

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 336 of 2022

In R/SPECIAL CIVIL APPLICATION NO. 15708 of 2016

With

**CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 336 of 2022**

With

R/LETTERS PATENT APPEAL NO. 360 of 2022

In

SPECIAL CIVIL APPLICATION NO. 15709 of 2016

With

R/LETTERS PATENT APPEAL NO. 361 of 2022

In

SPECIAL CIVIL APPLICATION NO. 15718 of 2016

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FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes

3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

MANISHKUMAR PRAHLADBHAI PATEL
Versus
STATE OF GUJARAT

Appearance:

MR YATIN OZA with MS SRUSHTI A THULA(5014) for the Appellant(s) No. 1
MR MANAN MEHTA, AGP for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2,3,4,5

CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date :05/05/2023

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

This batch of Letters Patent Appeals preferred under Clause 15 of the Letters Patent, wherein the appellants are original petitioners, is directed against common judgment and order dated 18.2.2022 of learned single Judge dismissing all Special Civil Applications. Thereby the prayer of the petitioners for applying the principle of 'equal pay for equal work' in respect of pay-band for them came to be rejected holding that there was a valid and reasonable classification for the purpose of extending different pay scales based on the educational qualifications.

1.1 Amongst the group of the above petitions in some cases the pay scales were reduced on the ground that higher pay

scales was given by mistake and consequently recovery orders were passed. Learned single Judge set aside the recovery but denied the application of 'equal pay for equal work.'

2. As the factual setting in all the cases are similar, the representative facts are drawn from the record of Letters Patent Appeal No.926 of 2022 relatable to Special Civil Application No.9867 of 2020, which was treated as main by both the sides to make submissions.

3. The following prayers were made in the petition.

“(i) Declare the action of the respondents as arbitrary, discriminatory and contrary to law so far as it relates fixation of pay in relation to secondary school teachers and further be pleased to direct the concerned respondents to pay the same salary to the petitioner as is being paid to other secondary teachers and direct the respondents to pay to the petitioner salary in the pay scale of Rs.9300- 34800 (Grade Pay 4200).

(ii) Set aside the order dated 16.4.2009 by which the petitioner is paid salary in the pay scale of 5200-20200 and thereby direct the respondents to pay to the petitioner salary in the pay scale of 9300-34800 (Grade Pay 4200) with effect from 10.6.2007.

(iii) Declare that the petitioner is entitled to get equal pay / salaries, allowances and benefits at par with the other Secondary Teacher of equivalent grade, employed by the respondents authorities doing similar nature of work retrospectively from the date on which the petitioner has given the status of regular employment.”

3.1 In other words, the prayers in different petitions related to direct the respondents to pay the same salary to the petitioners as paid to other secondary Teachers. The Office Order and the Notification dated 16.4.2009 whereby the petitioners were paid salary in the pay scale of Rs.5200-20200 with grade pay of Rs.2800/- instead of in the pay scale of Rs.9300-34800 with grade pay of Rs.4200 was prayed to be set aside. The petitioners who are the Drawing Teachers thus wanted themselves to be treated at par with other secondary teachers by applying the principle of 'equal pay for equal work'.

3.2 The petitioners hold Diploma of five years in Applied Arts, Arts Teacher Diploma and course of Computer Concepts. The petitioners applied pursuant to the advertisement dated 7.3.1999 published in the newspaper whereby the applications for the posts were invited. The qualifications for the post for Teacher in Drawing or Arts were SSC and Art Teachers Diploma (Drawing). By order dated 10.6.2002, the petitioner of Special Civil Application No.9867 of 2021 was appointed. All the petitioners were accordingly appointed. Initially they were on probation for five years and were paid fixed salary of Rs.4,000/-. At the end of five years they were made permanent in the pay scale of Rs.4500-125-7000 with the basic salary which is Rs.4000/-. Thereafter pursuant to the Gujarat Civil Services (Revision of Pay) Rules, 2009, the pay band of the petitioner was fixed at Rs.8560/- with effect from 9.6.2007 in the pay scale of Rs.5200-20200 with grade pay of Rs.2800/-.

