

Analysis of Supreme Court Judgement*

Judgement delivered by the Supreme Court in the case of **State of Punjab and others V/s Jagjit Singh and others in civil appeal no. 213 of 2013** is a landmark judgment in my view.

In the said judgment the issue which arose for consideration was whether temporarily engaged employees (Daily Wage employees, Ad hoc Appointments, Employees appointed on a casual basis, Contractual Employees and the like) are entitled to the pay-scale along with Dearness Allowance (as revised from time to time) of a Permanent employee, who does such work or not, on account of their performing the same duties, which are discharged by those engaged on a regular basis, against a sanctioned post or not.

If one is to analyse the judgement in my mind two issues arises which are as under;

- i) The appointment of Ad hoc and Casual employees or Contractual Employees, who wants to get the benefit of a regular employee, in the entire judgement has relation to one issue namely whether the said employees who are employed to do certain work and for which work in the scheme of things, already there exists some Permanent employees or a sanctioned post which is not filled up or is kept vacant and if the said Permanent employees or sanctioned post has a fixed pay-scale, is eligible to get the benefit of those Permanent Employees Therefore, it is clear that the employees so appointed on an Ad hoc basis has to have a relation with a permanent post which is already in existence, then only the Temporary employees can claim for the benefits accruing to an Permanent Employee.
- ii) The second point is that if such Ad hoc employees are carrying out the duties which are discharged by the Permanent Employees and if the Ad hoc Employees are able to prove that the work carried out by them is one and the same, in that event they are entitled to claim equal pay. This proposition of the judgement leaves enough scope for another bout of litigation on case to case basis in order to establish that the work carried out by a Permanent employee and an Ad hoc employee is one and the same.

The Court while deciding this issue has dwelt in depth to the numerous decision given by the honourable Supreme Court on various occasions on this issue and they

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have analysed and has distinguished cases which pertain to employees engaged on a regular basis who are claiming wages on the principle of “equal pay for equal work” like the present clamour for one Rank one Pension.

The entire matter arose out of the decision of a full bench judgment passed by the honourable Punjab and Haryana High Court. The Punjab and Haryana High Court while coming to its conclusion heavily realised upon the Supreme Court judgement in the case of Secretary, State of Karnataka v/s Umadevi (a constitutional bench decision).

The honourable Supreme Court after exhaustive analysis of all the decided cases laid out the principles of law for equal pay for equal work as under;

Principle involved: ‘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 (Emphasis supplied).

That temporary employees would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post.

The Crux of the Judgment is as under:

- 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.
- The claimant cannot be treated differently merely because they belong to different department when they are discharging functionally identical and equal duties, which are of the same quality and sensitivity. Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales.
- 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’.) 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

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- Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would be of valid classification, and therefore, pay differentiation would be legitimate and 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'
- For placement in a regular pay-scale, the claimant has to be a regular appointee i.e. on the basis of a regular process of recruitment and not on a temporary basis.
- The principle of 'equal pay for equal work', cannot be invoked in case where qualifications for recruitment to the post are different as it denotes that they **are not qualitatively similar or comparable**.
- 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**.
- Where the establishments are in different geographical locations, though owned by the same master. Persons engaged differently, and being paid out of different funds, **would not be entitled** to pay parity.
- 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**.
- 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.
- For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance.
- 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 upgrading inactivity, or on account of lack of promotional avenues.
- 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,

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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.

The above judgement in my view has settled a long standing issue and will definitely put brakes on those employers including the Government, Banks, Financial Institutions who hire people on Ad hoc basis or on temporary basis instead of filling a regular post or as a sanctioned post but goes to appoint people on Ad hoc basis without giving the benefit of a Permanent employee. Even if one has to employ such temporary workers for doing the work of a regular employee in that case the said temporary worker will also be entitled to get equal pay however, he/she will not be entitled to plead a permanency in the job. Therefore, this judgement will make the employer to think twice before hiring a temporary or casual worker to do a job of a permanent worker.

There is a school of thought whether the above rule is applicable to private sector employers also. In my opinion this principle is applicable across the board and does not distinguish between a private sector and public sector provided the parameters laid down by the judgment is proved by a casual or temporary employee. However, in reality the private sector can always change the rules to suit their needs and to their benefit.

As a result of this judgement what I foresee is that in order to circumvent the finding of the judgment the employer especially in the private sector will try to change or alter the job description of the Ad hoc Employee who is hired to do the work which a normal employee is doing. This may result in a bout of litigation and Industrial dispute.

This judgement is in any way is not going to affect the principles of the Contract Labour Regulation and Abolition Act, 1970 per se. It in fact strengthens the provision of the said act which prescribes the payment of minimum wages and other benefits to contract employee. In my view the Unions and scores of Ad hoc Employees who work on casual basis in various institutions should welcome this landmark judgment.

The flipside to this judgement will be since the judgement has carved down certain exceptions as to who all cannot come under this judgement and claim the benefits, may lead to a lot of Industrial Dispute and litigation in order to prove for the contesting part does fall under the said exceptions.

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Of late we have even found that Government departments, Banks and Industries are hiring peons, security guards, drivers, cleaners, etc. on a contract basis whereas they have not abolished such post in their system, before hiring such people on contract basis. Those institutions may face problem of providing them salary and benefits at par as prescribed for the post by those institutions. Once that is granted the next question and problem which these institutions may face is the request for granting permanent employment. The problem may not stop by giving the equal pay for equal work it may lead to a clamour for permanent employment.

To conclude, the judgement has settled a long standing issue and has opened a Can of litigation from employer's side and employee's side.

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