

**State of U.P. and ors. Vs. Ramesh Pratap Singh and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/456421](http://sooperkanoon.com/456421)

**Court :** Allahabad

**Decided On :** Feb-28-2003

**Reported in :** 2003(2)AWC1357; (2003)2UPLBEC1095

**Judge :** Tarun Chatterji, C.J. and ;R.K. Agrawal, J.

**Acts :** [Constitution of India](#) - Article 14

**Appeal No. :** Special Appeal No. 328 of 1999

**Appellant :** State of U.P. and ors.

**Respondent :** Ramesh Pratap Singh and ors.

**Advocate for Def. :** H.N. Singh, Adv.

**Advocate for Pet/Ap. :** Sabhajit Yadav, Adv. and S.C.

**Disposition :** Appeal dismissed

**Judgement :**

**R.K. Agrawal, J.**

1. The present special appeal has been directed against the judgment and order dated 25.9.1998 passed by the learned single Judge in Civil Misc. Writ Petition No. 8027 of 1992, whereby the learned single Judge has allowed the writ petition and directed the appellants to treat the respondents-petitioners entitled for pay scale of

Rs. 1,350-30-1,440-40-1,800-E.B.-50-2,200 from the date on which it was admissible to the employees working in the post of Machine Man Offset under the Government order dated 12.4.1990, and the balance of the amount which has not been paid to the petitioners for the period after 12.4.1990 to 31.7.1996 shall be paid to them with a period of six months from the date a copy of the order passed in the said writ petition, is filed before the appropriate authority.

2. Briefly stated, the facts giving rise to the present special appeal are that the respondents-writ petitioners, at the relevant period, were posted as Assistant Machine Operators Offset, in the Government Press, Ram Nagar, district Varanasi. Prior to July, 1979, the pay scale relating to the posts of Assistant Machine Operators Offset and Machine Man Offset were treated to be equivalent posts and the pay scale for both the posts were same at Rs. 200-320. The pay scale was revised at Rs. 354-550 pursuant to the recommendation made by the 2nd Pay Commission. The Equivalence Committee (Samta Samiti) which was constituted by the State Government vide order dated 14.10.1988, also recommended the same pay scale for both the posts which was accepted by the State Government and vide order dated 21.8.1989, the same pay scale was stipulated for two posts. The post of Assistant Machine Operators Offset was shown at serial No. 63, whereas the post of Machine Man Offset was shown at serial No. 65. The pay scale recommended for these two posts was at Rs. 1,200-30-1,440-E.B.-30-1,800.

3. It appears that on the representation made by the employees working on the post of Machine Man Offset, the Government order dated 21.8.1989 was modified vide order dated 12.4.1990 and the pay scale for the post of Machine Man Offset shown at serial No. 65 in the Government order dated 21.8.1989, was enhanced to Rs. 1,350-30-1,440-40-1,800-E.B.-50-2,200. However, the pay scale for the post of Assistant Machine Operator Offset, which was shown at serial No. 63, remained unchanged. Thus, the parity in the pay scale of two posts, was, for the first time disturbed on 12.4.1990. The respondents-petitioners made representation, but no action was taken by the State Government. However, vide Government order dated 31.7.1996, the pay scale for the post of Assistant Machine Operator Offset, was made at par with that of Machine Man Offset and

the grievance of the respondents-petitioners before the learned single Judge, was that two posts ought to have been equated with similar pay scale from 12.4.1990 itself, when the pay scale of Machine Man Offset, was enhanced.

4. The appellants had filed counter-affidavit before the learned single Judge wherein they had admitted the discriminatory nature of pay scale. Paragraphs 5, 6 and 8 of the said counter-affidavit filed on behalf of the State Government in the writ petition are reproduced below :

'5. That the Pay Commission in its recommendation dated 31.8.1989 had provided the same pay scale to both the posts.

6. That the order dated 12.4.1990 is discriminatory in nature as the pay scale of Machine Man Offset has been revised to Rs. 1,350-2.200 whereas the post held by the petitioners being of the same cadre and bearing the same pay scale from before, has been left out.

