

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**(Division Bench)**

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**CORAM :**

**Hon'ble Shri Justice Hemant Gupta, Chief Justice.**

**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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**Writ Appeal No.930/2010**

*State of Madhya Pradesh, through Secretary Department of  
Jail/Home, Bhopal and others*

***-Versus-***

*Rajesh Kumar Shukla*

Shri Amit Seth, Govt. Advocate for the appellants.

Shri N.K. Mishra, Advocate for the respondent.

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<b><i>Whether approved for reporting ?</i></b>	Yes.
<b><i>Law laid down</i></b>	The doctrine of equal pay for equal work would not be applicable even if the employees in two groups are doing identical work, unless there is complete and wholesale identity between them. The same can be invoked only when the employees are similarly situated.
<b><i>Significant paragraph Nos.</i></b>	8

**JUDGEMENT**

**(12.10.2017)**

**Per: Vijay Kumar Shukla, J.-**

In this intra-court appeal challenge has been made to the order dated 8-7-2010 passed by the learned Single Judge whereby the petition filed by the respondent-writ petitioner has been allowed.

2. The respondent who is working as a Music Teacher in Central Jail Department filed the writ petition claiming the same

payscale as is being granted to the teachers similarly situated in the Education Department. The learned Single Judge while allowing the writ petition directed for grant of the same benefits to the writ-petitioner in the light of the order passed by this Court in the case of **Uma Shankar Dubey vs. State of M.P. and others, [W.P(S). No.27/2005, dated 4-4-2005]** and further directed that all the benefits be extended to the writ-petitioner *at par* with theayscale existing in the Education Department, within a period of four months from the date of receipt of the certified copy of the order. The Court also directed that arrears and other benefits be also given to the writ petitioner from the date of filing of the writ petition, i.e., 01-9-2003 and prior to that notional fixation be granted.

3. Counsel for the appellants submitted that the learned Single Judge has allowed the writ petition relying on the judgment passed in **Uma Shankar Dubey (supra)** but the said judgment would not be applicable to the present case, as in the said case the petitioner – Uma Shankar Dubey was working as a teacher in the Central Jail and the qualification required for the teacher working in a Jail is similar to the educational qualifications prescribed for the School Education Department and duties are also same, therefore, the respondents have admitted the anomaly under the rules regarding paycales to the teachers working in the Jail Department.

He further contended that the present respondent is working as a Music Teacher in the Jail Department and under the relevant Rules, the qualification for the post of Music Teacher is different from the educational qualifications prescribed for the Education Department. He submitted that as per qualifications prescribed under the Recruitment Rules in the Jail Department, 10+2 High School or Higher Secondary School Certificate Examination is required with general knowledge of Hindi or Madhyama Examination and equivalent examination in 'Tabla Badan' recognized by the State Government.

4. Thus, on the basis of said premises it is contended that the learned Single Judge has erred while allowing the writ petition relying on the judgment passed in **Uma Shankar Dubey (supra)**, which is not applicable in the facts and the Recruitment Rules applicable to the respondent who is working as a Music Teacher.

5. Per contra, counsel appearing for the respondent supported the order passed by the learned Single Judge and submitted that the respondent is also a teacher in the Jail Department, though in the Music subject, therefore, he cannot be denied the benefit which has been granted to Uma Shankar Dubey (supra). He contended that on the basis of the principles of 'equal

pay for equal work', the respondent is entitled for the same payscale which is applicable to the Music Teacher working in the School Education Department. To bolster his submission he relied on the judgment passed by the Apex Court in **State of Punjab and others vs. Jagjit Singh and others, (2017) 1 SCC 148.**

6. Before considering the facts of the present case it is condign to survey the legal authorities on the principle of equal pay for equal work. In the case of **State of Madhya Pradesh and others vs. Ramesh Chandra Bajpai, (2009) 13 SCC 635** the Apex Court after referring the judgment of a three-Judge Bench in the case of **Govt. of W.B. vs. Tarun K. Roy, (2004) 1 SCC 347** held as under:

“14. Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is the same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently.”

The Court further opined that in a case where the employees do not hold essential educational

qualifications, they cannot claim parity in the scale of pay on the ground of equality stating:

“30. The respondents are merely graduates in Science. They do not have the requisite technical qualification. Only because they are graduates, they cannot, in our opinion, claim equality with the holders of diploma in Engineering. If any relief is granted by this Court to the respondents on the aforementioned ground, the same will be in contravention of the statutory rules. It is trite that this Court even in exercise of its jurisdiction under Article 142 of the Constitution of India would not ordinarily grant such a relief which would be in violation of a statutory provision.”

7. The Apex Court after taking into consideration other judgments held that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. The said doctrine cannot be applied only because nature of work is same. The Court has to consider various factors like source and mode of recruitment/appointment, qualifications, nature of work, value thereof, responsibilities, reliabilities, experience, confidentiality, functional need etc. Thus, the Court held that physical training instructor in a Government Ayurvedic College cannot be held to be entitled to claim parity of pay with the teachers who have been granted the UGC scale of pay.

