cases and given state of facts, where matters may be different and facts are entirely or substantially different. Their Lordships (Five Judges Bench) held as under :—

> "Stare decisis et non euieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated acts and necessarily decided questions. Apart from Art. 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain stage of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts

(7) AIR 1976 SC 2547
(8) 1990(2) RSJ 434

of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible."

(11) In the case of *Karnal Improvement Trust, Karnal* versus *Smt. Parkash Wanti (Dead) and another (9),* the principle of stare decisis was discussed at great length and various judgments on the subject including the English law was also discussed by the Hon'ble Supreme Court. Their Lordships held as under :—

"In Halsbury's Laws of England, the principle of stare decisis is stated thus : "The decision which has been followed for a long period of time and has been acted upon by persons in the formation of contracts or in the disposition of their property or in legal procedure or in other ways will generally be followed by courts of higher authority than the court establishing the rule even though the court before whom the matter arises afterwards might not have given the same decision had the question come before it originally. But the supreme appellate court will not shrink from overruling a decision or series of decisions which establish a doctrine plaintly outside the statute.

In *Maktul* versus *Mst. Manbhari,* AIR 1958 SC 918, a Bench of three Jedges considered a Full Bench judgment of Lahore High Court which held the field from 1895. The same was held to be erroneous and was overruled. In *Washington* versus *Dawson and Co. 264* U.S. 646, (=268 L.Ed. 219) Brandies, J., in his dissenting judgment held that "the doctrine of stare decisis should not deter

(9) J.T. 1995 (5) SC 151

us from overruling that case and those which follow it. The decisions are recent ones. They have not been acquiesced in. They have not created a rule of property around which vested interests have clustered. They affect solely matters of a transitory nature. On the other hand, they affect seriously the lives of men, women and children, and the general welfare". State decisis is ordinarily a wise rule of action. But it is not a universal and inexorable command. In Mark Graves versus people of the State of New York 306 U.S. 468, (=88 L.Ed. 927) Frank-further, J. observed "Judicial exigensies is unavoidable with reference to an Act like our Constitution, drawn in many particulars with proposed vagueness so as to leave room for the unfolding future." In The Bengal Immunity Co. Ltd., *versus* State of Bihar and others 1955 (2) SCR 603, a Bench of 7 Judges of this Court held that non-interference may result in an erroneous interpretation of the Constitution being perpetuated or may, if unrectified, cause great detriment to public well being. Accordingly, this Court overruled the previous decision.

Thus we hold that normally the decisions which have been followed for a long period of time and have been acted upon by perons in the formulation of contracts or in the disposition of that property or other legal process should generally be followed afterwards but this rule is not an inexorable, inflexible and universsally applicable in all situations."

(12) At this stage, it may be appropriate to refer to the applicability of ratio decidend as it has been treated to be a determining factor for followed the precedents. Their Lordships of the Hon'ble Supreme Court in the case of *The Punjab Land Development & Reclamation Corporation Ltd., Chandigarh* vs. *The Presiding Officer, Labour Court, Chandigarh & Ors (10)* held as under :—

An analysis of judicial precedent, *ratio decidendi* and the ambit of earlier and later decisions is to be found in the House of Lords decision in F.A. and A.B. Ltd. *versus*

(10) J.T. 1990 (2) S.C. 489

Lupton (Inspector of Taxes) 1972 AC 634, Lord Simon concerned with the decisions in Griffiths *versus* J.P. Harrison (Watford) Ltd. (1963) A.C.I, and Finsbury Securities Ltd. *versus* Inland Revenue Commissioners (1966) WLR 1402, with their inter-relationship and with the question whether Lupton's case fell within the precedent established by the one or the other case, said :—

"What constitutes binding precedent is the ratio decidendi of a case and this is almost always to be ascertained by an analysis of the macerial facts of the case that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material."

The ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. In the process the ratio decidendi which the judges who decided the case would themselves have chosen may be even different from the one which has been approved by subsequent judges. This is because judges, while deciding a case will give their own reasons but may not distinguish their remarks in a rigid way between what they thought to be the ratio decidendi and what were their *obiter dicta*, that is, things said in passing having no binding force, though of some persuasive power. It is said that "a judicial decision is the abstraction of the principle from the facts and arguments of the case." "A subsequent judge may extend it to a broader principle of wider application or narrow it down for a narrower application."

(13) The principle in regard to following of precedents has been subject matter of various pronouncements even before the Hon'ble Apex Court, wherever the view of the Hon'ble Apex Court are at variance the view of the larger Bench would be binding upon the High Court as afore-noticed. But when there were equal Benches of the Apex Court, taking divergent views, the High Court has to follow the view which is more appropriate/applicable to the facts and circumstances

of the case and not avoid judgments on the merits of the case. In the case of *M/s Indian Petrochemicals Corporation Ltd. & Another* vs. *Shramik Sena,* (11) the Hon'ble Court took the view that requring the parties, by the High Court, to seek clarification from the Supreme Court, is not the appropriate course of action and even if there are diametrically apposite interpretation of the judgment of the Apex Court, still the High Court is expected to decide the matter on merits.

(14) Emphasing the need for receipt to the law of precedence, the Hon'ble Apex Court in the case of *S.I. Roop Lal and another* versus *Lt. Governor through Chief Secretary,, Delhi and others,* (12) held as under :—

> "Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned: deviation from the same should be only on a procedure known to law. A subordinate Court is bound by the enunciation of law made by the Superior Courts. A coordinate Bench of a Court cannot pronounce judgment contary to declaration of law made by another Bench. It can only refer it to a larger bench if it disagrees with the earlier pronouncement."