8. That so far as, the claim of the petitioners regarding payment of difference of pay is concerned. It is submitted that the same cannot be granted to them for the reasons firstly : that no entitlement ever accrued in their favour and secondly if particular cadre has been wrongly benefited, the other cadres not so benefited, would not be entitled to claim difference of pay. The disparity does not create any right for such claim and the same having been removed by the order dated 31.7.1996, the grievance of the petitioners has been redressed and no other dispute relating to payment of difference amount can be raised by the petitioners.'

5. The learned single Judge, came to the conclusion that admittedly, the employees working on both the posts, namely, Assistant Machine Operators Offset and Machine Man Offset were being paid same pay scale which uniformity was maintained in the recommendation made by the Pay Commission and the Pay Committee at the time of revision and, therefore, it is not a case of a particular cadre having been wrongly benefited with the enhancement in the pay scale. The State Government, realising its mistake granted the same pay scale to the Assistant Machine Operators Offset w.e.f. 31.7.1996 and, there was no reason as to why it denied the benefit of the said pay scale from 12.4.1990 which the

employees working in the post of Machine Man Offset were getting.

6. We have heard Shri Sabhajit Yadav learned standing counsel for the appellants and Shri H.N. Singh, learned counsel for the respondents.

7. The learned standing counsel submitted that the post of Assistant Machine Operators Offset and Machine Man Offset are different posts and the employees in two posts are discharging different duties, thus, there was no question of granting similar pay scale of Machine Man Offset to the employees working on the post of Assistant Machine Operator Offset.

8. He further submitted that it was the sole discretion and within the exclusive domain of the State Government to grant any particular pay scale to a particular posts and, thus, the Court, in exercise of jurisdiction under Article 226 of the [Constitution of India](#), should not interfere in such matters.

9. In support of these contentions, he relied upon the following decisions mentioned below :

(i) State of U. P. and Ors. v. J. P. Chaurasia and Ors., AIR 1989 SC 19.

(ii) Supreme Court Employees Welfare Association v. Union of India and Ors., AIR 1990 SC 334.

(iii) State of Rajasthan v. Gopal Das, AIR 1995 SC 809.

(iv) Union of India and Ors. v. Indu Lal and Ors., AIR 2002 SC 2197.

(v) State of Haryana and Anr. v. Haryana Civil Secretariat Personal Staff Association, 2002 (3) AWC 2477 (SC) : JT 2002 (5) SC 189.

(vi) State of Haryana and Ors. v. Jagroop Singh, JT 2002 (6) SC 369.

10. Shri H.N. Singh, learned counsel for the respondents writ petitioners submitted that the employees working on the two posts namely Assistant Machine Operator Offset and Machine Man Offset perform similar duties on the Offset Machine and that is why, they were granted the same pay scale. Even the 2nd Pay

Commission, also recommended the same pay scale for these two posts. Thus, the position in respect of these two posts in question, continued equally till 12.4.1990. Thereafter on some representation being made, the difference crept in. However, the State Government, on representation being made, rectified the mistake by granting same pay scale on 31.7.1996 and there was no reason whatsoever to deny the benefit of the same pay scale during the period 12.4.1990 to 31.7.1996. He submitted that the respondents-petitioners were not claiming any parity of salary and emoluments for the first time before this Court as the State Government itself had treated the two posts similar since beginning upto 12.4.1990 and again from 31.7.1996 till date. The respondents-writ petitioners were also not claiming any fixation of their pay scale, but, are seeking redressal of discrimination meted out to them which fact has also been admitted by the State appellants in their counter-affidavit as mentioned hereinabove. According to him the, decisions relied by the learned standing counsel have no application to the facts and circumstances of the present case.

