

No. FIN(PR)-B(7)-54/98-II
Government of Himachal Pradesh
Finance (Pay Revision) Department.

From

Principal Secretary (Finance) to the
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of the Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

Dated: Shimla-171 002, the 22nd December, 2014.

Subject:-

Regarding parity of pay scales- judgment of High Court of Himachal Pradesh in LPA No. 11 of 2012.

Sir/Madam,

I am directed to invite a reference to the subject cited above and to send herewith a copy judgment dated: 22.09.2014 delivered by Division Bench of Hon'ble High Court, Himachal Pradesh, in LPA No. 11/2012 titled as State of Himachal Pradesh Vrs. Pratap Thakur. It is requested that while defending the cases in the Hon'ble Courts or dealing with the representations/ requests of employees to grant parity in pay scale, the law laid down by the Hon'ble Apex Court and Hon'ble High Court of Himachal Pradesh, in the following cases may strictly be kept in view:-

- (1) Hukam Chand Gupta Vrs. Director General, ICAR and others, (2012) 12 Supreme Court Cases 666.
- (2) State of Madhya Pradesh and others Vrs. Ramesh Chander Bajpai, (2009) 13 Supreme Court Cases 635.
- (3) Steel Authority of India Ltd and others Vrs. Dibyendu Bhattacharya, (2011) 11 Supreme Court Cases 122.
- (4) Union Territory Administration, Chandigarh and others Vrs. Manju Mathur and another, (2011) 2 Supreme Court Cases 452.
- (5) State of Punjab & another Vrs. Surjit Singh & others, 2009 AIR SCW 6759.
- (6) New Delhi Municipal Council Vrs. Pan Singh & others, 2007 AIR SCW 1705.
- (7) State of Haryana and others Vrs. Charanjit Singh and others etc. etc., AIR 2006 Supreme Court 161.
- (8) Division Bench of Hon'ble High Court of Himachal Pradesh Judgment dated: 27.10.1994 in CWP No. 873/1993- Roshan Lal Vrs. Hon'ble High Court of Himachal Pradesh and another.

Continued Page No. 2/-

(9) LPA No. 51/2009 – Himachal Pradesh State Electricity Board Vrs. Rajinder Upadhaya & others decided on 11.09.2014.

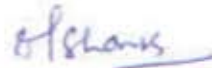
2. The broad conclusion which can be drawn from the aforesaid judgments is that there cannot be a straitjacket formula for equating posts with similar nomenclature/ designation or similar duties. Several factors have to be considered such as source of appointment/ recruitment, qualifications, nature of work, the value thereof, responsibilities, reliabilities, experience, confidentiality, functional need, feeder & promotional categories etc. before parity or particular pay scale can be considered.

3. Thus the observations of the difference Courts, including the Apex Court cited in above judgments may be invariably considered while examining demand/ cases of higher pay scales etc.

4. Apart from the above, the replies to the petitions filed by the employees for claiming the parity of pay scales may also be prepared and defended in the light of law laid down in the above judgments before the appropriate fora. In the cases where replies have already been filed; supplementary reply/affidavits may be filed on the basis of the above.

5. These instructions may be brought to the notice of all concerned and are also available on <http://himachal.gov.in/finance/PayRevision.htm>.

Yours faithfully,



{Om Parkash Sharma}
Under Secretary (Finance) to the
Government of Himachal Pradesh.

Endst. No. As above. Dated: Shimla-171 002, the 22nd December, 2014.

Copy forwarded to the following for information and necessary action:-

1. The Principal Resident Commissioner, Government of Himachal Pradesh, Himachal Bhawan, 27-Sikandra Road, New Delhi.
2. The Secretary, H.P. Vidhan Sabha, Shimla-171004.
3. The Secretary, H.P. Public Service Commission, Nigam Vihar, Shimla-2.
4. The Secretary, H.P. Electricity Regulatory Commission, Khalini, Shimla.
5. The Secretary, H.P. Subordinate Services Selection Board, Hamirpur.
6. The Resident Commissioner, Pangli, District Chamba, Himachal Pradesh.
7. All the Managing Directors, Boards/ Corporations/ Public Sector Undertakings in Himachal Pradesh.
8. The Registrars, HP University, Shimla/ UHF, Nauni (Solan)/ HPKVV, Palampur (Kangra)/ Technical University, Hamirpur.
9. The Section Officers of all the branches of Department of Finance, H.P. Secretariat, Shimla-171 002.