> "We are indeed sorry to note the attitude of the tribunal in this case which, after noticing the earlier judgment of a coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case. Because of this approach of the latter Bench of the tribunal in this case, a lot of valuable time of the Court is wasted and the parties to this case have been put to considerable hardship."

(11) JT 2001 (7) SC 567
(12) AIR 2000 SC 594

(15) The decisions of the Court which are not part of the *ratio decidendi* are classed as *obiter dicta* and are not authoritative. Precedents sub silentio and without agrument are of no moment, when the matter is argued at length and is decided normally, it should not be permitted to be re-opened *Municipal Corporation of Delhi* versus *Gurnam Kaur,* (13). But doctrine of *ratio decidendi* would apply with complete force when the judgment provides reasoning and conclusions on a controversy arising of somewhat similar circumstances which arise in subsequent cases. The decisions pronounced on litigated facts and necessary questions decided would operate as precedent in similar circumstances so as not to unsettle the settled law. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. *(Krishena Kumar* versus *Union of India and others* (14).

(16) A Constitutional Bench of the Supreme Court of India in the case of *Prakash Amichand Shah* versus *State of Gujarat and others* (15) specifying the duty of the Court while applying the principle of precedents observed as under :—

> "A decision ordinarily is a decision of the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situtation."

(13) J.T. 1988 (4) SC 11
(14) JT 1990 (3) S.C. 173
(15) AIR 1986 SC 468

"An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent. In such cases there is good reason to disregard the later decision. Such occasions in judicial history are not rare."

(17) The above enunciated principles, thus, would pose a question before the Court necessarily to be answered before final determination, whether the controversies raised in the cases afore-noticed were litigated on facts, argued and decided by the larger Benches of the Hon'ble Apex Court or not. In various cases, consistent view was taken by the larger benches of the Supreme Court while granting the relief to the petitioners based upon the principle of equal pay for equal work. The view of the larger bench then was followed by smaller benches of the Apex Court. Of course, in some other cases, the smaller Benches of the Apex Court took a different view and on the facts of those cases declined the similar relief, prayed by the petitioners therein. It would be pious obligation of this Court to follow the principles of law enunciated by larger Bench of the Apex Court and decide the cases on merits in furtherance to such enunciation of law.

(18) It will not be inappropriate for us to notice at this stage that divergent view to the larger Benches of the Apex Court were taken by smaller Benches of that Court. Even Benches of equal strength had taken different views as to whether the petitioners were or not, entitled to the relief on the principle of equal pay for equal work. In *Ghaziabad Development Authority's case (supra)* smaller Bench took somewhat divergent view to the view expressed by larger Bench of the Supreme Court in the cases of *Bhagwati Prasad (supra)* and *Randhir Singh (supra)*. Though somewhat different views were expressed but none of the Benches of smaller or equi-strength to the earlier Benches of the Supreme Court ever denunciated the principle of 'equal pay for equal work.' The Three Judges Bench in the case of *Chief Conservator of Forest* versus *Jagannath Maruti Kondhare,* (16) where the Court felt that denying the petitioners relief of 'equal pay for equal work' at par to their regular counter-parts amounted to unfair practice and granted the relief to the petitioners. Though His Lordship while being member of the Two Judges Bench in the

(16) 1996 (2) SCT 165

case of *Jasmer Singh (supra)* denied the relief to the petitioners in the facts of the case.

(19) In these cirsumstances, particularly keeping in mind the peculiar facts in those cases, their Lordships did not intend to disturb the settled principle of equal pay for equal work but declined relief to the petitioner in those cases as being not offending the principle of equality. They belonged to different classes, falling within the concept of permissible clarification were not hit by the principle of discrimination. In *Jasmer Singh* is case (supra) the Court specifically referred to non-availability of posts, differentiation in method of recruitment and duties being performed between the daily wagers and their counter-parts regularly appointed, while declining the relief. Despite the view of Two Judges Bench in *Ghaziabad Development Authority case* (supra) and *Jasmer Singh's* case (supra) and some other cases, the view of the larger bench of the Appex Court has been consistently followed in other cases right upto the current times. The view taken in *Dhirendra Chamoli's* case (supra) even otherwise has stood the test of time and has been consistently followed by various Benches of the Supreme Court and different High Courts.

(20) A plain analysis of the above stated principles clearly show that where there are divergent views taken by the Hon'ble Apex Court, on the same principle, the High Court should normally follow the law laid down by a larger Bench of the Hon'ble Apex Court. The judgment of the Larger Bench would have to be given greater weightage and apply to facts of the subsequent cases, particularly when it satisfies the ingredients for application of principle of ratio devidendi. In fact the judgment of the Larger Bench of the Supreme Court in *Randhir Singh's* case (supra) was not brought to the notice of their Lordships, of the two Judges Bench of the Hon'ble Supreme Court in the case of *Ghaziabad Development Authority* (supra) (which was followed in the case of Jasmer Singh and other cases). However, in the case of *Jasmer Singh,* their Lordships did notice *Randhir Singh's* case (supra).