11. Having heard the learned counsel for the parties, we find that it is not in dispute that the pay scale of Assistant Machine Operators Offset and Machine Man Offset was the same, i.e., Rs. 200-320 prior to July, 1979. The 2nd Pay Commission also recommended the same pay scale for these two posts at Rs. 354-550. The Equivalence Committee constituted under the Government order dated 14.10.1988 also recommended the equal pay scale for two posts at Rs. 1,200-30-1,440-E.B.-30-1,800 which report was accepted by the State Government vide order dated 21.8.1989. The pay scale of Machine Man Offset, was enhanced by the State Government vide order dated 12.4.1990 on some representation being made by the concerned employees. However, no enhancement in the pay scale relating to the post of Assistant Machine Operators Offset was made. But on the representation being made, the State Government once again vide order dated 31.7.1996, removed the anomaly crept into these two posts and granted the same pay scale which was applicable to the post of Machine Man Offset. In paragraphs 5 and 6 of the counter-affidavit filed by R.N. Tripathi on behalf of the State-appellants in the writ petition, it has been admitted that the Pay Commission in its recommendation dated 21.8.1989 had prescribed the same pay scale to both the posts. In paragraph 6 of the counter-affidavit, it has

been admitted that the order dated 12.4.1990 is discriminatory in nature as the pay scale of Machine Man Offset has been revised to Rs. 1,350-2,200 whereas the post held by the respondent-writ petitioners, being of the same cadre and bearing same pay scale from before has been left out. Thus, it is admitted by the appellants that the posts of Machine Man Offset and Assistant Machine Operators Offset is of the same cadre and has been discriminated. Thus, from own showing of the appellants, the order dated 12.4.1990 by which the pay scale relating to the post of Machine Man Offset, had been enhanced leaving out the post of Assistant Machine Operator Offset, is discriminatory. Apart from it, the State Government has all along been treating these two posts as equivalent and that is why the same pay scale was granted for both the posts. But only in the year 1990, vide Government order dated 12.4.1990, a departure was made, which mistake was corrected on 31.7.1996. No reason has been assigned by the State Government as to why the Assistant Machine Operators Offset were not entitled for similar treatment (same pay scale) which was given to the Machine Man Offset for the period from 12.4.1990 to 31.7.1996 when prior to 12.4.1990 and after 31.7.1996 both the posts carried the same pay scale. In the absence of any reason having been put forward, the plea taken by the appellant that the Assistant Machine Operator Offset cannot be granted the same pay scale, is not sustainable. However, the appellants accorded the same pay scale since 31.7.1996. Thus, we hold that the stand that if a particular cadre has wrongly been benefited and then other cadre shall not be benefited, is discriminatory, in nature and is hit by Article 14 of the [Constitution of India](#).

12. In the case of State of U. P. and Ors. v. J. P. Chaurasia and Ors. (supra), the Hon'ble Supreme Court has held that 'the same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact.'

13. In the case of Supreme Court Employees Welfare Association v. Union of India and Ors. (supra), the Hon'ble, Supreme Court has held that : 'It follows from the above decisions that although the doctrine of 'equal pay for equal work' does not come within Article 14 of the Constitution as an abstract doctrine, but if any classification is made relating to the pay-scales and such classification is unreasonable and/or if unequal pay is based on no classification, then Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of 'equal pay for equal work', as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of 'equal pay for equal work' will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of 'equal pay for equal work', as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution. Dhirendra Chamoli v. State of U. P., (1986) 1 SCC 637, is a case of 'equal pay for equal work' as envisaged by Article 14, and not of the abstract doctrine of 'equal pay for equal work'.

14. These decisions have no application to the facts of the present case as the appellants themselves have admitted the two posts to be in the same cadre and the discrimination met out to the Assistant Machine Operator Offset was rectified subsequently.

15. In the case of State of Rajasthan v. Gopal Das (supra) the pay scale of Upper Division Clerks of subordinate offices was revised under the Rules from Rs. 385-650 to Rs. 520-925 whereas the existing pay scale of Upper Division Clerks of Secretariat which was at Rs. 440-775 was revised to Rs. 610-1,090 w.e.f. 1.9.1981. On representation being made by the Upper Division Clerks to the subordinate offices, the pay scales were made at par with the Upper Division Clerks of the Secretariat w.e.f, from 1.2.1985. The plea taken by the Upper Division Clerks was that they are entitled for the same pay scale w.e.f. 1.9.1981.

