

SUPREME COURT OF INDIA

State of Punjab

Vs.

Surinder Singh

C.A.No.5607-5608 of 2001

(A.K. Mathur and Markandey Katju JJ.)

25.10.2007

ORDER

Heard learned for the parties.

These appeals by special leave are directed against the common judgment and order dated 24.5.2000 passed by a learned Single Judge of the Punjab & Haryana High Court in Regular Second Appeal Nos. 42/2000 and 43/2000 whereby the High Court has upheld the order of the Trial Court. The Trial Court had directed that the respondents herein who were working as Tractor Drivers on daily wage basis should be granted the same pay scale as those who had been regularly appointed, on the principle of equal pay for equal work. However, the other relief regarding regularization of their services was declined by the Trial Court and the same was affirmed by the High Court.

Aggrieved by the order of the High Court, the State of Punjab is in appeal before us.

Special leave was granted by this Court on 17.8.2001 and the execution of the order passed by the High Court was stayed. Today the appeals are before us for final hearing.

We have heard learned counsel for the parties and perused the impugned judgment of the High Court as also of the Trial Court.

The principle of equal pay for equal work has gone a sea change. Earlier the view of this Court was that if two persons are discharging the same functions, they will be entitled to same wages. Subsequently this view has been changed and now the view of this Court is that there should be complete and total identity between the two persons similarly situated so as to grant equal pay for equal work. Recently this Court has held that identity between two persons has to be complete and total. In case of a regular appointee, he has undergone a selection process and his services are regular. Even if a daily wage employee is discharging the same functions as a regular employee the authorities are not bound to grant equal pay to such a person who is appointed on daily wage basis, i.e., is appointed for a short term and has not faced the selection process. Thus, the principle of equal pay for equal work has to be granted only if there is a total and complete identity between the two persons. In this view, we are supported by a decision of this Court in the case of S.C. Chandra & Ors. v. State of Jharkhand & Ors., [2007] 9 SCR 130-JT [2007] 10 SC 272, which has referred to

earlier decisions of this Court.

In the aforesaid decision one of us (Markandey Katju, J.) in his concurring judgment has held that granting pay scale is an executive or legislative function, and not a judicial function. There is separation of powers under the Constitution between the three organs of the State, and the judiciary should not encroach into the domain of the other organs. Montesquieu's theory of separation of powers broadly applies in India too.

In view of the legal position, as mentioned above, we are of the opinion that the view taken by the High Court granting pay scale of regular employees to the daily wage employees does not appear to be well founded. Consequently, we allow these appeals and set aside the order of the High Court as also of the Trial Court and dismiss the suits filed by the respondents herein.

The appeals are allowed. No order as to costs.