SUPREME COURT OF INDIA

Food Corp.of India

Vs.

Ashis Kumar Ganguly

C.A.No.3481 of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

12.05.2009

JUDGEMENT

S.B. SINHA, J :

1. Leave granted.

2. Food Corporation of India constituted and incorporated under the Food Corporations Act, 1964 (for short "the Act") is before us questioning the correctness of a judgment and order dated 29.11.2006 passed by a Division Bench of the Calcutta High Court in F.M.A. No. 356 of 2002 directing it to grant advance increments to 57 deputationist employees.

3. The services of the employees of the Food Department of the Central Government as also the State Government were initially taken for running the affairs of the Corporation. Respondents before us were employees of the State of West Bengal. They were on deputation to the Food

Corporation of India from several States.

4. The Act was enacted to provide for the establishment of Food Corporations for the purpose of trading in foodgrains and other foodstuffs and for matters connected therewith and incidental thereto. The matter relating to recruitment of staff in the Food Corporation of India is governed by Section 12 of the Act, which reads as under:

"12. Officers and other employees of Corporation - (1) The Central Government shall, after consultation with the Corporation, appoint a person to be the Secretary of the Corporation.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Corporation may appoint such other officers and employees as it considers necessary for the efficient performance of its functions."

5. In the year 1968, however, Section 12A was inserted in the Act so as to enable the Central Government to make an order directing its employees to be transferred to the services of the Food Corporation of India. Those employees who had been working as deputationists from the Central Government were absorbed. They admittedly were given one extra increment purported to be on the basis of a circular letter issued in this behalf. In the year 1984, an option was given to the respondents herein for being absorbed in the Food Corporation of India upon tendering resignation in their parent cadre; pursuant to or in furtherance whereof the respondents herein opted to join the Food Corporation of India. They were so absorbed but were posted as Assistant Grade III.

They filed a writ petition questioning their absorption in the said grade contending that they were entitled to be posted as Assistant Grade II. The said question came up before this Court in Food Corporation of India & Ors. v. F.C.I. Deputationists Assocn. & Ors. [SLP (C) No. 16416 of 1996] and by a judgment and order dated 29.08.1996, it was opined that the respondents were entitled to the post of Assistant Grade II.

6. Respondents thereafter filed a writ petition in the year 1997 inter alia contending that in terms of the proviso appended to Regulation 81 of the Food Corporation of India (Staff) Regulations, 1971 (for short "the Regulations"), they were entitled to grant of one additional increment.

The said writ petition has been allowed by a learned Single Judge of the Calcutta High Court and affirmed by the Division Bench thereof on an intra-court appeal filed by the appellants herein

7. The learned Additional Solicitor General appearing on behalf of the appellants would contend:

(i) The High Court committed a serious error insofar as it failed to take into consideration that the employees deputed from the State of West Bengal and from the Central Government stand on different footings and in view of the fact that they formed different classes, no discrimination inter se amongst the said employees cannot be held to have been committed by the appellants.

(ii) Proviso appended to Regulation 81 of the Regulations is not applicable in the cases of the respondents as they were not the first appointees. Such a regulation having been framed with a view to attract the best talent in higher posts, the same was not applicable to the case of the respondents.

(iii) In any view of the matter, the said regulation providing for exercise of discretion on the part of the appointing authority, nor writ of or in the nature of mandamus could be issued.

8. Mr. Bhaskar Gupta, learned senior counsel appearing on behalf of the respondents, on the other hand, urged:

(i) A rule similar to Regulation 81 of the Regulations was available even prior to framing thereof and, thus, it is incorrect to say that such a benefit was conferred upon the Central Government employees by reason of a separate rule as concededly, the nature and content of the job required to be performed by the employees whether drawn from the Central Government or from the State Government being the same, no discrimination could be caused amongst the employees similarly situated.

(ii) The writ petition having immediately been filed after the decision of this Court, it was not barred by delay or laches.

9. Upon establishment of the Food Corporation of India, several circular letters were issued. The said circular letters were compiled in an Office Manual; Paragraph 4.70 whereof reads as under:

"4.70 Pay on first appointment The pay of an employee on first appointment to a post in the service of the Corporation shall be fixed at the minimum of the time scale applicable to the post to which he is appointed, or where the post is on a fixed pay, such fixed pay.

