

**HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT
JABALPUR**

Writ Petition No. 7058 of 2016

Kishan Pilley and others petitioners

versus

State of Madhya Pradesh and others respondents

Coram :

Hon'ble Shri Justice S.K. Gangele &
Hon'ble Shri Justice Subodh Abhyankar

Shri Manish Kholiya, learned counsel for the petitioners.

Shri Amit Seth, learned Government Advocate for the
respondents No. 1 to 3-State.

Shri B. N. Mishra, learned counsel for the respondent No. 4-
High Court.

Reserved on: 15.03.2017.

ORDER
(Pronounced on : 28.04.2017)

Per S.K. Gangele, J.

Petitioners, working in the High Court of Madhya Pradesh on various Class IV and III posts, have filed this petition for grant of higher pay scale. The petitioners further prayed that the petitioners No.1 to 37, who were below the grade pay of Rs.3600/- be granted one additional increment and the petitioners No.38 to 117 who were working on the grade pay of Rs.3600/- be granted two additional increments w.e.f. 01.04.2003 respectively.

2. The petitioners are the employees working in the High Court on Class IV and III posts. Their service conditions are governed by the recruitment rules named as The High Court of Madhya Pradesh (Officers and Employees Recruitment and Conditions of Services, Classification, Control, Appeal and Conduct) Rules, 1996 (hereinafter called as '**the Rules of 1996**'). The aforesaid rule was framed in exercise of powers conferred by Clause 2 of Article 229 of the Constitution of India.

3. The petitioners pleaded in the petition that they are performing the similar work rather onerous work in comparison to the employees who are working on Class IV and III posts in the District Courts in the State of Madhya Pradesh (hereinafter called as 'the employees of Subordinate Courts'). The pay scale of subordinate Courts' employees have been revised by the State of Madhya Pradesh in accordance with the directions issued by the Apex Court in the matter of *All India Judges Association and others vs. Union of India and others (Shetty Commission)*. The employees of subordinate Courts were also granted benefit of additional one increment, up-gradation of pay-scale and certain other allowances. The State Government accepted recommendations of Shetty Commission. However, the same benefits have been denied to the petitioners, which has resulted into anomaly

in the pay and allowances. The petitioners made a representation to this effect to the High Court and the Committee constituted by the High Court forwarded the recommendations to the State Government. However, the Government has not taken any step in this regard till today.

4. The respondents No.1 to 3-State in its reply raised a preliminary objection that any modification in the existing pay scale and allowances of the petitioners can be made by the Hon'ble Chief Justice after approval of Governor. The petitioners did not submit any representation before the competent authority of the State Government. Hence, the petition is premature. On merits, the respondents No.1 to 3-State pleaded that pay scale and service conditions of the employees working in the District Courts are being improved in accordance with the recommendations of Shetty Commission, however, there is no mention in the recommendation of Shetty Commission in regard to employees working in the High Court. Hence, the State Government is not bound to give same relief to the petitioners as has been given to the employees working in subordinate Courts. It is further pleaded that the Court is not empowered to issue writ in the matter of payment of salary and fixation of pay scale on the basis of equal pay for equal work. In

support of aforesaid contentions, learned counsel for the State placed reliance on following judgments of the Apex Court:

(a) State of Haryana and another vs Haryana Civil Secretariat Personal Staff Association, 2002 (6) SCC 72;

(b) Government of Andhra Pradesh vs P. Hari Hara Prasad, 2002 (7) SCC 707 and

(c) The Secretary, Finance Department vs The West Bengal Registration Service Association, 1992 AIR (SC) 1203.

5. The respondent No.4-High Court in its return submitted that the representation submitted by the petitioners was considered by the Grievance Committee of the High Court and the matter was forwarded to the Government. It is also submitted that services of the petitioners are governed by the Rules of 1996. The aforesaid rules are statutory in nature. The employees appointed on the posts mentioned in the recruitment rule are eligible to receive the pay scale mentioned in the Rules of 1996. In absence of any amendment in the rule, no extra benefit could be provided to the petitioners. It is the discretion of the State to accept or not to accept the recommendations of the High Court.