(21) In view of the above dicta, this court would follow the view expressed by the larger bench, of course, subject to applicability of the principle of ratio decidendi. The view expressed by different benches (three Judges) of the Hon'ble Apex Court were concerned with the

cases of work charge, daily wagers and contract labour. The relief claimed by those pesons related to claim of parity of pay to that of the regular employees discharging the same functions. Their Lordships of the Apex Court laid down the criteria for grant of such relief and actually granted equal pay for equal work to the empolyees. This concept of contract/daily wages employment has grown tremendously in its scope and dimensions and in fact it has become a recognised method of employment in the government departments. If that be so, the principle would have to be squarely applied to the present cases as well.

(22) The view of the Larger Benches of the Supreme Court, which as subsequently been followed in majority of the cases by smaller Benches of the Apex Court has applied the principles of equal pay for equal work to the cases and granted relief to the petitioners therein. Such view, thus, would be a binding precedent for this Court and its ratio decidendi would squarely apply to the question of law formulated on the facts of the cases in hand. Argo, we feel obliged to follow the view expressed by Larger Benches (Three Judges Benches) of the Hon'ble Apex Court in these cases.

(23) In the light of the above discussion, now we will proceed to refer to the judgments of the Hon'ble Apex Court directly on the matter in issue before us. In the case of Randhir Singh (supra) the Hon'ble Apex Court considered the scope of constitutional goal which emerges from the construction of Articles 14, 16 and 39-D of the Constitution. The concept of equal pay for the equal work was given different and definite dimensions by the Hon'ble Apex Court. Thus, it will be appropriate to refer to the various aspects of this judgment which reads as under :—

> "It is true that the principle of equal pay for equal work is not expresly 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 Sate Policy. Equal pay for equal work for both men and women means equal pay for equal work for everyone and as between the sexes."

".....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 mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

".....Construing Articles 14 and 16 in the light of the Preamble and Art. 39(d), we are of the view that the principle Equal pay for Equal work is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though thoe drawing the different scales of pay do identical work under the same employer."

"There cannot be the slightest doubt that the drivers in the Delhi Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reasons of their investiture with the powers, functions privileges of a police officer, their duties and responsibilities are more arduous."

"The only answer of the respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the Courts may recognise and act upon. We have shown that the answer is unsound. The clarification is irrational. We, therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the drivers-constables of the Delhi Police Force at least on a par with that of the dirvers of the Railway Protection Force. The scale of pay shall be effective from 1st January, 1973 the date from which the recommendations of the Pay Commission were given effect."

(24) The above view of the three Judges Bench of the Apex Court was subsequently followed in various cases by different Benches of the Court. In *Surinder Singh and another* versus *The Engineer in Chief, C.P.W.D., and others,* (17) the Court was concerned with the persons employed on daily wages by the C.P.W.D. department and the claim was basically with regard to equal pay for equal work. The Court held as under :—

> "One would have thought that the judgment in the Nehru Yuvak Kendra's case (supra) concluded further argument on the question. However, Shri V.C. Mahajan, learned counsel for the Central Government reiterated the same argument and also contended that the doctrine of equal pay for equal work was a mere abstract doctrine and that it was not capable of being enforeced in a Court of Law. He referred us to the observations of this court in Kishori Mohan Lal Bakhsi *versus* Union of India, AIR 1962 SC 1139. We are not a little surprised that such an argument should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Forty-Second Amendment proclaiming India as a socialist republic. The Central Government like all organs of the State is committed to the Directive Principles of Sate Policy and Art.39 enshrines the principles of equal pay for equal work. In Randhir Singh *versus* Union of India, (1982) 3 SCR 298: (AIR 1982 SC 879), this Court had occasion to explain the observations in Kishori Mohan Lal Bakshi *versus* Union of India (supra) and to point out how the principle of equal pay for equal work is not abstract doctrine and how it is a vital vigourous doctrine accepted through the world, particularly by all socialist countries. For the benefit of those that do not seem to be aware of it, we may point out that the decision in Randhir Singh's case has been followed in any number of cases by this court and has been affirmed by a Constitution Bench of this Court in D.S. Nakara *vesus* Union of India, (1983) 2 SCR 165: (AIR 1983 SC 130)."

(17) AIR 1986 SC 584

"We allow both the writ petitions and direct the respondents, as in the Nehru Yuvak Kendra's case (supra) to pay to the petitioners and all other daily rated employees, the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed. The respondents will pay to each of the petitioners a sum of Rs. 1000 towards their costs."

(25) The view was reiterated in the case of *Dhirrendra Chamoli and another* versus *State of U.P.*, (18). The Apex Court was again dealing with the employees engaged as casual workers on daily wages and granted them the relief of eqaual pay for equal work in comparison to the regular employees. The Court even noticed whether such employees were appointed against sanctioned posts or otherwise, the Government can not shirk its responsibility arising from Article 14 of the Constitution of India. The Court held as under :—

"This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a Welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to strave or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Art. 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country

(18) 1986 (1) LLJ 134

and who are admittedly performing the same duties as Class IV employees, must, therefore, get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctions posts or not. So long as they are performing the same duties, they, must receive the same salary and conditions of service as Class IV employees."