Provided that where any person appointed to a post to which a time-scale is applicable has been in continuous service for a period of not less than 2 years in any Department of the Central or any State Government or any Public Sector or Private Sector Undertaking immediately preceding such appointment, the appointing authority may in its discretion fix the pay at the stage in the time-scale applicable to the pay of the post next higher than the pay last drawn by him in such department or undertaking and may in addition, in his discretion, grant one advance increment.

Provided also that in no case shall the pay be fixed at higher than the maximum of the time- scale."

10. First Appellant thereafter framed the Staff Regulations, 1971 inter alia laying down the terms and conditions of service of the employees.

Regulation 81 of the Regulations reads as under:

"81. Pay on first appointment:

The pay of an employee on first appointment to a post in the service of the Corporation shall be fixed at the minimum of the time scale applicable to the post to which he is appointed, or where the post is on a fixed pay, such fixed pay.

Provided that where any person appointed to a post to which a time-scale is applicable has been in continuous service for a period of not less than 2 years in any Department of the Central or any State Government or any Public Sector or Private Sector Undertaking immediately preceding such appointment, the appointing authority may in its discretion fix the pay at the stage in the time-scale applicable to the pay of the post next higher than the pay last drawn by him in such department or undertaking and may in addition in his discretion, grant one advance increment."

11. On or about 19.11.1965, the Food Corporation of India issued a circular letter stating that the transferees and deputationists were to be brought to the scales of pay of the Corporation as contained in Para 4.8 of the Manual with effect from 1.04.1965, subject to the instructions contained therein which inter alia are as under:

"Fixation of pay in the case of transferees 2) Transferees from the Food Department may either opt for the Corporation pay scales or, if they so choose, retain their existing scales of pay.

3)(a) In the case of transferees from the Food Department, who have put in not less than two years' continuous service in that Department and who have opted for the Corporation's scales of pay, pay may be fixed after giving them the benefit of the first proviso to Regulation 70 of the draft Staff Regulations (paragraph 5.70 of the Manual) i.e., by allowing fixation of pay at the stage in the time-scale applicable to the post next higher than the pay last drawn and the grant of one advance increment, provided that the total monetary benefit resulting from the fixation of pay on the above basis does not exceed the limits specified below:- Corporation's pay scale ending at Rs...Rs. 10/- 250/- or less Corporation's pay scale ending at Rs...Rs. 20/- 550/- or less but above Rs. 250/- Corporation's pay scale ending at Rs...Rs. 40/- 700/- or less, but above Rs. 550/- Corporation's pay scale ending at Rs...Rs. 60/- 1000/- or less, but above Rs. 700/- Corporation's pay scale ending at above..Rs. 75/- Rs. 1000/- (b) Where as a result of fixation of pay in accordance with the above principles, the maximum monetary limits mentioned are exceeded, pay should be fixed at the next higher stage than the pay actually last drawn by an employee, without granting an advance increment, but personal pay should be allowed to the extent necessary in order to enable the employee to derive a total monetary benefit upto the maximum limit specified above, such personal pay being absorbed in future increments, i.e., the difference between the present pay in the Food Department plus the maximum monetary benefit mentioned above, and the revised pay in the new scale (fixed at the next higher stage without an advance increment) should be allowed as personal pay to be absorbed in future increments. It should, thus, be ensured that the total monetary benefit to an employee does not in any case exceed the above maxima."

12. Our attention has also been drawn by the learned Additional Solicitor General to the following illustration:

"Pay in the parentScale in theStage at which toPay on next office with theCorporation tobe fixed increment drawn scale (on the daywhich appointed in Corporation of fixation) 450/- in the scale350-25-500-30- 475 + 15 P.P. to550/-"

of 350-20-450-25-620-40-700 be absorbed in 475 future increments (next stage plus part of increment, maximum monetary benefit limited to Rs. 40/-)

13. Indisputably, the respondents were deputationists. They were absorbed in terms of a circular letter issued on 19.03.1984; the relevant conditions whereof read as under:

"(i) The State Government employees who opt for permanent absorption in the service of the Corporation will be treated as direct recruit and will be subject to the terms and conditions as prescribed in FCI (Staff) Regulations, 1971.