6. During the course of arguments, learned counsel appearing on behalf of the respondent No.4-High Court produced minutes of the meeting of Grievance Committee dated 20.08.2015 along with the

note of the Registry. In the aforesaid noting it is mentioned that the High Court had already made recommendations for implementation of Sheety Pay Commission to the employees of the High Court as back as on 10.12.2007 and on 16/19.09.2008. The Grievance Committee of the High Court, consisting Hon'ble Justice Shri K.K. Trivedi and Hon'ble Justice Shri Rajendra Mahajan, considered representation of the petitioners and recommended that a reminder in respect of such a proposal sent by the High Court may be sent to the State Government and the representation of the employees of the High Court may be included in the writ petition pending before the High Court. Minutes of the meeting are as under:

“SUBJECT No.3

*A representation is made by the employees of the High Court asking for grant of benefits as have been made available to the employees of the Sub-ordinate Court on the basis of the law laid down by the apex Court in the case of **All India Judges Association & Others Vs. Union of India and others**, whereby Justice Shetty Commission recommendations were accepted and directions were issued to the States to provide such facilities to the employees of the sub-ordinate Courts. It is the grievance of the employees of the High Court that though they are also working in the judicial system and are discharging much higher responsibility than the responsibility cast on the employees of the sub-ordinate Courts, yet they are not given the same treatment as have been given to the employees of the sub-ordinate Courts. Their contention is that in terms of the directions issued by the Apex Court in the case of **All India Judges Association (supra)**, the State government has issued*

the orders on 6.10.2010 giving medical reimbursement allowances, additional allowances to the employees working in the Record Room and Nazrat and to the employees who are assigned the duty as Driver and grant of increments of pay in addition to traveling allowances to the personal Assistants and Private Secretaries and employees posted in the cities like Bhopal, Indore, Jabalpur and Gwalior, who are given 150/- per month allowances. However, these benefits are not extended to the employees of the High Court.

The Registry has put a note that such recommendations have already been made by the Registry as back as on 10.12.2007, 16/19.9.2008 and, therefore, nothing more can be suggested as the High Court on administrative side can only make a recommendation to that effect to the State. The other reason assigned in the note is that the Justice Shetty Commission recommendations are not made for the employees of the High Court, but are meant only for the employees of the sub-ordinate Court. Therefore, nothing more is required to be done on the representation of the employees of the High Court.

*Though the Shetty Commission recommendations are not specifically applicable to the employees of the High Court, but since they are also part of the judicial system for which the consideration was done in the aforesaid case of **All India Judges Association (supra)**, by the Apex Court, the recommendation made by the Shetty Commission should not be read only for the employees of the sub-ordinate Courts. The employees of the High Court are discharging more onerous duty in comparison to the employees of the District Courts and for the equal cadre at least there should not be disadvantageous service condition for the employees of the High Court.*

The Committee, therefore, recommends that a reminder in respect of such a proposal sent by the High Court may be sent to the State Government and the representation of the employees of the High Court may be included in the writ petitions pending before the High Court on judicial side in respect of grievance

of such employees, as interlocutory application.”

(Emphasis supplied)

7. The Secretary, Law and Legislative Department, State of Madhya Pradesh by order dated 28.01.2017 granted benefit of Shetty Commission to the employees of the Sub-ordinate Court with effect from 01.04.2003.

8. It is an admitted fact, from the pleadings of the petitioners and the pleadings of the respondents that the employees working on Class III and IV posts in the District Courts of the State of Madhya Pradesh are getting higher pay and benefits in comparison to the employees who are working in the High Court of Madhya Pradesh on Class III and IV posts. The District Court employees have been given benefit of one additional increment w.e.f. 01.04.2003 and one up-gradation who are below the grade of pay of Rs.3600/- and two up-gradations to the employees who were in the grade of pay of Rs.3600/- from 01.04.2003. The State in its reply pleaded that the employees of the District Courts have been granted benefits in accordance with the recommendations of Shetty Commission in accordance with the judgment of the apex Court **All India Judges Association** (supra). The employees of the High Courts are not included in the recommendations of Shetty Commission hence, the employees who are working at the High Court level in the same cadre have not been

given benefit.