8. The said principle was reiterated in the case of **National Aluminium Co. Ltd. and others vs. Ananta Kishore Rout and others, (2014) 6 SCC 756**. The Apex Court referred the judgment passed in **State of Haryana vs. Tilak Raj, (2003) 6 SCC 123** wherein it was held that the principle of equal pay for equal work can only apply if there is a complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work, they cannot be granted equal pay if there is no complete and wholesale identity. The same view was reiterated in the case of **State of Haryana vs. Charanjit Singh, (2006) 9 SCC 321**. Following these judgements the Apex Court held that even if the employer of these employees is the same, still the employees cannot claim equal pay for equal work on this ground unless there is parity in the nature of work, mode of appointment, experience and educational qualifications between them.

9. The judgment relied upon by the counsel for the respondent in the case of **State of Punjab and others vs. Jagjit Singh and others (supra)** is of no aid to him. In the said case the Apex Court was considering the applicability of equal pay for equal work to the temporary employees and held that in cases where temporary employees are performing same duties as discharged by regular employees against sanctioned posts, such employees would

be entitled to minimum of the regular payscale along with dearness allowance as revised from time to time. But the Court has reiterated the same parameters for applicability of equal pay for equal work and summarised as under:

“42. All the judgments noticed in paragraphs 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of ‘equal pay for equal work’. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them, were against the same post for which a higher pay-scale was being allowed, in other Government departments. Or alternatively, their duties and responsibilities were the same, as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of ‘equal pay for equal work’ was invoked and considered, it would be just and appropriate, to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of ‘equal pay for equal work’. Our consideration, has led us to the following deductions:-

(i) The ‘onus of proof’, of parity in the duties and responsibilities of the subject post with the reference post, under the principle of ‘equal pay for equal work’, lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see – the Orissa

University of Agriculture & Technology case10, [Union Territory Administration, Chandigarh v. Manju Mathur](#)<sup>15</sup>, the Steel Authority of India Limited case<sup>16</sup>, and the National Aluminum Company Limited case<sup>18</sup>).

(ii) The mere fact that the subject post occupied by the claimant, is in a “different department” vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of ‘equal pay for equal work’. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see – the Randhir Singh case<sup>1</sup>, and the D.S. Nakara case<sup>2</sup>).

(iii) The principle of ‘equal pay for equal work’, applies to cases of unequal scales of pay, based on no classification or irrational classification (see – the Randhir Singh case<sup>1</sup>). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case<sup>3</sup>, the Mewa Ram Kanojia case<sup>5</sup>, the Grih Kalyan Kendra Workers’ Union case<sup>6</sup> and the S.C. Chandra case<sup>12</sup>).

(iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of ‘equal pay for equal work’ (see – the Randhir Singh case<sup>1</sup>, [State of Haryana v. Haryana Civil Secretariat Personal Staff Association](#)<sup>9</sup>, and the [Hukum Chand Gupta](#) case<sup>17</sup>). Therefore, the principle would not be automatically invoked, merely because



the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case<sup>3</sup> and the State Bank of India case<sup>8</sup>). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of 'equal pay for equal work' (see - State of U.P. v. J.P. Chaurasia<sup>4</sup>, and the Grih Kalyan Kendra Workers' Union case<sup>6</sup>).

(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – the Orissa University of Agriculture & Technology case<sup>10</sup>).

(vii) Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or

some other relevant criteria (see - [State of U.P. v. J.P. Chaurasia](#)<sup>4</sup>).

(viii) If the qualifications for recruitment to the subject post vis-a- vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see – the Mewa Ram Kanojia case<sup>5</sup>, and [Government of W.B. v. Tarun K. Roy](#)<sup>11</sup>). In such a cause, the principle of ‘equal pay for equal work’, cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of ‘equal pay for equal work’, has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see - [Union of India v. Pradip Kumar Dey](#)<sup>7</sup>, and the [Hukum Chand Gupta](#) case<sup>17</sup>).

(x) A comparison between the subject post and the reference post, under the principle of ‘equal pay for equal work’, cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see – the Harbans Lal case<sup>23</sup>). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - [Official Liquidator v. Dayanand](#)<sup>13</sup>).

(xi) Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if

the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see – the State Bank of India case<sup>8</sup>).

(xii) The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable (see - [State of Haryana v. Haryana Civil Secretariat Personal Staff Association](#)<sup>9</sup>).

(xiii) The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay-scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see - [State of West Bengal v. West Bengal Minimum Wages Inspectors Association](#)<sup>14</sup>).

(xiv) For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post

has minimal duties of quality control, the principle would not be applicable (see - [Union Territory Administration, Chandigarh v. Manju Mathur](#)<sup>15</sup>).