(26) Another Three Judges bench of Hon'ble Apex Court in the case of *Sandeep Kumar* versus *State of Uttar Pradesh,* (19) applying the principle of equal pay for equal work, granted relief to the diploma holders working on daily rate basis, to that of the regular diploma holders. The Court held as under :—

"Some of the petitioners in these applications under Article 32 of the Constitution are degree-holders in Engineering and designated as Assistant Engineers while the others are diploma holders in Engineering and are indesignated as Junior Engineers. They are employed on daily rated basis under the U.P Bridge Corporation respondent No. 3 which is a public sector undertaking of the State of Uttar Pradesh. The main dispute canvassed in these writ petitions is two-fold:-- (1) regarding the apporopriate salary for the work done; ..."

"...The Distinction maintained has been explained by saying that since they are not regular employees no payment is being made for three holiday when no work is taken. It is difficult to accept this contention. The petitoner-degree-holders are paid at the same rate as the regular degree- holders. There is no reason to make di..tinction between petitioner-diploma holders and the regular diploma holders. Besides even under the minimum Wages Act a paid day of rest in every period of seven days is mandatory. The diploma degree holders among the petitioners should therefore be paid Rs.1,400 p.m."

(19) 1992 (2) SCT 252

(27) Still another Three Judges Bench of the Hon'ble Apex Court in the case of *Bhagwati Prasad* versus *Delhi State Mineral Development Corporation,* (supra) while granting the similar relief, held as under :—

> "The petitiones in both the writ petitions are daily rated workers working in the respondent—Corporation and they are seeking relief under Art.32 of the Constitution for writ of mandamus or other directions to regularise their services in the respective units and to pay them equal wages with initial basic pay, D.A. and other admissible allowances."
>
> ".....As they are not being paid equal wages at par with regular employees, this offends their right to equality of pay under Art. 14 and such action is contrary to the provisions of Art. 39."
>
> "once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years experience, ignoring artificial break in service for short period, periods created by the respondent, in the circumstances would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar

duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately."

(28) In the case of *Food Corporation of India* versus *Shyamal K.Chatterjee,* (supra) the Hon'ble Apex Court held as under :—

"Further the High Court had given a finding that since some casual workers appointed direcdtly by the appellant and some employed by the contractors are working in the same godown and on the same work, there could not be any scope for making any difference and to deny equal pay for equal work. Proceeding further it was stated that on the principles ..sic..earlier with reference to the letter of the Labour Department, the wages will have to be paid regularly to the respondent at the same rate at which it was paid to the regular employees of the appellant doing identical work which has to be worked out on daily rate basis from March, 1989. This was the order that was affirmed by this Court and was not interfered with. It is difficult for us to comprehend on what basis the appellant can make any complaint now except to engage themselves in nit-picking and being over ingenious in making submissions before the Court. The position is, threfore, clear to the effect that this appeal is misconceived and deserves to be dismissed with costs, quantified at Rs. 10.000."

(29) Again, in a recent judgment in the case of *G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital* versus *State of Uttar Pradesh,* (20) the Hon'ble Apex Court reiterated the earlier view of the larger Benches and while giving wide interpretation to the concept of equal pay form equal work, noticed the claim of the appellants and submissions including economic burden and constrains of the State, the Court held as udner :—

"The Labour Court upon acceptance of the cliam of the employees in no uncertain terms found the entitlement

(20) 2000 (4) SCT 295

of the employees of Cafeteria and declared the latter to be the regular employees of the University from the date of the award and held entitled to receive the same salary and other benefits as the other regular employees of the University. The University, however, being aggrieved by the award moved two writ petitions by way of challenges to the two awards under Article 226 of the Constitution. The High Court also on a detailed scruitny of the Regulations and other materials on record dismissed the writ petitions with an observation that the impugned awards of the Labour Court are perfectly justified in the facts and circumstances of the case and do not suffer from an error of law."

"The society shall have to thrive. The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social ..sic..and benefit. It is not bestowing any favour to anybody but it is a mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now come to cry halt and it is for the law Courts to rise up to the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not a mere legal jargon but in the new millennium, it is the obligation for all to confer this economic justice to a seeker. Society is to remain social justice is the order and economic justice is the rule of the day. Narrow pendantic approach to satutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto the law thus is not in a state of fluidity since the situation is more or less settled. as regards interpretation widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice—social and economic-as noticed above ought to be made available ..sic..expendition so that the socialistic pattern of the society as dreamt of by the founding fathers can

be and have its foundation so that the future generations do not live in the dark and cry for social and economic justice."

"In a faint attempt Mr. Trivedi wanted to introduce a pragmatic approach to the problem and contended that the law Court should consider the matter from different angles applying practical experience and factual contexts before arriving at the solution. It has been contended that the financial implications would be rather much too heavy on the University to be borne by it and unless State assistance is made available, it would a well neight impossibility to meet the burden. We are, however, unable to record our concurrence thereto. Pragmatism does not necessarily be deprivation of the legitimate claims of the weaker sections of the society. The submission, if we may say with respect, is totally misplaced and does not warrant any further discussion thereon."

(30) We may also refer to a very recent order passed by the Hon'ble Apex Court in the case of *Chandigarh Administration & Others* versus *Ved Pal & Others Special Leave Petition (Civil) No. 6285 of 1997, decided on 17th October, 2000,* where their Lordships while clarifying the order earlier passed in regard to payment of wages and dearness allowance at the minimum of the revised pay scales at par with for the regular employees, the Hon'ble Apex Court, held as udner :—

"In view of the fact, of the decision of *Bhagwati Prasad* (supra), learned counsel appearing for the petitioners took time to obtain instructions. When the case was taken up again, there seem no further instructions in this regard, hence, we proceed to dispose of the matter finally. It is true Dharma Pal (supra) grants limited dearness allowance, while the consequence of the order dated 12th February, 1999 is to grant equal pay for equal work, including the same dearnes allowance as admissible to the regular employee. After giving our due consideration to the submission made, we are of the

opinion that in view of decision in Bhagwati Prasad (supra) (three Judges), it is not a fit case to either modify/clarify the order dated 12th February, 1999."