On these facts, the Hon'ble Supreme Court held that the notification dated 23.2.1985 relating to the U.D.Cs. of subordinate offices was not an issue with a view to remove any anomaly or to make any provision for category which was left out of the Rules. It was a notification issued as a result of the acceptance of the demand of the U.D.Cs. of the subordinate offices for grant of higher pay scale which was given to their counterparts in the Secretariat and the State Government was Justified in granting revised pay scale w.e.f. 1.2.1985.

16. In the present case, we find that the pay scale of Assistant Machine Operators Offset and Machine Man Offset was the same pursuant to the recommendation of the Equivalence Committee. The pay scale of Machine Man Offset was enhanced on 12.4.1990 leaving out the pay scale of Assistant Machine Operator Offset who were also enjoying the same pay scale and were doing similar work. The anomaly was removed vide order dated 31.7.1996. Thus, it is not the case of granting revised pay scale but of removal of anomaly in the pay scale of Assistant Machine Operator Offset.

17. In the case of Union of India and Ors. v. Indu Lal and Ors. (supra) the Hon'ble Supreme Court has held that the Chief Law Assistant and Law Assistant who were designated as Presenting Officer under Section 19(2) of the Railways Claims Tribunal Act, cannot be equated and no parity in pay scale can be given as the Law Assistant and Chief Law Assistant were working under the supervision and guidance of Junior Administrative Grade, the Presenting Officer who has full administrative control over them and they do not discharge similar nature of duties and at no stage these officers were authorised to act independently and had to get the approval for every act done by them from Junior Administrative Grade Presenting Officer.

18. In the present case, the two posts carried the same pay scale uptill 12.4.1990 and also from 31.7.1996. On the basis of that two posts are equivalent and the employees working thereon are discharging the similar duties.

19. In the case of State of Haryana and Anr. v. Haryana Civil Secretariat Personal Staff Association (supra), the Personal Assistants in State Civil Secretariat of Haryana State were claiming the same scale of pay granted by the Central

Government to the Personal Assistants working in the Central Secretariat. The Hon'ble Supreme Court in para 10 of the judgment has held as follows :

'JO. It is to be kept in mind that the claim of 'equal pay for equal work' is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex-matter, which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of post under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decisions taken by the Government. The Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the Court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. As noted earlier, in the present case the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre.'

20. In the present case, the parity is not being claimed with the employees of another Government but discrimination meted out to the petitioners in respect of employees of the same department who were holding the equivalent posts and discharging the same duties is being sought to be redressed.

21. In the case of State of Haryana and Ors. v. Jagroop Singh (supra), the 4th Pay Commission recommended the pay scale of Rs. 950-1,500 w.e.f. 1.1.1986 which was given by the State Government w.e.f. said date. On representation being made, the pay scale was enhanced to Rs. 1,200-2,040 w.e.f. 1.5.1990. The employees approached the High Court claiming entitlement of pay scale of Rs. 1,200-2,040 w.e.f. 1.1.1986 without assailing the notification issued by the State Government modifying the pay scale. The Government on the basis of representation made, suggestion received as well as qualification for different posts had modified the pay scale w.e.f. 1.5.1990. The Hon'ble Supreme Court did not find any infirmity in the Government decision particularly when the employees did not assail the legality of the aforesaid notification.

22. In the present case, as already mentioned hereinbefore, the respondents-writ petitioners had alleged discrimination and sought the same pay scale w.e.f. 12.4.1990, which had been given to the employees working as Machine Man Offset. We have already held that the respondents-writ petitioners have been arbitrarily discriminated and action of the appellant in not granting the same pay scale which was given to the Machine Man Offset is violative of Article 14 of the [Constitution of India](#). Thus, we are of the view that the decisions relied upon by the appellants have no application to the facts of the present case.

23. In view of the foregoing discussions, we do not find any legal infirmity in the impugned Judgment and order passed by the learned single Judge. The special appeal falls and is dismissed.

24. However, the parties shall bear their own costs.