{Om Parkash Sharma}
Under Secretary (Finance) to the
Government of Himachal Pradesh.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. 11 of 2012

Reserved on: 16.09.2014

Decided on: 22.09.2014

The Principal Secretary (Personnel) & another ...Appellants.

Versus

Pratap Thakur ...Respondent.

Coram

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes

For the appellants: Mr. Shrawan Dogra, Advocate General,
with Mr. Romesh Verma, Additional
Advocate General, and Mr. J.K. Verma & Mr.
Kush Sharma, Deputy Advocate Generals.

For the respondent: Mr. M.L. Sharma, Advocate.

Mansoor Ahmad Mir, Chief Justice

This Letters Patent Appeal is directed against the judgment and order, dated 24th February, 2011, made by the learned Single Judge in CWP (T) No. 7679 of 2008, titled as Pratap Thakur versus State of Himachal Pradesh and others, whereby the writ petition filed by the writ petitioner-respondent herein came to be allowed (hereinafter referred to as "the impugned judgment"), on the grounds taken in the memo of appeal.

2. The writ petitioner-respondent invoked the jurisdiction of the H.P. State Administrative Tribunal in terms of Section 19 of the Administrative Tribunals Act, 1985, by the medium of Original Application No. 829 of 2001, seeking quashment of Annexure A-10 and directing the writ respondents-appellants to grant pay scale of

₹ 4400-7000 with effect from 1st January, 1996 with all consequential benefits and interest @ 15% per annum to the writ petitioner, who was holding the post of Junior Translator in the erstwhile H.P. State Administrative Tribunal, on the averments contained in the said petition. After abolition of the H.P. State Administrative Tribunal, was transferred to this Court, came to be diarized as CWP (T) No. 7679 of 2008.

3. Precisely, the case of the writ petitioner was that he was appointed as Junior Translator on 16th May, 1995 in the pay scale of ₹ 950-1800 (Annexure A-1), was confirmed on the said post with effect from 1st March, 1998 vide Annexure A-2, was promoted as Senior Translator with effect from 15th December, 1998 in terms of Annexure A-3.

4. The writ petitioner has laid the foundation of his case on the ground that the posts created/ sanctioned in the H.P. State Administrative Tribunal are similar to the posts sanctioned and created in various departments of the State of Himachal Pradesh especially, Himachal Pradesh Secretariat, Governor's Secretariat and Himachal Pradesh Vidhan Sabha Secretariat. The post of Junior translator was sanctioned in the cadre of H.P. State Administrative Tribunal in the grade of ₹ 400-600, was revised to ₹ 950-1800/1200-2100 with effect from 1st January, 1986, and the post was at par with the Junior Translator in the Himachal Pradesh Vidhan Sabha Secretariat because same pay scale was admissible in Vidhan Sabha also and essential qualifications for appointment were also similar. The pay scales were revised in terms of notifications,

dated 20th January, 1998 (Annexure A-6) and dated 1st September, 1996 (Annexure A-7), but the pay scale of Junior Translator in the H.P. State Administrative Tribunal was not revised and in order to have parity, the H.P. State Administrative Tribunal made a proposal for revising the pay scale of Junior Translators from ₹ 950-1800/1200-2100 (pre-revised) to ₹ 4400-7000. However, the writ respondents-State have rejected the same vide Annexure A-10.

5. The writ respondents have resisted the petition on the grounds taken in the respective memo of objections. Writ respondents No. 1 and 2 have filed joint reply and writ respondent No. 3 has filed separate reply.

6. Writ respondents No. 1 and 2 have specifically pleaded that the case was examined by the Government and it was found that there is no parity and accordingly, the prayer was rejected. It is apt to reproduce para 6 (iv), 6 (v) (b) and 6 (v) (e) of the reply filed by writ respondents No. 1 and 2 herein:

**Para-6 ———*

(iv) Admitted to the extent that a request was received from R.No. 3 to re-revise the pay scale of the post of Junior Translator from 3120-5160 to Rs. 4400-7000 w.e.f. 1.1.1996 which was not agreed to by the Govt. as there was no parity in the matter of pay scale of the posts of Junior Translator in H.P. Administrative Tribunal and Himachal Pradesh Vidhan Sabha.