9. The Apex Court in the case of ***Supreme Court Employees Welfare Association vs Union of India and another*** reported in **1993 (Sup 3) SCC 727** has considered the question for grant of same pay scale and benefits to the employees working in the Supreme Court at par with the employees working in Delhi High Court and held as under:

“15. The aforesaid recommendations of the Committee of Judges of this Court which have been accepted by the then Chief Justice of India and which are to be forwarded to the President for his approval cannot be held, for the present, to be a rule within the meaning of [Article 146](#) of the Constitution. But those recommendations can certainly form basis for issuing interim direction regarding payment of the revised scale to the holders of different categories of posts within the Registry of this Court. It is an admitted position that the question regarding revision of scale of pay of different categories of employees of this Court w.e.f. 1.1.1986 is pending consideration for more than seven years. During the hearing of the applications for interim directions we were informed that holders of the corresponding posts of the High Court of Delhi have been getting the revised scale of pay pursuant to the orders aforesaid dated 4.11.1991 and 14.11.1991. There does not appear to be any justification that when the holders of corresponding posts in the High Court of Delhi are getting the scales of pay pursuant to the orders aforesaid, how these scales could be denied to holders of the corresponding posts of the Apex Court in the country till the rules come in force.

16. On behalf of Union of India an application has been filed for recall/modification of aforesaid order

dated 25.7.1986. We find no reason to recall the said order which has already been implemented. The Committee of Judges while making recommendations have also taken note of this aspect

17. It appears before the Committee on behalf of Ministry of Finance an anomaly was pointed out which has been stated as follows:

(A) The Punjab High Court pay-scale of Rs. 400-600 extended to Junior Clerks of the Delhi High Court w.e.f. 1.1.1978 had been fixed after absorbing the Dearness Allowance calculated at C.P.I. 320.

(B) Even so, the Dearness Allowance was given to the Junior Clerks of Delhi High Court at the Central Government rates which had been calculated over and above the basic pay fixed as on 1.1.1973 taking the then existing C.P.I. 200 as the basis.

(C) The Punjab High Court pay-scale of Rs. 300-430 accorded to Class IV employees of the Delhi High Court was again arrived at after absorbing the Dearness Allowance calculated at C.P.I. 320 as on 1.1.1978 and even so the Dearness Allowance was given to them at the Central Government rates which was calculated over and above the Basic pay fixed on 1.1.1973 taking C.P.I. 200 as the basis.

(D) As a result their pay-scales were higher than what was legitimately due to the corresponding posts in the Government of India and that had resulted in double payment of Dearness Allowance for 120 points of C.P.I. and this had resulted in an anomaly, namely, the Class IV employees of the Delhi High Court and of the Supreme Court to whom similar benefits were extended pursuant to the interim order of this Court were drawing a higher salary which works out to Rs. 159/- more as on 1.1.1978 and Rs. 308/- more as on 1.1.1986, compared with the salary accorded to Class IV employees in the service of the Central

Government and their salary is even more than the pay of L.D.Cs. in Central Government service.

(E) The Junior Clerks of the Delhi High Court and of the Supreme Court to whom the pay-scales of the Delhi High Court were extended pursuant to the interim order of this Court have been drawing a higher salary which works out to Rs. 159/- more than the corresponding Central Government employees as on 1.1.1978 and by Rs. 356/- as on 1.1.1986.

(F) That the confirming of similar pay-scales to Junior Clerks and Class IV employees on the establishment of this Court by the Rules to be made by the Chief Justice of India under [Article 146](#) results in great disparity between the pay-scales of the corresponding posts under the Central Government and this will constitute a ground for the central Government employees to demand parity in the pay-scales, i.e., pay-scales accorded to the corresponding employees of the Delhi High Court and the Supreme Court and this will result in enormous financial liability on the Central Government.

18. *We first remove the anomaly in the recommendations made by the Committee in respect of the posts of Private Secretaries to the Registrars of the Supreme Court and which are the subject matter of interlocutory application No. 5 of 1992. The Committee in its recommendations has allowed the pay-scale of Rs. 3000-4500/- in respect of the posts of Section Officer, Librarian, Court Master and Sr. Assistant Librarian but has recommended the pay-scale to Private Secretary to the Registrar at Rs. 2300-3700/- A perusal of the pay-scales as recommended by the Fourth Pay Commission itself at item No. 11 shows that the Section Officer, Librarian, Private Secretary to the Chief Justice, Private Secretary to the Judges, Private Secretary to Registrar, Court Master, and Sr. Assistant Librarian have been given the pay-scale of Rs. 2300-3700/-. This clearly shows that the posts of Private Secretary*