(ii) They will count their seniority in the post/ grade in which they are absorbed from the date of absorption in the Corporation.

(iii) Details indicating the post and the scale of pay held by the State Government Deputationists as also the corresponding post in the F.C.I. and the scales of pay attached to the post is indicated in Annexure - II. The employees who opt for absorption in the Corporation will be initially appointed to the corresponding post indicated therein.

(iv) West Bengal State Government employees who have been on deputation in F.C.I. for a period of at least five years as on 30th April, 1984 will only be eligible for absorption in the service of the Corporation."

14. Options having been exercised by the respondents pursuant thereto, they were appointed in the appellant - corporation.

15. Before coming into force of the 1971 Regulations, as noticed hereinbefore, paragraph 4.70 of the Manual was applicable. The Corporation, therefore, had all along been keen to obtain the services of government employees working in the Food Departments of the States evidently because they did have the requisite experience. It is not denied or disputed that those employees were appointed to a post to which a time scale was applicable. They were in continuous service for not less than two years. Paragraph 4.70 of the Manual and Regulation 81 of the Regulations are attracted both in the case of the Central Government employees and the State Government employees. Concededly, in the case of the Central Government employees, the said benefit had been extended.

16. Before the High Court, the Corporation conceded that the nature of duties, qualification and service conditions of both set of employees stand on similar footings.

17. The deputationists were not the employees of the Corporation.

They were still on the State Cadre. They became the employees only on their absorption. The circular letter inviting options stated so in unmistakable terms.

18. The learned Additional Solicitor General drew our attention to the statements made in the rejoinder affidavit to show as to how the Central Government employees were different from that of the State Government employees.

Only because, according to the Corporation, they were treated differently, in our opinion, by itself cannot be a ground not to apply the rules applicable to the employees of the Food Corporation of India on their absorption in the services of the Food Corporation of India only because they have been taken from the different sources. Different treatments meted out to the respondents vis-`-vis the Central Government employees although drawn from separate cadre, for the purpose of grant of benefit to one class only, would, in our opinion, amount to discrimination.

19. This Court, in its judgment and order dated 29.8.1996 passed in SLP (C) No.16416 of 1996 took notice of the fact that the respondents herein had served the Corporation for a period of 18 years on deputation in the post of Assistant Grade-II. The learned Additional Solicitor General, however, contends that the appellants in their first writ application itself should have prayed for grant of one increment. In this connection, our attention has been drawn to the statements made in para 23 of the writ application alleging that the appellant had taken an arbitrary decision to deny the advance increment to those candidates who had been absorbed at that point of time.

It, however, appears that a representation was filed by the Food Corporation of India Deputationists Association thereagainst on 8.1.1991.

In the said paragraph of the writ petition, the appellants categorically stated that the said representation had not been disposed of. The said allegations had not been traversed by the appellants in their counter affidavit before the High Court. It was, thus, not contended by or on behalf of the appellant that a decision one way or the other had been taken by the Corporation in that behalf so as to enable them to raise such a contention specifically in the earlier writ petition.

Submission of the learned Additional Solicitor General that the present writ petition was barred under the principles of constructive res judicata and/or Order II Rule 2 of the Code of Civil Procedure was not raised before the High Court. Had such a contention been raised, the respondents would have been able to show that for one reason or the other and, particularly, in view of the fact that their representations in that behalf was still pending, the question which has been raised herein could not have been raised.

20. Mr. Gupta, in our opinion, is correct in his submission that the question of claiming an additional increment in terms of proviso appended to Regulation 81 of the Regulations could not have been raised in the earlier application as the respondents were not certain as to whether they

would be fitted as Assistant Grade-II or Assistant Grade-III.

21. Strong reliance has been placed by Mr. Saran on a decision of this Court in State of Tamil Nadu v. Seshachalam [(2007) 10 SCC 137] wherein this Court held :

"Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation.