(v) —————

(a) —————

(b) As submitted against para 6 (ii) above the post of Junior Translator in H.P. Vidhan Sabha has been allowed the pay scale of Rs. 4400-7000 w.e.f. 1.1.1996 on Punjab pattern. The same has rightly been denied to the applicant as this post does not exist in the counter-part Department in Punjab and accordingly he has been allowed the revised

pay scale of Rs. 3120-5160 as per general conversion table issued by the Finance Department vide letter No. Fin(PR)B(7)-1/98 dated 9.1.1998 (Annexure R-1).

(c) _____

(d) _____

(e) *It is not correct that the duties and responsibilities of the post of Junior Translator are higher than those of Clerk. Both of these categories have been placed in identical pay scales since 1978 i.e. Rs. 400-600 revised to Rs. 950-1800 w.e.f. 1.1.1986. As regards qualifications the same are prescribed taking into account the nature of job of a particular post."*

7. Writ respondent No. 3 though has made recommendation for grant of the said grade but has not given the details how the two posts are similar and whether the functions, duties and responsibilities of the Junior Translators at Himachal Pradesh State Administrative Tribunal and Himachal Pradesh Vidhan Sabha are similar and are performing as such.

8. The Writ Court, after examining the pleadings, passed the impugned judgment, which, on the face of it, is not in accordance with law, needs to be set aside for the following reasons:

9. The writ petitioner has based his case on the foundation that the post of Junior Translator in the Himachal Pradesh State Administrative Tribunal was equivalent to the post of Junior Translator in the Himachal Pradesh Vidhan Sabha, had sought relief on that ground and, thereafter, they pleaded that they are entitled to that grade.

10. The Writ Court/learned Single Judge has not marshalled out the facts and merits of the case read with the office orders / notifications to the effect whether the duties and

responsibilities of the writ petitioner were similar to that of the Junior Translator in the Himachal Pradesh Vidhan Sabha in order to determine the claim of parity.

11. The Apex Court in **Hukum Chand Gupta versus Director General, Indian Council of Agricultural Research and others**, reported in (2012) 12 Supreme Court Cases 666, held as to how parity can be claimed or granted. It is apt to reproduce relevant portion of para 20 of the judgment herein:

20. ——— There cannot be straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a writ court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the writ court would lack the necessary expertise to undertake the complex exercise of equation of posts or the pay scales.*

12. The Apex Court in another case titled as **State of Madhya Pradesh and others versus Ramesh Chandra Bajpai**, reported in (2009) 13 Supreme Court Cases 635, held that the Court has to consider factors like the source and mode of recruitment/appointment, qualifications, nature of work, value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. It is apt to reproduce para 15 of the judgment herein:

"15. In our view, the approach adopted by the learned Single Judge and the Division Bench is clearly erroneous. It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of quality in the matter of pay scales. The court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the quality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holds of two posts."

13. The Apex Court in the case titled as **Steel Authority of India Limited and others versus Dibyendu Battacharya**, reported in **(2011) 11 Supreme Court Cases 122**, has discussed the development of law and the judgments made by the Apex Court right from the year 1968, in paras 18 to 29 of the judgment. It is apt to reproduce paras 30, 31 and 33 of the judgment herein:

30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the concerned posts. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.

31. The onus to establish the discrimination by the employer lies on the person claiming the parity of pay. The expert committee has to decide such issues, as the fixation of pay scales etc. falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible for administration i.e. service

conditions etc. is found to be bonafide, reasonable, and on intelligible criteria which has a rational nexus of objective of differentiation, such differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just or prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesale/wholesome identity between the two posts they should not be treated as equivalent and the Court should avoid applying the principle of equal pay for equal work.

32.

33. By the impugned order, the respondent has not been granted the post in Grade E-1 but salary equivalent to that of Shri B.V. Prabhakar has been granted to the Respondent. The order itself is mutually inconsistent and contradictory. The representation of the respondent had been for waiving the criteria meaning thereby that the respondent sought a relaxation in the eligibility criteria for the post in Grade E-1. It is evident from the representation itself that the respondent never possessed the eligibility for the post of Grade E-1. The Law does not prohibit an employer to have different grade of posts in two different units owned by him. Every unit is an independent entity for the purpose of making recruitment of most of its employees. The respondent had not been appointed in centralised services of the company.

