

**1994 (0) GLHEL-HC 208473**

**GUJARAT HIGH COURT**

**Hon'ble Judges: B.J.Shethna, J.**

Natubhai M.Shah Versus Chairman Cum.M.D., National Textiles Corporation

SPECIAL CIVIL APPLICATION No. 1184 of 1981 ; \*J.Date :- SEPTEMBER 26, 1994

- CONSTITUTION OF INDIA Article - 14 , 226

**CONSTITUTION OF INDIA - Art. 14, 226 - principle of 'equal pay for equal work' - applicability - petitioners working in the respondent mill - claiming that they are paid lesser emoluments than other members working in the same Department - held, nature of work performed is the same - no rationality to discriminate petitioners - violation of Art. 14 - petitioners entitled to receive equal pay for equal work - petition allowed.**

**Imp.Para:** [ 7 ]

**Cases Distinguished :**

1. Jaipal And Ors. Vs. State Of Haryana And Ors, 1988 3 SCC 354
2. K.Vasudevan Nair Vs. Union Of India, AIR 1990 SC 2295
3. N.F.C.Nfc (Physical Education) Teachers Association Vs. Union Of India, 1988 3 SCC 91

**Cases Relied on :**

1. Bhagwandas Vs. State Of Haryana, AIR 1987 SC 2049
2. Daily R.C.Labour P.& T.Deptt. Vs. Union Of India, AIR 1987 SC 2342

**Equivalent Citation(s):** 1995 (1) GCD 219 : 1995 LabIC 883

**JUDGMENT :-**

**B.J.SHETHNA, J.**

**1** All these petitions are disposed of by this common judgement as the identical point is involved in these matters.

**2** Special CA No.1184/81 was originally filed by 9 petitioners of whom at present only petitioner No.6-K.S.Thakar and petitioner No.7-M.N. Metha are in service. Petitioner No.9-D.B.Intwala has died during the pendency of this petition in 1991 as reported at the bar and the remaining petitioners have retired from the service. Respondent Nos. 2 and 3 have come on record of this petition by way of Civil Application. They are in fact not only supporting the petitioners but claiming similar benefits which can be extended to the petitioners by this Court.

**3** Special CA No. 1594/88 was filed on 30th March 1988 originally by 10 petitioners. Out of them petitioner Nos. 2 and 3 requested this Court to delete their names as they wanted the benefit of voluntary retirement scheme.

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**4** Special CA No. 1795/91 was filed by two petitioners who are Audit Clerks. Petitioners of SCAs Nos. 1184/81 and 1594/88 are auditors. They are working with the respondent-National Textile Corporation (Gujarat) Ltd. All the petitioners have challenged in these petitions the action of the respondent-Corporation denying equal pay for equal work vis-a-vis other members of the Audit Department. The petitioners who are either working as Auditors or Audit Clerks in the Mills are paid about Rs.600 less than the persons similarly situated like them and who are working as Auditors and Audit Clerks in the Head Office of the respondent - Corporation merely because they are working in the Head Office even though they are interchangeable and inter-transferable. In fact the persons working in the Mills have been transferred to Head Office also and they have also worked in the Head Office and the persons who are working in the Head Office have been also transferred to the Mills and they have also worked in the Mills which is clear from the chart produced at Annexures B and B/1 to SCA 1184 All the petitioners have to report to Chairman-cum-Managing Director of the Corporation through Deputy Manager (Audit) stationed at Head Office and the nature of work performed by the petitioners is not only similar but the same which is performed by the other members of the Audit Department who are working in the Head Office. Not only that a common audit programme is issued every month. The department is completely centralised in the Head Office and since 1975 it is being controlled and supervised by the Head Office itself. The petitioners are recruited through different units of the NTC (Gujarat) Ltd including head office. In spite of these similarities the Corporation was giving higher pay to those persons whose names are on the muster rolls of the Head Office and the petitioners have been given less salary of about Rs.600 per month only because their names are not on the muster rolls of the Head office. Specific averments have been made in paras 4 5 6 and 7 of SCA 1594/88 and particulars have been given and it has been shown how the petitioners have been discriminated though they are similarly situated with those members of the Audit Department who are working in the Head Office. In para 7 of that petition it has been pointed out that the Central Laboratory was created just like centralised Audit Department in the Corporation in June 1975 and all the employees of Central Laboratory were drawn from mill-units but their names were placed on the rolls of the Head office and their service conditions were made absolutely uniform. But the Corporation has in a most arbitrary manner has kept the names of six employees on the muster roll of the Head Office while others were retained in their units only for the purpose of payment of their wages. In view of the aforesaid facts Mr. Sahani learned counsel appearing for the petitioners has vehemently submitted that the action of the Corporation of not giving equal pay for equal work to the petitioners vis-a-vis other members of the Audit Department is clearly arbitrary and therefore the Corporation should be directed to afford complete equality in terms of pay allowances and other service conditions to the petitioners as compared to other members of Audit Department of Head Office without any discrimination and to give arrears of wages and money equivalent of various allowances and benefits with 12% interest from the date of filing of the petition and to award costs of the petition. In support of his submission he relied upon the judgments of the Supreme Court in Bhagwandas vs. State of Haryana AIR 1987 SC 2049 and Daily R.C.Labour P.& T.Deptt. vs. Union of India AIR 1987 SC 2342.