to Registrar was kept equivalent to the other posts of Section Officer, Court Master etc., as already mentioned above and fixed in the same pay scale of Rs. 2300-3700/-. The Committee of Judges have recommended the increased pay scale of Rs. 3000-4500/- in case of Section Officer, Librarian, Court Master and Sr. Assistant Librarian who were fixed in the pay scale of Rs. 2300-3700/- by the Fourth Pay Commission. The post of Private Secretary to the Registrar being also in the pay-scale of Rs. 2300-3700/- should be entitled to the pay-scale of Rs. 3000-4500/-. It may also be noted that even on 1.1.1986 from which date the recommendations of the Fourth Pay Commission has been made to be effective, Private Secretary to Registrar was in the same pay-scale of Rs. 775-1200/- as given to Section Officer, Librarian, Private Secretary to The Chief Justice, Private Secretary to the Judges, Court Master and Sr, Assistant Librarian. Thus in the circumstances mentioned above when all the other officers who were in the pay-scale of Rs. 775-1200/- as on 1.1.1986 and fixed in the pay-scale of Rs. 2300-3700/- even by the Fourth Pay Commission have been recommended the pay-scale of Rs. 3000-4500/- by the Committee of Judges, the Private Secretary to the Registrar is also became entitled to the same pay-scale of Rs. 3000-4500/ -. The Interlocutory Application No. 5 of 1992 in Writ Petition (Civil) No. 801 of 1984 stands disposed of in the manner indicated above.

19. Taking the recommendations of the Committee of Judges as a base, we would now dispose of the other interim applications mentioned above. In Interlocutory Application No. 4 of 1992 filed by the Junior Stenographers it has been contended that the Junior Clerks of Delhi High Court have been fixed in the pay-scale of Rs. 1350-2200/- from 1.1.1986. By an order of this Court dated 18.4.1991 the Junior Clerks of this Court have also been granted a similar pay-scale of Rs. 1350-2200/- w.e.f. 1.1.1986. It has been submitted that the post of Junior Stenographer is a promotional post from Junior Clerks. In the Third Pay

Commission the Junior Stenographers were fixed in the pay-scale of Rs 330-560/- which was also the pay-scale of Senior Clerks. So far as the Junior Clerks are concerned they were fixed in the pay-scale of Rs. 260-400/- by the Third Pay Commission. The Committee of Judges have also recommended the pay-scale of Rs. 1400-2300/- to the Junior Stenographers treating them at par with Senior Clerks of this Court who are equivalent to Upper Division Clerks of the Delhi High Court. It has been contended on behalf of the Junior Stenographers that they are also entitled to the pay-scale of Rs. 1400-2300/- as already recommended by the Committee. We find force in the above contention. The Senior Clerks of this Court have been treated equivalent to U.D.Cs. of Delhi High Court who have been allowed the pay-scale of Rs. 1400-2300/- and the Junior Stenographers being treated at par with the Senior Clerks of this Court have been rightly, placed by the Committee in the pay-scale of Rs. 1400-2300/-. It may also be noted that the Junior Clerks have already been allowed the pay scale of Rs. 1350-2200/- and as such the Junior Stenographers of this Court, who are on a higher posts than the Junior Clerks, are entitled to the pay-scale of Rs. 1400-2300/- as recommended by the Committee of Judges. The Interlocutory Application No. 4 of 1992 in Writ Petition (civil) No. 801 of 1986 filed by the Junior Stenographers stands disposed of in the manner indicated above.

20. As regards Interlocutory Application No. 3 of 1992 in Writ Petition (civil) No. 801 of 1986 filed by the Supreme Court Employees Welfare Association it has been prayed that in view of the order passed by the High Court of Delhi directing payment of the pay-scale of Rs. 3000-4500/- w.e.f. 1.1.1986 to the Court Masters, Superintendents and other categories of employees of the said Court, the staff holding corresponding posts in this Court should also be allowed the aforesaid pay-scales by way of interim measure till the rules are framed under [Article 146](#) of the Constitution.