(xv) There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see – the Hukum Chand Gupta case<sup>17</sup>), when the duties are qualitatively dissimilar.

(xvi) The principle of ‘equal pay for equal work’ would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see – the Hukum Chand Gupta case<sup>17</sup>).

(xvii) Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of ‘equal pay for equal work’, even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of ‘equal pay for equal work’ would not apply (see – the S.C. Chandra case<sup>12</sup>, and the National Aluminum Company Limited case<sup>18</sup>).”

**10.** In the backdrop of the aforesaid enunciation of law, it is apposite to refer the Rules governing the service conditions of the respondent, who is working as a Music Teacher in the Jail

Department. The Rule, namely, M.P. Class-III, Non-ministerial and Ministerial (Jail Service Recruitment) Rules 1974 [hereinafter referred to as 'the Rules'] has been filed and marked as **Annexure-AD/1**.

**11.** Posts of Assistant Teacher and Music Teacher are mentioned at serial numbers 7 and 8 of the Schedule. Against the post of an Assistant Teacher, the educational qualification is prescribed - that in accordance with Service Recruitment Rules existing in the Education Department for the post of Music Teacher, the educational qualification is prescribed High School Examination Certificate under 10+2 Scheme or under the old Scheme of Higher Secondary School Certificate Examination; or Madhyama Examination or equivalent qualifications, from a recognized institute by the State of Madhya Pradesh. A note is appended thereto that the candidate must have passed Higher Secondary School Certificate Examination from the State of M.P. The qualifications and duties of a Music Teacher in the School Education Department is different. The relevant portion of the Rules is extracted hereunder:

जेल विभाग	7. सहायक शिक्षक	18 वर्ष	30 वर्ष	स्कूल शिक्षा विभाग के सेवा भर्ती नियम के अनुसार
जेल विभाग	8. सहायक शिक्षक	18 वर्ष	30 वर्ष	(1) 10+2 प्रणाली के अंतर्गत कम से कम हाईस्कूल परीक्षा उत्तीर्ण अथवा पुरानी प्रणाली से हायर सेकेंड्री परीक्षा उत्तीर्ण होनी चाहिए. (2) शासनसे मान्यता प्राप्त संस्था की

				मध्यमा परीक्षा उत्तीर्ण अथवा समकक्ष अर्हता होनी चाहिए. टीप-उम्मीदवार को हायर सेकेंडरी परीक्षा मध्यप्रदेश में स्थित विद्यालय से उत्तीर्ण होना चाहिए.
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12. Thus, from a bare perusal of the aforesaid Rule, it is clear that for the post of teacher the same qualification is prescribed in the Education Department. But, for the post of Music Teacher, the qualification is prescribed only 10+2 High School Examination or Higher Secondary School Certificate Examination with other qualifications. Whereas, in the Education Department qualification for the post of Music Teacher is second class graduation degree or a degree which is mentioned at page 45 of the writ petition, which is extracted hereunder:

“महानिरीक्षक प्रस्ताव पर निम्नानुसार परीक्षण किया गया:—

संगीत शिक्षक का वेतनमान		
गृह विभाग		शिक्षा विभाग
अर्हतायें:—	10+2 के अंतर्गत हाईस्कूल उत्तीर्ण। हिन्दी का सामान्य ज्ञान अथवा तबला वादन में शासन से मान्यता प्राप्त संस्थान की मध्यमा परीक्षा एवं समकक्ष परीक्षा उत्तीर्ण करने का प्रमाण-पत्र।	संगीत में द्वितीय श्रेणी स्नातक उपाधि अथवा समकक्ष उपाधि
वेतनमान:—	पुनरीक्षित वेतनमान 1986 में. रूपये 800—1200 पुनरीक्षित वेतनमान 1990 में. रूपये 950—1400	पुनरीक्षित वेतनमान 1986 में. रूपये 1290—2050 पुनरीक्षित वेतनमान 1990 में. रूपये 1400—2640

Thus, as per Recruitment Rules, the qualification for the post of Music Teacher in the Jail Department is not similar to the

educational qualifications prevailing in the Education Department. Further, the duties of a Music Teacher in Education Department is full-time, as music class is compulsory for students but in Jail it is of temporary nature and require only for those prisoners, who opt for the music. Thus a Music Teacher working in Jail cannot be held to be an equal class with a Music Teacher working in Education Department. The principle of equal pay for equal work would not apply in the present case, in the light of facts and law discussed hereinabove.

**13.** Thus, the learned Single Judge has erred while allowing the writ petition relying on the judgment passed in **Uma Shankar Dubey (supra)** which was relating to the case of a teacher working in the Jail Department and not of a Music Teacher.

**14.** In view of our preceding analysis, the order passed by the learned Single Judge is unsustainable and is hereby set aside. Accordingly, the **writ appeal is allowed** and the writ petition stands dismissed.

**(Hemant Gupta)**  
Chief Justice

**(Vijay Kumar Shukla)**  
Judge

ac.