

## HR Law Hotline

November 16, 2016

### EQUAL PAY FOR EQUAL WORK IN INDIA:

#### WAGE DISCRIMINATION BETWEEN PERMANENT AND TEMPORARY EMPLOYEES DISALLOWED

- Temporary employees performing similar duties and functions as discharged by permanent employees entitled to draw wages at par with permanent employees in the government sector.
- Mere difference in nomenclature would not disentitle an employee from being paid the same wages as permanent employees.
- Any act of paying less wages as compared to others similarly situated, constitutes an act of exploitative enslavement.

The constitutional principle of ‘*equal pay for equal work*’ has been upheld by the Supreme Court of India (“SC”) with respect to temporary employees’ *vis-à-vis* permanent employees in the government sector. In ***State of Punjab and Ors. v. Jagjit Singh and ors***<sup>1</sup>, the SC has ruled that temporary employees performing similar duties and functions as discharged by permanent employees are entitled to draw wages at par with similarly placed permanent employees. The principle must be applied in situations where the same work is being performed, irrespective of the class of employees.

#### FACTS:

The instant case arose out of conflicting judgments of the Punjab & Haryana High Court (“P&H High Court”). The P&H High Court has analysed the question as to whether temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like) are entitled to the same wages as that of permanent employees, if they discharge similar duties and responsibilities as that of permanent employees. The P&H High Court, in ***State of Punjab & Ors. v. Rajinder Singh & Ors.***<sup>2</sup>, took the view that temporary employees would not be entitled to the minimum of the pay-scale as was being paid to similarly placed permanent employees. However, the P&H High Court in ***State of Punjab & Ors. v. Rajinder Kumar***<sup>3</sup> took a contrary view and held that temporary employees would be entitled to minimum of the pay-scale, alongwith permissible allowances (as revised from time to time), which were being given to similarly placed permanent employees.

Given the conflicting views, the matter was referred to a full judge bench of the P&H High Court in ***Avtar Singh v.***

***State of Punjab & Ors.***<sup>4</sup>. The full judge bench of the P&H High Court, while adjudicating upon the issue, concluded that temporary employees are not entitled to the minimum of the regular pay-scale, merely on account of the reason that the activities carried out by daily wagers and permanent employees are similar. However, this rule was subjected to two exceptions, wherein temporary employees would be entitled to wages at par with permanent employees:

1. If the temporary employee has been appointed in a regular sanctioned post after undergoing a selection process based on fairness and equality of opportunity to all other eligible candidates
2. If the temporary employee has been appointed in a post which is not a regular sanctioned post, however, their services have been availed continuously, with notional breaks, for a sufficient long period.

The instant case before the SC arises out of a challenge raised against all the three aforementioned judgments.

#### JUDGMENT:

Analyzing in length the principles laid down by various courts, the SC observed that the issue at hand necessitated a bird’s eye view on the underlying ingredients which govern the principle of ‘*equal pay for equal work*’. The principle has been extensively deliberated in a catena of decisions. In order to make the determination, the SC examined (i) the situations where the principle was extended to employees engaged on permanent basis and thereafter (ii) the situations in which the principle was extended/declined to different categories of temporary employees. Accordingly, various principles have been discerned and distinguished by the SC. Analyzing claims by temporary employees under the principle, the SC observed:

1. Not paying the same wages, despite the work being the same, is violative of Article 14<sup>5</sup> of the Constitution of India (“**Constitution**”) and amounts to exploitation in a welfare state committed to a socialist pattern of society<sup>6</sup>.
2. The right of equal wages claimed by temporary employees emerges, *inter alia*, from Article 39<sup>7</sup> of the Constitution<sup>8</sup>.

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3. The claim for equal wages would be sustainable where an employee is required to discharge similar duties and responsibilities as permanent employees and the concerned employee possesses the qualifications prescribed for the particular post.
4. In a claim for equal wages, the duration for which an employee remains or has remained engaged, the manner of selection/appointment etc. would be inconsequential, insofar as the applicability of the principle is concerned.<sup>9</sup>.
5. Based on the principle flowing from Article 38(2)<sup>10</sup> of the Constitution, the Government cannot deny a temporary employee at least the minimum wage being paid to an employee in the corresponding regular cadre, alongwith dearness allowance and additional dearness allowance, as well as all other benefits which are being extended to casual workers.
6. The classification of workers (as unskilled, semi-skilled and skilled), doing the same work, into different categories, for payment of wages at different rates is not tenable. Such an act of the employer would amount to exploitation and shall be arbitrary and discriminatory, and therefore, violative of Articles 14 and 16<sup>11</sup> of the Constitution<sup>12</sup>.
7. If daily-wage employees can establish that they are performing equal work of equal quality, and that all the other relevant factors are fulfilled, a direction by a court to pay such employees equal wages (from the date of filing the writ petition), would be justified<sup>13</sup>.