(31) In addition to the above judgments of the Hon'ble three Judges Benche(s) and Two Judges Benche(s), which have a direct bearing on the controversy before us, we may also refer to some of the other judgments of the Hon'ble Apex Court, where the principle of equal pay for equal work was applied to different cases de hors the objection of the State in regard to qualifications, source and manner of appointment and sanctioned posts etc.

1. *Bhagwan Dass* versus *State of Haryana,* (21).

2. *Jaipal and others* versus *State of Haryana,* (22).

3. Civil Appeal No. 4492 of 1997 (Arising out of S.L.P.). (C) No. 1502 of 1997) titled *State of Punjab and Ors.* vesus *Devinder Singh Ors.* decided on 21st July, 1997.

4. Civil Appeal No. 1879 of 1999 (Arising out of S.L.P. (C) No. 4046 of 1999) titled *Nagar Panchayat Bhikhiwind* versus *Kulbir Singh and others* decided on 30th March, 1999.

(32) The judgments primarily relied upon by the respondents can also be discussed. In the case of *Ghaziabad Development Authority* (supra), the Hon'ble Apex Court was primarily concerned with the question of regularisation of the employees. The Hon'ble Court declined the relief to the petitioners for making payment at par with regular employees while observing that they should be necessarily and by implication, paid the minimum wages. The Hon'ble Court did not discuss any of the previous judgments and view of the Larger Benches and in fact there is no detailed discussion on the principle of equal pay for equal work. In the case of *Jasmer Singh* (supra) their Lordships declined the relief of equal pay for equal work on the ground of petitioners therein not possessing equivalent qualifications, the mode of recruitment and age limits etc. Their Lordships of course, noticed the judgment of Larger Bench of the Supreme Court in the case of

(21) AIR 1987 SC 2049
(22) AIR 1988 SC 1504

Randhir Singh (supra). So was the view taken in the case of *V.Markendeya and others* versus *State of Andhra Pradesh and others,* (23). In that case their Lordships did not reject, on principle, the concept of equal pay for equal work but held that the Government was entitled to prescribe two different scales for two classes of employees.

(33) The Hon'ble Apex Court in the case of *Grih Kalyan Kendra Workers Union* versus *of Union of India and others,* (24) took the view that the concept of equal pay for eqal work had assumed the status of fundamental right and is to be applied with full vigour to the establishment which are instrumentalities of the State and also that there cannot be any mathematical formula for finding out similarity, it has to be a reasonable similarity only. Their Lordships held as under :—

> "The Supreme Cort has zealously enforced the fundamental right of equal pay for equal work in effectuating the constitutional goal of equality and social justice. Therefore, the principle of equal pay for equal work even in an establishment which is an instrumentality of a Stae is applicable to its full vigour."

> "While considering the principle of equal pay for equal work it is not necessary to find out similarity by mathematics formula but there must be a reasonable similarity in the nature of work, performance of duties, the qualification and the quality of work performed by them. It is permissible to have classification in services based on hierarchy of posts, pay scale, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the object sought to be achieved."

(34) As is clear from the above observations, their Lordships declined the relief to the petitioners in that petition on the basis of reasonable classification and a finding being recorded that there was no discrimination on the basis of the material placed before the Hon'ble Court. On similar lines was the decision of another Two Judges Bench of the Supreme Court in the case of *Mewa Ram Kanojia* versus *All India Institute of Medical Sciences and others,* (25).

(23) AIR 1989 SC 1308
(24) AIR 1991 SC 1173
(25) AIR 1989 SC 1256

(35) Interestingly before us, there is no dispute to the fact that the petitioners are performing the same work which their counter-parts/regular employees in the same department are performing.

(36) There are six writ petitions listed before this Bench where the referred questions need to be answered. In these petitions the petitioners are admittedly employed either as Ledger Clerks, Pump Operators, Mali-cum-Chowkidars, Fitters, Petrol Men and Surveyors etc. in P.W.D. Public Health Department, while in the remaining cases they are employed as Chokidar-cum-Malis in the Excise Department of the Government of State of Punjab. According to these petitioners they have been employed to the said posts by the respondents during the period 1980 to 1996. Upon their appointment they have been performing the functions and are doing the work identical to the work being done by their respective counter-parts in the regular cadre. The petitioners have working experience and they claim that they even possess the requisite qualifications for appointment to the said post. The petitioners have admittedly been working in their respective departments and have experience varying from five to fifteen years. The work or project where they were appointed are still continuing. The petitioners who were appointed as part-time Chowkidars in 1993 in the department of Excise and Taxation were employed as whole time Chowkidars on daily wages on 3rd June, 1996. It is contended by the petitioners that the relief granted to the similarly situated petitioners was also allowed by a Division Bench of this Court and such judgments of this Court have been affirmed or partly modified by the Hon'ble Apex Court by granting minimum of the pay scale three years prior to the date of institution of the petition. True copies of the orders have been annexed as Annexures P/6, P/10 and P/13 to this petition. Thus, the petitioners claim parity in pay with their counter-parts appointed on regular basis.