21. *It may be worthwhile to note that the Committee of Judges have already recommended the pay-scale of Rs. 3000-4500/- in the case of Section Officer, Librarian, Court Master, Sr. Assistant Librarian to bring them at par with the incumbents holding corresponding posts of Superintendent, Librarian and Court Master in the Delhi High Court. The Committee of Judges have also recommended new pay-scale of Rs. 3300-4800/- in case of the posts of Assistant Registrar, Principal Private Secretary to the Chief Justice of India, Assistant Editor, Supreme Court Reports, Chief Librarian, Assistant Registrar-cum-Private Secretary to the Chief Justice of India, Assistant Registrar-cum-Private Secretary to the Judges and Assistant Registrar-cum-Private Secretary to the Registrar-General of this Court. The said new pay-scale has been recommended in view of the fact that the lower post of Section Officer, Librarian, Court Master and Sr. Assistant Librarian have been fixed in the pay-scale of Rs. 3000-4500/-. It is needless to mention that in the aforesaid category of posts for which the pay-scale of Rs. 3000-4500/- has been recommended, one more category of Private Secretary to Registrar shall be added which have already been dealt above while disposing of Interlocutory Application No. 5 of 1992. Thus we direct that the recommendation made by the Committee of Judges for granting the pay-scale of Rs. 3000-4500/- and a new pay-scale of Rs. 3300-4800/- for the posts mentioned therein may be given by way of interim measure from the month of March, 1993 subject to the Rules made by the Chief Justice of India under [Article 146](#) of the Constitution.*

22. *It may be noted that the Delhi High Court by order dated 14.11.1991 in Writ Petition No. 2756 of 1991 had allowed the pay-scale of Rs. 3000-4500/- from 1.1.1986 to the Court Masters, and Superintendents of Delhi High Court and the Special Leave Petitions No. 2594 of 1992 filed against the Judgment of the High Court having been dismissed on 25.3.92 by this Court and the same having become*

final, the employees in the Supreme Court are justified in claiming the pay-scale of Rs. 3000-4500/- from 1.1.1986. Same is the position in the case of Junior Stenographer. The Chief Justice may consider and if deem appropriate direct that the payment of arrears can be made by deposit of the whole arrears or part in General Provident Fund or by way of suitable instalments as the case may be by taking note of the financial involvement in consultation with the Government. We are making it clear that we are not giving any direction in this regard and the Chief Justice while framing the Rules under [Article 146](#) of the Constitution shall be free to consider and pass appropriate orders as regards the arrears. Interlocutory Application Nos.2 and 3 in Writ Petition (civil) No. 801 of 1986 stand disposed of in the manner indicated above.

23. Interlocutory Application No. 2 of 1992 in Writ Petition (civil) No. 1201 of 1986 has been filed by the Supreme Court Class IV Employees Welfare Association claiming the pay-scale of Rs. 975-1660/- as allowed to such employees by the Delhi High Court vide its Judgment dated 4.11.1991 in Civil Writ No. 3464 of 1990. The Committee of Judges have recommended the aforesaid pay-scale to Peon, Frash and Safaiwala employed in the Supreme Court fixing them at par with corresponding post of Peon, Frash and Sweeper in the Delhi High Court. The Committee of Judges have also recommended the new and higher pay-scale of Rs. 1000-1750/- to Daftry and Jamadar employed in the Supreme Court in view of the fact that these posts are promotional posts and are entitled to higher pay-scale as the lower pay-scale of Rs. 975-1660/- has been recommended to Peon, Frash and Safaiwala. We direct that the pay-scales as recommended by the Committee of Judges may be given from the month of March, 1993 by way of interim measure. It may be noted that the Union of India has already filed Special Leave Petition under [Article 136](#) of the Constitution before this Court against the decision of the Delhi High Court dated

4.11.1991 passed in the Civil Writ Petition No. 3464 of 1990. The said Special Leave Petition is still pending for consideration. We, therefore, direct that the grant of the above-mentioned pay-scales of Rs. 975-1660/- to the Peon, Frash and Safaiwala and the pay-scale of Rs. 1000-1750/- to Daftry and Jamadar from March, 1993 shall be subject to the decision of the Special Leave Petition filed by the Union of India against the Judgment of Delhi High Court dated 4.11.1991. This disposes of the Interlocutory Application No. 2 of 1992 in Writ Petition (civil) No. 1201 of 1986. As regards arrears from 1.1.86 the Chief Justice shall pass appropriate orders.”