**5** As against that Mr.Kaushal Thakar for Mr.K.S.Nanavati learned counsel for the respondent-Corporation has raised first of all a preliminary objection regarding this Court taking up these matters as according to him the main SCA No. 1184/81 falls within the jurisdiction of the Division Bench as there is a challenge to the vires of section 14 (1) and (2) of the Sick Textile Undertakings (Nationalisation) Act, 1974 and the remaining two petitions have been ordered to be heard alongwith that petition though there is no challenge to the vires of that section. Mr. Thakar has taken me through the proposed amendment to this petition and in para 3A there is a challenge to this in the grounds. But the prayer clause 6 (A) (1) which in amended reads as under: 6 A(1) The petitioners be held to be the employees of the National Textile Corporation (Gujarat) Ltd. and the Respondent be directed to treat them as such in respect of employments allowances and other conditions of service.

Thus there is no prayer made in the relevant clause to declare that section as ultra vires. Apart from this Mr. Sahani learned counsel for the petitioners made it clear that he does not press the vires of that section. Therefore this objection raised by Mr. Thakar does not survive.

**6** Then Mr. Thaker submitted that this Court should not entertain these petitions in view of the order passed by the Supreme Court on 29-9-89 in S.L.P.No.12730/88 (AN) and other allied matters whereby the parties were relegated to the alternative remedy by way of approaching the Tribunal for the National Textile Corporation which was to be constituted by the Union of India under sec. 7(b) of the Industrial Disputes Act 1947 It is true

that the Supreme Court has passed such an order. However it must be stated that the parties to those proceedings had agreed that the dispute between them be referred to the National Industrial Tribunal. That is not the case here. The learned counsel appearing for the petitioners in these petitions have vehemently submitted that the petitioners are deprived of their fundamental rights of equal pay for equal work since years together and when the matters have now fortunately reached final hearing before this Court after so many years it would not be proper on the part of this Court to relegate the petitioners to approach the National Industrial Tribunal. In fact Mr. Sahani learned counsel has pointed out that though the Tribunal was constituted as per the order of the Supreme Court the disputes between the parties have yet not been resolved. That apart he has pointed out that the facts of the present case stand totally on different footing and though a detailed affidavit in reply is filed in SCA 1184/81 and a brief reply affidavit has been filed in SCA 1795/91 the respondent Corporation is unable to make out a case in its favour and to support its action in not extending the benefits of equal pay for equal work to the petitioners. Taking into consideration the peculiar facts and circumstances of the case I am of the view that at this juncture it will not be proper on the part of this Court to direct the petitioners to avail of that alternative remedy after so many years and therefore this objection raised by Mr.Thakar is rejected.

7 Then Mr.Thakar has argued on merits. He has taken me through the reply affidavit filed in the main SCA 1184/81 and tried to defend the action of the Corporation in not paying equal pay for equal work to the petitioners by reading paras 4, 5,7,6 and 7 of the reply affidavit. At this stage I would like to reproduce the averments made in para 5 of the reply affidavit:

6 mere fact that the petitioners are doing similar work would not give any right to the petitioners to be treated as employees or the Corporation thereby extending the rules applicable to the staff in the Head Office of the Corporation I say that the petitioners have no right to be treated in same manner as the Head Office staff in respect of conditions of services