(37) In the counter-affidavit filed by the respondents, the only factor that is highlighted and emphasised, is the differentiation between regular and daily wage employees. Number of factors have been stated like availability of posts, age limit, method of recruitment, no rules are applicable to the daily wagers, daily wagers are not as responsible as their counter-parts are and there are no conditions of service of the daily wagers etc.

(38) It was also argued on behalf of the State that the State Government is not required to pay the minimum of the scale especially when some of the petitioners are governed by a scheduled employment under the Minimum Wages Act and as such are entitled to the minimum wages prescribed under the Act. In other cases, it is stated that the Government notifies in normal course of its administrative activities and exigencies of work, the *Common Schedule of Rates* (C.S.R.) and the petitioners cannot be paid anything in excess thereof.

(39) Before we apply the above priniciples laid down by the Hon'ble Apex Court to the facts and circumstances of the present case, we consider it appropriate to discuss the ingredients which a petitioner would be required to satisfy before claiming the benefit of equal pay for equal work. The equal pay for equal work principle supposes the value of the work at par. In other words, the work performed by the two groups of employees should be similar and comparable. This does not permit an employer to draw the fine lines of distinction through a micro-scopic eye. It may be that such distinctions are primarily the creation of the State itself. The various points taken in the counter—affidavits, which are so called distinctions between the two groups of employees, are somewhat hypothetical, imaginative and creation of the State itself. Nothing prohibits the State from specifying the criteria for employing casual/daily rated workers, the conditions which would control them, during the period of their appointment and the manner and methods which would be applied for payment and disbursement of their wages/salary.

(40) It is a matter of common knowledge that a daily rated person works harder and better than a regular employee, as he is put to test of existence with each following day. The Government has to follow prescribed procedure for terminating a regular employee if he is found at default, but a daily rated or casual worker can be thrown out of employement any day without notice. The circumstances attendant to the practical reality prevailing in our society and particularly in Government departments clearly indicate that the employer has much greater administrative discretion and advantageous control over a casual and daily rated worker than a regular employee. In fact, what has been stated in the written statement is destructive of the very case sought to be argued by learned counsel appearing for the State. If the State considers it proper not to formulate any of

such policy, regulating such State affairs, the State has to blame itself and none else.

(41) The various kinds of stands taken by the State like lack of funds, sources of recruitment, nature of employment, qualifications and age limits for denying the relief, based on equal pay for equal work had been repelled by the Hon'ble Apex Court in various cases referred by us supra and we consider it totaly un-necessary for us to discuss these matters in any further elucidation. As none of these grounds were held to be of any substance or merit, the State cannot derive any help from these aspects, to deny the benefit to the employees accruing as a consequence of principles enunciated under Article 14 read with Article 39(d) of the Constitution of India. The matter having been settled by the Apex Court, there is no occasion for us to enter into any further deliberations on this issue.

(42) Achievement of the above referred constitutional goal necessarily imposes an obligation upon the State, which is the biggest employer in our country, to avoid disparity of pay to its employees who are discharging similar work and functions. To improvise ways and means to ameliorate the existing affairs of this concept of employment and payment of fair wages, is implicitly duty of the State. For attainment of this object the State has to over-come its limitations and particularly self-created ones. Equal pay for equal work in the present day has emerged not only as a legitimate expectancy on the part of the employee, but is a legitimate legal right, a right which has become enforceable and executable in accordance with law. The catena of judgments afore-noticed specifically repel the various limitations put forward by the State to avoid its liability to give equal pay for equal work or even minimum of the pay scale. Leaving aside the various Two Judges Benches judgments of the Apex Court part, the Three Judges Benches dealt with these limitations and were answered against the State in the following manner :—

(a) In the case of Bhagwati Prasad (supra), the plea of the State that the daily rated casual workers do not possess the requisite qualifications was rejected while holding that long experience is a substantial compliance of the prescribed qualifications, more particularly when they have worked to the satisfaction of all concerned.

(b) The ground of financial limitations/financial burden of the State was repelled in the case of Jagannath Maruti Kondhare's case (supra) ;

(c) The plea that method and manner of recruitment being distinct and different and, thus, State was not liable to adhere to the principle of equality was not accepted in the case of Sandeep Kumar (supra) (Two Judges Bench in Jai Pal and others, Bhagwan Dass and others);

(d) That no sanctioned posts are available for recruitment of the workers, non-availability of sanctioned posts, was held to be no excuse for denying equal pay for equal work, directions for regulation passed in the case of Dhirendra Chamoli (supra).

(43) The plea of minimum wages is equally without substance. The provisions of the Minimum Payment of Wages Act requires the Government to specify minimum wages payable to the employees of the Scheduled employment under the provisions of the Act. This legislative enactment is a mere indicator that an employer must pay to the employee engaged by him or on behalf of any other person in any Scheduled employment. Breach of payment of prescribed minimum wages shall entail penal consequences against the employer, but by no stretch of imagination, this legislative enactment can be treated as a specific or implicit bar for payment of higher wages, more aptly described as equal pay for equal work. The Courts would come to the rescue of the poor and struggling masses if basic protection available to them is infringed by no other person than the State itself.