10. In the above judgment, the Apex Court, by way of judicial pronouncement, granted benefit to the employees working in the Supreme Court at par with the employees who are working in the High Court of Delhi. In the matter of payment of salary, the Apex Court further observed that there does not appear to be any justification that when the holders of corresponding posts in the High Court of Delhi are getting the scales of pay pursuant to the orders aforesaid, how those scales could be denied to holders of the corresponding posts of the Apex Court in the country till the rules come in force.

11. The Calcutta High Court in the case of *State of West Bengal & others vs The High Court Employees' Welfare Association & others*, reported in *2016 (3) CalLJ 448* has also granted benefit of additional increments to the employees working in the High Court on the

principle that the employees working in District Courts of West Bengal were granted the additional benefits.

12. The High Court of Tripura, Agartala in the case of ***High Court Employees's Association and others vs The State of Tripura and others***, passed in WP(C) No. 71 of 2015 has also followed the same principle in granting benefit to the employees working in the High Court.

13. Recently, the Apex Court in the case of ***State of Punjab and others vs Jagjit Singh and others***, reported in ***(2017) 1 SCC 148*** has considered the applicability of principle of equal pay for equal work in detail and has considered all the previous judgments for and against in regard to equal pay for equal work and held 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:

42.1. 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 Mathur¹⁵, the Steel Authority of India Limited case¹⁶, and the National Aluminum Company Limited case).

42.2. 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 case¹, and the D.S. Nakara case).

42.3. 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 case¹). 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, the Mewa Ram Kanojia case, the Grih Kalyan Kendra Workers' Union case⁶ and the S.C. Chandra case).

42.4. 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 case¹, State of Haryana v. Haryana Civil Secretariat Personal Staff Association, and the Hukum Chand Gupta case). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same

nomenclature.

42.5. *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) case³ and the State Bank of India case⁸). 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. Chaurasia⁴, and the Grih Kalyan Kendra Workers' Union case).*

42.6. *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).*

42.7. *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](#)).*

42.8. *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 case⁵, and [Government of W.B. v. Tarun K. Roy](#)). In such a cause, the principle of 'equal pay for equal work', cannot be invoked.*

42.9. *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, and the Hukum Chand Gupta case](#)).

42.10. *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). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - Official Liquidator v. Dayanand).*

42.11. *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).*

42.12. *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](#)).*

42.13. *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](#)).

42.14. 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](#)).

42.15. 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), when the duties are qualitatively dissimilar.

42.16. 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).

42.17. 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, and the *National Aluminum Company Limited* case).”

* * * * *

59. We would also like to extract herein [Article 7](#), of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

“7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under [Article 141](#) of the Constitution of India, the principle of ‘equal pay for equal work’ constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of ‘equal pay for equal work’, in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and

the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."

- 14.** The Apex Court emphatically held in the aforesaid judgment that the principle of equal pay for equal work is applicable if the

employees are discharging similar duties and responsibilities in the hierarchy of same posts.

15. To govern the service condition of employees working in the High Court recruitment rules have been framed named as The High Court of Madhya Pradesh (Officers and Employees Recruitment and Conditions of Services, Classification, Control, Appeal and Conduct) Rules, 1996 (hereinafter called 'the Rules of 1996'). The aforesaid rules have been made in exercise of powers conferred by Clause 2 of Article 229 of the Constitution of India by the Chief Justice of the High Court of Madhya Pradesh, Jabalpur. Schedule-I of the Rules prescribes pay scale of the officers and employees working in the High Court.

16. Constitution Bench of the Apex Court in the case of *State of U.P. and another vs C.L. Agrawal and another* reported in (1997) 5 SCC 1 held as under in regard to power of the High Court under Article 226 of the Constitution of India:

“18. There is a passage in the judgment in the case of Supreme Court Employees' Welfare Association that, in the context of the matters before us, deserves to be set out. We endorse what is observed and commend it to the States so that they may deal with proposals made by their Chief Justices with due deference and respect.

"57. So far as the Supreme Court and the High Courts are concerned, the Chief Justice of India

and the Chief Justice of the concerned High Court, are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor, as the case may be, is required. It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightaway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the President of India and the Chief Justice of India."

17. Article 229 of the Constitution reads as under:

“229. Officers and servants and the expenses of High Courts;

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct: Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by

the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose: Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.”