Delay or latches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or latches on the part of a Government servant may deprive him of the benefit which had been given to others. Article of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Opinion of the High Court that GOMs No. 126 dated 29.5.1998 gave a fresh lease of life having regard to the legitimate expectation, in our opinion, is based on a wrong premise. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation. By reason thereof only the existing right is saved subject, of course, to the provisions of the statute. {See State of Himachal Pradesh and Anr. v. Kailash Chand Mahajan and Ors. 1992 Supp.(2) SCC 351}."

In view of the fact that such a contention had not been raised before the High Court and keeping in view the facts and circumstances of the case, as noticed hereinbefore, we are of the opinion that the aforementioned contention should not be permitted to be raised before us for the first time.

22. The question as to whether the respondents disentitled themselves from obtaining an equitable relief under Article 226 of the Constitution of India, because of delay or latches on their part must also be rejected as the earlier writ petition was disposed of only on 29.8.1996. The writ petition having been filed in the year 1997 and the order of the Supreme Court having been given effect on 7.10.1996, it cannot be said that any undue delay was caused by the respondents in filing the writ petition on 9.9.1997. There cannot be any doubt whatsoever that a writ of or in the nature of mandamus can be issued only when existence of a legal right in the writ petitioner and a corresponding legal duty in the respondent are established.

23. Where the administrative authority is conferred with a discretionary jurisdiction, the High Court, it was urged, ordinarily would not issue a writ of mandamus. Our attention in this behalf has been drawn to a judgment of this Court in The State of Madhya Pradesh v. G.C. Mandawar [AIR 1954 SC 493] wherein this Court in the context of exercise of discretionary power in the matter of grant of dearness allowance at a particular rate under Rule 44 of the Fundamental Rules, opined :

"Under this provision, it is a matter of discretion with the local Government whether it will grant dearness allowance and if so, how much. That being so, the prayer for mandamus is clearly misconceived, as that could be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule 44 of the Fundamental Rules confers no right on the Government servants to the grant of dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State of grant compassionate allowance as its own discretion, and no mandamus can issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced."

To the similar effect is the decision of this Court in Union of India v. R. Rajeshwaran & Anr. [(2003) 9 SCC 294] wherein again in the context of grant of admission in a medical college, reservation of some seats in some medical colleges, it was held :

"9. In Ajit Singh (II) v. State of Punjab this Court held that Article 16(4) of the Constitution confers a discretion and does not create any constitutional duty and obligation. Language of Article 15(4) is identical and the view in Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan and Superintending Engineer, Public Health v. Kuldeep Singh that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be held to be laying down the correct law. In these circumstances, neither the respondent in the present case could have sought for a direction nor the High Court could have granted the same."

The said decisions, in our opinion, cannot be said to have any application to the facts and circumstances of the present case. A statutory authority or an administrative authority must exercise its jurisdiction one way or the other so as to enable the employees to take recourse to such remedies as are available to them in law, if they are aggrieved thereby.

The question which, however, arises for consideration is as to whether having exercised its jurisdiction in favour of a class of employees, a statutory authority can deny a similar relief to another class of employees.

In a case of this nature, in our opinion, the writ court was entitled to declare such a stand taken by the statutory authority as discriminatory on arriving at a finding that both the classes are entitled to the benefit of a statutory rule.

It is contended that the deputationists who were the Central Government employees were transferred in terms of Section 12A of the Act. We may notice sub-section (3) thereof, which reads as under :

"12.(3) An officer or other employee transferred by an order made under sub-section (1) shall, on and from the date of transfer, cease to be an employee of the Central Government and become an employee of the Corporation with such designation as the Corporation may determine and shall subject to the provisions of sub-sections (4), (4A), (4B), (4C), (5) and (6) to be governed by the regulations made by the Corporation under this Act as respects remuneration and other conditions of service including pension, leave and provident fund, and shall continue to be an officer or employee of the Corporation unless and until his employment is terminated by the Corporation."

As in terms of the aforementioned provision, the employees so transferred would be deemed to be the employees of the Corporation upon cessation of the relationship of employer and employee between the Central Government and themselves and they would be subject to the provisions of the same regulations.