(44) Referring to the object of the Minimum Wages Act, the Hon'ble Supreme Court of India in the case of *Madhya Pradesh Mineral Industry Association, Nagpur* versus *The Regional Labour Commissioner (Central), Jabalpur and others (26),* held as under :—

"It is true that the provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments

(26) AIR 1960 SC 1068

by prescribing minimum rates of wages for them, and so, in construing the said provisions, the Court should adopt what is sometimes described as a beneficent rule of construction."

(45) The payment of minimum wages cannot be termed as ultimate goal to be attained by a social welfare State. In fact in the present cases, on the own showing of the respondents, payment under this Act has not been considered satisfactorily by the State itself. The State has placed before us a statement of wages being paid to the persons working in the same department as per prescribed rates, Common Schedule of Rates (for short C.S.R.), and the minimum of the pay scale. In other words, fixation of C.S.R. by the State is entirely an voluntary act, which is much higher than the minimum wages payable under the provisions of the Act. This clearly shows that State itself pays different rates for the persons working in the same department despite the fact that it is a scheduled employment. Thus, it is an implicit waiver of the plea taken by the State before us. Minimum wages is a statutory protection and a guiding factor to fixation of appropriate wages to be paid to the employees of the State. While fixing the C.S.R., the Government itself treats the minimum wages as the basis and upon consideration of cumulative effect of other factors like cost of living, station etc., fixes the higher wages. Thus the intention of the State is, to achieve the higher level of wages payable to its employees.

(46) The provisions of Munimum Wages Act, thus, cannot be said to be in conflict with the law laid down in the cases of *Randhir Singh* (supra) and *Jagannath Maruti Kondhare* (supra). These laws are complimentary to each other. Both intend to achieve the object of social justice and protection of right of equality. In fact it is one of the finest example of legislative law and Judge made law laying a common precept for payment of wages at parity.

(47) Similarly in discharge of functions and performance is certainly an essential ingredient attracting the applicability of this concept. If on record, disparity in functions and work is demonstrated, the matter would fall in different class of cases and benefit of this principle may not be available. It is not equal pay for all, but is basic equality of pay for equal work. Still, the threads of denial of complete benefit of the scale and benefits attached thereto, would always staire

this section of employees in face. Similarity of performance in work is the principle guiding the determination and nature of appointment does not absolutely invalidates this claim, but grants the employee to a limited benefit of entitlement of minimum of the pay scale. In the cases of *Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch* versus *Union of India (27), U.P. Income-tax Department Contingent Paid Staff Welfare Association* versus *Union of India and others (28),* and *Delhi Municipal Karamchari Ekta Union (Regd.)* versus *P.L. Singh and others (29),* and in very recent cases, which we will shortly refer to, the Apex Court insisted upon granting relief of munimum pay i.e. basic pay and dearness allowance alone to the petitioners in all these cases.

(48) Once it is admitted that petitioners before us are discharging similar functions for a reasonably long span and their work is satisfactory, not much of a dispute, thus, would remain for applying the above enunciated principles to the facts of the present case. In fact it is neither pleaded in the counter affidavit nor argued before us that the petitioners in all these cases, do not possess the requisite qualifications alike their counter-parts in the regular cadre. Similarity of functions and no differentiation being pleaded in regard to responsibilities of these employees, the State cannot deny the relief of equality in pay on any fair grounds. The distinguishing features pleaded in the counter, as already stated by us, are a creation of the State itself. None prevents the State from exercising better control, supervision and proper method of recruitment of these class of employees i.e. daily rated/casual workers, particularly when this has become a regular and integral process of State Government. None of the above judgments have inflicted any restriction upon the State to exercise such a right. On the contrary, the Courts have always commanded the State to formulate the schemes for regular appointments of the persons employed for years and years together.

(49) The petitioners in numerous cases before the Apex Court were the employees who had worked for a very long period i.e. ten years and above, when they were granted the relief and various

(27) AIR 1987 SC 2342
(28) AIR 1988 SC 517
(29) AIR 1988 SC 519

submissions of the State were rejected. In other words, continuity in service for a reasonable time was one of the paramount factor, which was taken into consideration by the Apex Court, while granting the relief.

(50) During the course of arguments, learned counsel appearing for the respective parties fairly conceded that the Government has already formulated policy of regularisation, dated 23rd January, 2001 of daily wagers/casual employees like the petitioners. It is stated in the said policy that such employees who have already completed more than three years of service, would be considered for regularisation. We are not concerned with the question of regularisation of the employees including that of the petitioners, as that is neither the question referred nor such a relief is pleaded in the writ petitions before us. However, this fact can be noticed for a limited purpose i.e. that the period of three years has been considered to be a period sufficient to entitle the employees for grant of regular pay etc. In other words it is indicative of a fairly reasonable period which vests the employee with the legitimate rights enforceable in law.

(51) Having discussed the general principles controlling the various aspects of these cases, it will be appropriate for us to refer to the view taken by the Hon'ble Apex Court in vrious judgments, spreading over a period of more than 20 years, sufficiently indicates the essentials which need to be satisfied for entertaining a claim founded on the principle of equal pay for equal work or equality. Thus, we may concisely state these essentials :—

(a) The petitioners ought to be employed by the State as casual or daily rated workers;

(b) The employee ought to have worked as such for a fairly reasonable time satisfying the ingredients of continuity in service;

(c) The functions being discharged and work being performed by such employee should be similar, (of course, not by mathematical formula), as that being done by a regular employee of the same department;

(d) Work performance of the employees should be satisfactory.