14. The Apex Court in **Union Territory Administration, Chandigarh and others versus Manju Mathur and another**, reported in (2011) 2 Supreme Court Cases 452, held that similarity of designation or nature or quantum of work is not determinative of entitlement to equality in pay scales.

15. The Apex Court in the case titled as **State of Punjab & Anr. versus Surjit Singh & Ors.**, reported in 2009 AIR SCW 6759, has discussed the development of law right from the year 1960 till 2009. It is apt to reproduce para 30 of the judgment herein:

"30. Mr. Swarup may or may not be entirely correct in projecting three purported different views of this Court having regard to the accepted principle of law that ratio of a decision must be culled out from reading it in its entirety and not from a part thereof. It is no longer in doubt or dispute that grant of the benefit of the doctrine of 'equal pay for equal work' depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity."

16. It would also be profitable to reproduce para 13 of the judgment rendered by the Apex Court in **New Delhi Municipal Council versus Pan Singh & Ors.**, reported in 2007 AIR SCW 1705, herein:

"13. They, thus, formed a class by themselves. A cut-off date having been fixed by the Tribunal, those who were thus not similarly situated, were to be treated to have formed a different class. They could not be treated alike with the others. The High Court, unfortunately, has not considered this aspect of the matter."

17. The Apex Court in a case titled as **State of Haryana and others versus Charanjit Singh and others etc. etc.**, reported in AIR 2006 Supreme Court 161, held that the principle of 'equal pay for equal work' has no mechanical application in every case. It is apt to reproduce para 17 of the judgment herein:

"17. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmar 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 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 made 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 regards. 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."

18. A Division Bench of this Court in a case titled as **Roshan Lal versus Hon'ble High Court of Himachal Pradesh and another**, being **CWP No. 873 of 1993**, decided on 27th October, 1994, held that even if a post of one cadre is created in two departments and different pay scales are granted, that cannot be a ground to claim parity. In order to claim parity, the writ petitioners have to indicate that their jobs, duties, responsibilities and functions are similar. In this case, the Court has examined whether the post of Book Binder sanctioned in the High Court and Secretariat of the State Government and in other departments are entitled to same pay scale? No doubt, the post of Book Binder was created in all these departments, but it was held that it is for the writ petitioner to plead and prove that he was performing the same type of work and responsibilities and other factors are similar. This Court, after discussing all facts and factors, rejected the plea for grant of parity and the writ petition was dismissed. It is apt to reproduce relevant portion of the judgment herein:

"Having heard the learned counsel for the petitioner, we find no justification in the submission. It is too much of the employee of the High Court to claim that the High Court should be equated with the Printing and Stationery Department of the State Government. Even on the basis of job, there would be no similarity. The Printing and Stationery Department would have continuous and different varieties of work needing a different type of Book-Binder than the Book-Binder in the High Court."

19. A similar question has also arisen in a recent case titled as **Himachal Pradesh State Electricity Board versus Rajinder Upadhaya & others**, being **LPA No. 51 of 2009**, decided on 11th September, 2014, and after discussing the law, it has been

held by this Court that in order to claim parity, the writ petitioner has to indicate that their functions, responsibilities and the duties are similar. It is apt to reproduce para 30 of the judgment herein:

"30. It was for the writ petitioners to plead, marshal and prove that they were performing the similar duties as the Circle Scale Superintendent was performing and the duties, which are being performed by the Law Officer Grade-I are being performed by them also."

20. Viewed thus, the writ petitioner has failed to carve out a case for grant of parity.

21. In view of the above discussions, the learned Single Judge has fallen in error in allowing the writ petition and quashing the decision of the State in rejecting the writ petitioner's claim vide Annexure A-10.

22. Having glance of the above discussions, the impugned judgment merits to be set aside. Accordingly, the appeal is allowed, the impugned judgment is set aside and the writ petition is dismissed. Pending applications, if any, are also disposed of.

(Mansoor Ahmad Mir)
Chief Justice

(Tarlok Singh Chauhan)
Judge

September 22, 2014
(1998)