The SC observed that an employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities and certainly not in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone who is compelled to work at a lesser wage does not do so voluntarily - he/she does so to provide food and shelter to his/her family, at the cost of his/her self-respect and dignity, at the cost of his/her self-worth, and at the cost of his/her integrity. Any act of paying less wages as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. The SC further observed that India being a signatory to the International Covenant on Economic, Social and Cultural Rights, 1966, there is no escape from the obligations thereunder in view of the different provisions of the Constitution. Thus, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee, whether engaged on a permanent or temporary basis.

Accordingly, the SC set aside the decisions rendered by the full judge bench of the P&H High Court in **Avtar Singh v. State of Punjab & Ors.** and the division bench in **State of Punjab & Ors. V. Rajinder Singh** while the decision of the division bench in **State of Punjab & Ors. v. Rajinder Kumar** was upheld, subject to the modification that the concerned employees would be entitled to the minimum of the pay-scale of the category to which they belong but would not be entitled to allowances attached to the posts held by them.

## ANALYSIS

This judgment is indeed a welcome step and provides the right direction in terms of ensuring equality. Non-permanent employees are meant to be used only for business exigencies and not for wage arbitrage. Unfortunately, there continues to be instances of discrimination of such non-permanent staff in India, especially contract labour, which discrimination must be avoided at all costs. Infact, the Contract Labour (Regulation & Abolition) Act, 1970 ("**CLRA**") requires the contractor to ensure that the rates of wages payable to the workmen of the contractor are not less than the rates prescribed under the Minimum Wages Act, 1948. The SC judgment should, in our view, help change the way employers approach such non-permanent staff leading to significant reduction in wage discrimination.

Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees, the most important factor that would require determination is whether the concerned employees are rendering similar duties and responsibilities as are being discharged by permanent employees, holding the same/corresponding posts. This judgment of the SC makes it clear that a mere difference in nomenclature is not sufficient to disentitle a temporary employee from being paid wages at par with permanent employees.

— **Preetha S & Vikram Shroff**

You can direct your queries or comments to the authors

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<sup>1</sup> Decided on October 26, 2016

<sup>2</sup> LPA no. 337 of 2003, decided on 7.1.2009

<sup>3</sup> LPA no. 1024 of 2009, decided on 30.8.2010

<sup>4</sup> CWP no. 14796 of 2003

<sup>5</sup> Article 14 of the Constitution guarantees the right to equality to every citizen of India and embodies the general principles of equality before law and prohibits unreasonable discrimination between persons.

<sup>6</sup> Dhirendra Chamoli v. State of U.P.; (1986) 1 SCC 637

<sup>7</sup> Article 39 deals with certain principles of policies to be followed by the state. It specifically requires the state to strive for securing equal pay for equal work of both men and women.

<sup>8</sup> D.S. Nakara v. Union of India; (1983) 1 SCC 304; Surinder Singh v. Engineer-in-Chief, CPWD; (1986) 1 SCC 639

<sup>9</sup> Bhagwan Dass v. State of Haryana; (1987) 4 SCC 634

<sup>10</sup> Article 38(2) of the Constitution requires the state to strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities amongst individuals.

<sup>11</sup> Article 16 of the Constitution deals with equality of opportunity in matters of public employment.

<sup>12</sup> Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India; (1988) 1 SCC 122

<sup>13</sup> State of Haryana v. Charanjit Singh; (2006) 9 SCC 321; State of Haryana v. Jasmer Singh; (1996) 11 SCC 77; State of Haryana v. Tilak Raj; (2003) 6 SCC 123; Orissa University of Agriculture & Technology v. Manoj K. Mohanty; (2003) 5 SCC 188; Government of W.B. v. Tarun K. Roy; (2004) 1 SCC 347

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