(52) At the cost of repetition, we may refer that there is no dispute to the similarity of work and functions and the fact that the petitioners do not lack essential qualifications. Even if to some extent it was disputed, it would make no difference in the light of law laid down by the Apex Court. The stress on payment of minimum of the pay scale i.e. the basic pay and dearness allowance alone was insisted upon by the Supreme Court repeatedly. In the case of *Devinder Singh (supra),* the petitioners, who were working as Ledger Clerks, Ledgerkeepers alike some of the petitioners before us in the same department, had filed a writ claiming parity of pay, a Division Bench of the High Court,—*vide* judgment, dated 20th Mrch, 1996, granted the relief to the petitioners. However, upon appeal filed by the State, the Hon'ble Supreme Court modified the judgment of the High Court, but granted the minimum of the pay scale. Copy of the order has been placed on record as Annexure P/10 (State of Punjab and others *versus* Devinder Singh and others, Civil Appeal No. 4492 of 1997). The order, dated 21st July, 1997, reads as under :—

"The direction issued by the High Court in favour of the respondents entitling them to get the salary and allowances as regularly appointed employees is set aside and instead it is directed that the respondents will be entitled to get the minimum of the pay scale available to the Ledger Keepers/Ledger Clerks with appropriate allowances thereon shall be available to the respondents so long as they work as daily wage Ledger Keepers/ Ledger Clerks. In view of the present order if in case any amount is found to have been paid to the respondents in excess, it will be adjusted in a phased and reasonable manner so that the respondents may not be out of pocket to a large extent. No costs."

Similar relief was also granted by the Supreme Court in the case of Kulbir Singh *(supra).* The petitioners were granted minimum of the pay scale with effect from the date they were appointed.

(53) Reliance placed by the respondents upon the Full Bench Judgment of this Court in the case of *Ranbir Singh* versus *State of Haryana (30),* is misplaced one. Firstly, the Hon'ble Full Bench had not considered two judgments of the Larger Benches of the Hon'ble Apex Court in the cases of *Bhagwanti Prasad (supra)* and *Jagannath Maruti Kondhare (supra)* and another Larger Bench of the Supreme Court in the case of *Ranbir Singh (supra)* in its correct perspective. The principles of *ratio decidendi, stair decisis* and applicability of precedents was not referred to by their Lordships in the Full Bench. In fact, Hon'ble Mr. Justice R.s. Mongia, as his Lordship then was, the Presiding Judge of the Full Bench, doubted the correctness of the said Full Bench and had authored the order of reference in the present cases. The reference had become necessary because of subsequent development in law. *Devinder Singh's* case *(supra),* which was allowed by the High Court in the year 1996, was affirmed on point of law, though relief was modified by the Supreme Court,—vide its order, dated 21st July, 1997. However, this order of the Apex Court and many other judgments giving identical relief were not brought to the notice of the Full Bench in the year 1998. When they were brought to the notice of the Division Bench in the present cases, the occasion for reference arose. In order to consider the import and effect of various judgments taking a dissenting view, which rendered the law enunciated by the Full Bench as ineffective, their Lordships felt it appropriate to again refer the matter to a Larger bench. Thus, with respect, but regretfully, we are of the considered view that the Full Bench view in *Ranbir Singh's* case *(supra)* does not enunciate the correct law and is not in comity to the judgments of the Larger Bench of the Supreme Court.

(54) The employer and employees relationship essentially has to be symbiotic. The mutual rights and obligations must correspond to disciplined discharge of duties. Fairness is the foundation of this mutuality. It is more so, where State itself is the employer. Where the State expects its employees to work and discharge their duties with verve, there the State must transcend and pay fair wages to the employees in adherence to the concept of equal money for equal value of work. Any discrimination, much less hostile discrimination, in

(30) 1998 (2) SCT 189

payment of wages would not only offend the predicated concept of law afore-noticed, but also undermine attainment of the defined constitutional goal, by the State. Synoptic analysis of the consistent judicial pronouncements afore-referred, has persuaded us to note the conditions precedent to the application of equal pay for equal work. These conditions cannot be termed as a straight jacket formula applicable per se universely.

(55) The relief to be granted would have to be considered in light of the facts and circumstances of each case. What we have stated is a mere reiteration of the law enunciated by the Apex Court and cannot be stated as a derivative enunciation. The petitioners have been able to satisfy the fundamentals noticed in this judgment and in fact part of their claim stands on the admission of the respondents. We have taken into consideration and followed the Larger Benches of the Apex Court as they discuss the rationale and logic at the greater length and have not given undue importance to the time and date on which the decisions were rendered. The view of the larger Bench subsequently followed, attaches certainty and uniformity to the law so declared. Keeping in mind the law enunciated and in light of the facts and circumstances of these cases to assimilate, we feel persuaded to answer the question in favour of the petitioners.

(56) In view of our detailed discussion above, we answer the question formulated in the reference order as under :—

> ".....The petitioners, who are working as Ledger Clerks, Ledger-Keepers, Pump Operators, Mali-cum-Chowkidars, Fitters, Petrol Men and Surveyor etc., and are satisfying the afore-stated essential ingredients, are entitled to the minimum of the pay scale (basic pay and dearness allowance alone) admissible to their counterparts working on regular basis in the same department."

(57) The reference is answered accordingly and matters be listed before the regular Bench for disposal in accordance with law, subject to orders of Hon'ble the Chief Justice.

***R.N.R.***