18. The Apex Court further in the case of ***State of U.P. Vs Section Officer Brotherhood and another*** reported in ***(2004) 8 SCC 286*** has considered the jurisdiction of the Hon'ble the Chief Justice of the High Court and held as under :

32. In this case, our attention has been drawn to a decision of this Court in Union of India Vs. Kishan K. Sharma and Others [(2004) 2 SCC 173] wherein this Court despite holding that the High Court was not correct in issuing a writ of or in the nature of mandamus directing the Central Government to pay a scale of Rs. 1640-2900 with effect from 1.1.1986 in favour of the Respondents, did not interfere in the matter considering the same to be old one and having regard to the fact that the direction of the High Court had already acted upon. Such is not the position here.

33. This Court granted stay of the operation of the judgment regarding enhancement in Civil Appeal No. 1260 of 2001 and granted an ad interim stay of the payment of first instalment of

arrears which was going to fall on 1.1.2000 in Civil Appeal No. 1980 of 2000.

CONCLUSION :

34. We, therefore, are of the opinion that the impugned judgments cannot be sustained which are set aside accordingly. However, this order shall be subject to the rules framed by the Chief Justice in the case of the Private Secretaries of the High Court. It will, however be open to the Chief Justice of the Allahabad High Court to frame appropriate rules as has been done in the case of the Private Secretaries or constitute an appropriate committee for the said purpose. We have no doubt in our mind that if such committee is constituted and any recommendation is made for enhancement of the scale of pay for the concerned officers by the Chief Justice, the same would be considered by the State Government in its proper perspective and in the light of the observations made hereinbefore expeditiously.”

19. In the present case, the petitioners have filed a letter dated 27.6.2015 along with the proposed pay-scales by way of additional written submission. The High Court recommended to the Government certain pay scales to its employees. It was forwarded to the Government for necessary approval. That, recommendations are still pending before the State Government for consideration.

20. In view of the aforesaid discussion, the principle of law is that the Chief Justice has power under Article 229 (2) of the Constitution of India to frame rules in regard to pay and allowances of the employees of the Court and send the same to the State Government for approval of the Hon'ble Governor. The Grievance Committee in

its meeting dated 20.08.2013 has already considered the matter and resolved that the High Court may sent a proposal to the State Government in regard to pay and allowances. The salary and working conditions of the employees may not be disadvantageous in comparison to salary and service conditions of the District Court employees. The Hon'ble Apex Court and other High Courts have issued certain directions in regard to grant of benefits, as quoted above.

21. Looking to the aforesaid facts of the case and the principle laid down by the Apex Court in the matter of *Supreme Court Employees Welfare Association (Supra)*, and other High Courts in the case of *State of West Bengal & others (supra)* and in the case of *High Court Employees's Association, Tripura (supra)* and also keeping in view the fact that High Court had already made recommendations to the State Government for implementation of Sheety Pay Commission to the employees of the High Court as back as on 10.12.2007 and on 16/19.09.2008, in our opinion it would be just and proper to direct the respondents to grant one additional increment to the petitioners, who were working below the grade pay of Rs.3600/- w.e.f. 01.04.2003 and two additional increments to the remaining petitioners, who were working in the grade pay of Rs.3600/- w.e.f. 01.04.2003. The

petitioners would be eligible to get arrears of salary. Arrears of salary be paid within period of two months from the date of receipt of certified copy of this order. Respondents No.2 and 3 are further directed to grant, sanction and release necessary fund to meet the contingent requirement within the period as mentioned above.

22. So far as relief in regard to grant of higher pay scale and allowances are concerned, in view of the principle of law laid down by the Constitution Bench of the Apex Court in the matter of *State of U.P. and another vs C.L. Agrawal and another* reported in (1997) 5 SCC 1, this Court could not issue any direction for grant of pay scale. However, keeping in view the fact that the matter of pay scale and allowances of the employees of the High Court is pending before the State Government since 27.6.2015, the respondents are directed to finalize the same within a period of four months. While considering the recommendations, the State shall take into consideration the principle of law laid down by the apex Court in the case of *State of U.P. and another (supra)*.

23. Accordingly, petition is allowed in part with aforesaid observations and directions. No order as to costs.

(S.K. GANGELE)
JUDGE

(SUBODH ABHYANKAR)
JUDGE