24. We fail to understand, why the benefit of the said regulations shall be denied to the employees who were deputed to the Corporation from the State Government cadre. Incidentally, we may notice that even in the circular letter dated 19.3.1984, it was categorically stated :

"The absorption of the employees will be subject to the following conditions :

(i) The State Government employees who opt for permanent absorption in the service of the Corporation will be treated as direct recruit and will be subject to the terms and conditions as prescribed in FCI (Staff) Regulations, 1971."

25. If respondents, thus, were to be treated as direct recruits subject to the terms and conditions and as prescribed in FCI Staff Regulations, 1971, in law they were also required to be treated alike as having entered the services of the Corporation for the first time. Even their seniority in the post in which they were absorbed was to be accounted from the date of absorption in the Corporation. Thus, for all intent and purport, the past services of the Central Government employees and the State Government employee whether appointed in the service of the Corporation by way of transfer or by way of absorption would result in cessation of relationship of employer and employee between the Central Government or the State Government as the case may be and the employees concerned. In other words, until their absorption, the respondents were the employees of the State Government and they become the employees of the Corporation only upon their absorptions. Furthermore in the cases of both the Central Government employees as also the State Government employees, common regulation would bind them since their absorption in the service of the

Corporation either in terms of sub-section (3) of Section 2A of the Act or in terms of the order of absorption passed in respect of each of the respondents.

26. Submission of the learned Additional Solicitor General that the employees transferred from the Central Government and those deputationists who have been absorbed fall in different classes cannot be accepted. The learned Additional Solicitor General pointed out the following purported differences between the two groups of employees:

"a. The services of the food transferees from Central Government were transferred to FCI on compulsory/permanent basis after Central Government Gazette Notification, in accordance with Section 12A of the Food Corporations Act, 1964. Whereas the West Bengal Deputationists were sent on deputation to FCI as per agreement with the Government of West Bengal and FCI.

b. The Food transferees from Central Government had no option for joining or otherwise in the FCI on transfer from RDF. It was compulsory for them.

Whereas there was no compulsion for West Bengal Deputationists for their absorption in FCI. They had an option either to be repatriated to their parent department. Govt. of West Bengal or to be inducted in FCI as per FCI, HQ circular No.21 of 19.3.1984.

c. After the transfer of the services of the Food transferees from Central Government to FCI, their parent department was wound up except for existence of power with 1 or 2 officers to settle their pension cases. Whereas existence of the parent department of West Bengal Deputationists i.e. Food & Supplies Department, Government of West Bengal with manpower was/is all along there.

d. The Food transferees from Central Government did not have to tender any resignation with their parent department for transfer of their services to FCI.

Whereas the deputationists emplopyees had to resign from the Department of Food & Supplies of West Bengal before their absorption in FCI.

e. The Food transferees from Central Government enjoyed continuity of their services. They were the food "Transferees". Whereas by virtue of the option exercised with FCI by the Deputationists Employees, their status is of a direct recruit w.e.f. 01.07.1984.

f. On joining FCI, the Food transferees from Central Government did not get any gratuity from their parent department in respect of their services rendered with the Government of India. Whereas the Deputationists Employees had received their gratuity and pro-rata pension from their parent department for the services they rendered with the Government of West Bengal.

g. FCI Staff Regulations, 1971 was not in existence at the initial stage of the transfer of the RDR Employees in FCI.

Whereas at the time of the absorption of the Deputationist Employees in FCI, the FCI (Staff) Regulations, 1971 were in existence."

27. We would deal with them in seriatum.

a. The conditions of service of employees from two different sources can not be different only because they were recruited from different sources. In view of the fact that both the set of employees were governed by the same set of regulations, it would not be correct to contend that the transferees from the Central Government had no option.

b. It was for the Central Government to issue an appropriate notification in terms of Section 12A(1) of the Act. Only when such an order was issued, sub-section (3) thereof would come into play.