If they are doing similar work then nothing would prevent the petitioners from getting equal pay for equal work vis-a-vis other members of the Audit Department who are working with the Corporation. To deny the same benefit which is extended by the Corporation to the other members of the Audit Department of the Corporation working in the Head Office would be nothing but clearly violative of Article 14 of the Constitution and such an action of the Corporation would never be allowed to be sustained. There is no rationality to discriminate the petitioners on the ground that their names do not appear on the muster roll of the Head Office when there is a common internal audit programme and the allotment of staff to the different textile mills is made by the Corporation itself. It is interesting to note that in para 6 of the affidavit in reply they have stated that: ....The allotment of staff is made on certain rational basis and the petitioners cannot make any grievance out of such rational..... What is that rational basis is not at all explained. In fact it is totally irrational and they cannot claim that the classification between the employees is reasonable inasmuch as the terms and conditions or service under which the petitioners are governed are continued. Mr.Thakar in his attempt to sustain the action of the Corporation of not paying equal pay for equal work to the petitioners which is paid to other members of the Audit Department of the Corporation working in the Head Office has relied upon five judgments of the Supreme Court viz. (1) N.F.C. NFC (Physical Education) Teachers Association vs. Union of India (1988) 3 SCC 91 and vs. Pramod Bhartiya and Ors. JT 1992 (5) SC 683; (3) K. Vasudevan Nair vs. Union of India AIR 1990 SC 2295 (4) F.A.I.C. and C.E.S. vs. Union of India. (1988) 3 SCC 91 and (5) Jaipal and Ors. vs. State of Haryana and Ors. (1988) 3 SCC 354. All these judgments have no application to the facts of this case and therefore I have not dealt with the same in detail. However in nut shell I may state that in the first judgement cited by Mr.Thakar was an admitted position that the responsibility and the nature of work of the employees were totally different. That is not the position in the present case. On the contrary it is an undisputed fact that the petitioners were doing the same work and their responsibility was also the same like the other members of the Audit Department who are working in the Head Office of the Corporation. The second judgement would also not help the respondent because, in absence of the material regarding duty function etc. the Supreme Court did not extend the benefit or equal pay for equal work. In rest of the judgement also the position is the same. In fact the observations made in the last judgement cited by Mr. Thakar are helpful to the petitioners. In Jaipal's case (supra) the Supreme Court held that the doctrine of equal pay for equal work would apply on the promise of similar work and it would not be open to the State to discriminate one class from the other in paying salary. In fact the issue involved in these petitions is clearly

covered by the decision of the Supreme Court in Bhagwan Dass case (supra) which is cited by Mr.Sahani in which it is held that:

Once the nature and functions and the work of two persons are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of equal pay for equal work doctrine. Thus where the supervision is education department who are temporary Govt servants selected from the cluster of a few villages only and the supervisors who are selected by the Subordinate Services Board after competing with candidates from any part of the country and absorbed as regular Govt servants perform similar kind of work the temporary supervisors cannot be discriminated against in regard to pay scales. Whether equal work is put in by a candidate selected by a process whereas candidates from all parts of the country could have competed or whether they are selected by a process where candidates from only a cluster of a few villages could have competed is altogether irrelevant and immaterial for the purposes of the applicability of equal work for equal pay doctrine.

When the duties and functions discharged and work done by the supervisors appointed on a regular basis and those appointed on a temporary basis in the education department are similar the fact that the scheme under which temporary appointments are made is a temporary scheme and the posts are sanctioned on an annual basis having regard to the temporary nature of the scheme cannot be a factor which could be invoked for violating equal pay for equal work doctrine. Whether appointments are for temporary periods and the Schemes are temporary in nature is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of equal pay for equal work is attracted.

**8** Last contention raised by Mr.Thakar that the respondent Corporation is not a State within the meaning of Article 12 of the Constitution and therefore writ would not lie and this Court cannot exercise its powers under Art. 226 of the Constitution is given up by Mr. Thakar in view of the judgement of this Court in First Appeal No. 619 of 1981 delivered on April 18 1983 (Coram: A.P. Ravani J.) which is cited by Mr. Sahani.

**9** In view of the above discussion all these petitions are allowed and the respondent Corporation is directed to afford complete equality in terms of pay revised pay allowances and other service conditions to the petitioners as compared to other members of Audit Department of the Corporation working in its Head Office and to give arrears of wages and money equivalent of various allowances including revised pay and benefits. The same shall be paid on or before 31st December 1994 Rule in each of these petitions is made absolute with costs.