Applicability of a rule would not depend upon the question as to whether the respondents had an option either to be repatriated to their parent department or not inasmuch as the rule became applicable only on their absorption and not prior thereto.

c. No additional fact has been placed before us in support of the statement that the entire Food Department was wound up. Even if that be so, in absence of any such regulation governing their cases, they could have been given the benefit of an additional increment to which other employees were also entitled to.

d. For the aforementioned reasons, in our opinion, it is wholly immaterial as to whether cessation of relationship of employer and employee took place by reason of resignation or by transfer.

e. In view of the terms and conditions of transfer so far as the Central Government employees are concerned and the option exercised by the deputationists as well the effect of Regulation 81, there is no force in the aforementioned contention.

f. As in the case of the employees of the Central Government, the continuity of service had been maintained only because the deputationists had received their gratuity and pro-rata pension from their parent department, in our opinion would not make any difference as the sole question was as to whether the proviso appended to Rule 81 was applicable in their case or not.

g. We have noticed hereinbefore that even before coming into force of the FCI Staff Regulations, 1971, there existed a similar provision by way of paragraph 4.68 of the Mannual. Thus, whereas in the case of the Central Government employees, the earlier provisions were applied, in the case of the State Government employees, the regulations are to be made applicable.

28. Submission of the learned Additional Solicitor General that Article 14 of the Constitution of India postulates a valid classification cannot be said to have any application in the instant case. The High Court, in our opinion, has rightly found that in the matter of grant of benefits under proviso appended to Regulation 81, all the employees were similarly situated. In a case of this nature, legal right of the respondents emanated from violation of the equality clause contained in Article 14. If they were otherwise similarly situated, there was absolutely no reason why having regard to the provisions contained in Article 39A of the Constitution of India, the respondents should be treated differently.

It is, therefore, not a case where persons differently situated are being treated differently as was submitted by Mr. Saran. Equally meritless is the plea of the learned Additional Solicitor General that fixation of pay-scale should be left to the expert or employer. Strong reliance has been placed in this connection on State of Haryana & Ors. v. Charanjit Singh & Ors. [(2006) 9 SCC 321], wherein this Court has held :

"19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order

to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ.

Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work"

requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. 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. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors."

In Union of India & Ors. v. Dineshan K.K. [(2008) 1 SCC 586], it was stated "16. Yet again in a recent decision in State of Haryana v. Charanjit Singh a Bench of three learned Judges, while affirming the view taken by this Court in State of Haryana v. Jasmer Singh, Tilak Raj8, Orissa University of Agriculture & Technology v. Manoj K. Mohanty and Govt. of W.B. v. Tarun K. Roy has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved.

Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled."

In Haryana State Minor Irrigation Tubewells Corportion & Ors. v. G.S. Uppal & Ors. [(2008) 7 SCC 375] "19. In S.B. Vohra case this Court dealing with the fixation of pay scales of officers of the High Court of Delhi (Assistant Registrars) held that the fixation of pay scales is within the exclusive domain of the Chief Justice, subject to approval of President/Governor of the State and the matter should either be examined by an expert body or in its absence by the Chief Justice and the Central or State Government should attend to the suggestions of the Chief Justice with reasonable promptitude so as to satisfy the test of Article 14 of the Constitution of India.

Further, it was observed that financial implications vis-`-vis effect of grant of a particular scale of pay may not always be a sufficient reason and differences should be mutually discussed and tried to be solved.

20. In State of Haryana case this Court held that the High Court was in error in allowing the parity in pay scale to State Civil Secretariat PAs with Central Secretariat PAs merely because the designation was same, without comparing the nature of their duties and responsibilities and qualifications for recruitment and without considering the relevant rules, regulations and executive instructions issued by the employer and governing the cadre concerned.

21. There is no dispute nor can there be any to the principle as settled in the abovecited decisions of this Court that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very 29 limited. However, it is also equally well settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

(See K.T. Veerappa v. State of Karnataka)"

Such a question does not arise in this case as it has been found that the action on the part of the appellant is grossly arbitrary.

29. It was furthermore contended by Mr. Saran that in the event a finding is arrived at that the Central Government employees had been given, an advance increment wrongly, similar benefit may not be granted to the respondents on the premise that no equality can be claimed in illegality. Such a case has never been made out by the appellants. Even otherwise, we are of the opinion, the Central Government employees have rightly been given the benefit of one additional increment in terms of the proviso appended to Regulation 81 of the Regulations.

30. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.