3.2.1 The grievance raised by all the petitioners in their respective petitions was that though they were in the secondary

section imparting education in Drawing subject, they were not paid the same salary as was paid to other secondary school teachers teaching other subjects. It was the contention that the subject of drawing or arts was a subject recognized in the secondary school teaching, in the same way as other subjects like Mathematics, Science, English etc. were recognized. They pleaded that though they had been working for equal number of hours, they were paid salary in the lower pay scale.

3.2.2 The petitioners contended that as per the appendix to Notification dated 16.4.2009 issued by the State Education Department, the Teachers who possessed degree of B.A in Fine Arts, are accorded higher pay scale of Rs.9300-34800 with grade pay, whereas those Teachers holding qualification of SSC and Art Teachers Diploma (Drawing) were kept in lower pay scale of Rs.5200-20200. It was submitted that the Fine Art Teachers were paid salary in higher pay scale, whereas the petitioners were deprived of the same. The petitioners further contended that the Kendriya Vidyalaya and Navodaya Vidyalaya Teachers are also given the scale of Rs.9300-34800. It was stated that one similarly situated teacher made representation dated 4.7.2016, but nothing yielded.

3.2 The crux of the case and the gist of the grievance is that the other secondary teachers are given higher pay scale of Rs.9300-34800 with grade pay of Rs.4200, whereas the petitioners are kept in the pay scale of Rs.5200-20200 with grade pay of Rs.2800/- and that it amounted to discrimination, also violated the principle of 'equal pay for equal work'.

3.3 Affidavit-in-reply was filed in the lead petition in which it was submitted inter alia that the claim of the petitioner was unsupported by any material. It was contended that the petition was barred by delay and laches. The petitioner was appointed, it was contended, in the year 2002 and has been getting the same pay scale as fixed on the basis of the educational qualification possessed by him. It was further contended that doctrine of 'equal pay for equal work' could not be pressed into service since the petitioner could be classified in different category for applying pay band amongst the secondary teachers on the basis of the educational qualification. It was submitted that the petitioner got the qualification of Diploma in Drawing whereas the other secondary teachers possessed the degree qualification.

3.3.1 In the affidavit-in-reply, it was stated by the respondent that the case of the petitioners to seek to equate themselves with Fine Arts teachers was also misconceived. It was stated that the Fine Arts teachers had different qualifications. They are Arts teachers with B.A. (Fine Arts) Degree. It was contended that similarly other secondary teachers from different discipline were the degree holders in their respective subjects.

3.3.2 It was contended that Government Resolution dated 16.4.2009 in its schedule indicated different educational qualifications for various subjects and the difference in pay was accordingly prescribed. It was contended that the pay-scales for the secondary teachers are prevalent since 1973. It was contended that the petitioner upon the expiry of the probation

period was confirmed in the pay-scale of 4500-7000 which he accepted throughout. It was thus contended that the differentiation in pay scale of secondary teachers was based upon educational qualification. About the comparison sought to be made by the petitioners with the Teachers in the Kendriya or Navodaya Vidyalaya, it was contended that such comparison was misconceived as the Kendriya and Navodaya teachers are governed by Central Civil Services Rules.

3.4 Learned Single Judge elaborately discussed and delved into principles relating to equal pay for equal work, by referring to and relying on the decisions in **State of U.P and others vs. J.P. Chaurasia and Others[(1989) 1 SCC 121]**, in **Government of W.B. vs. Tarun K. Roy [(2004) 1 SCC 347]**, in **S.C. Chandra and Others vs. State of Jharkhand [(2007) 8 SCC 279]**, in **Steel Authority of India and Others vs. Dibyendu Bhattacharya [(2011) 11 SCC 122]**, in **State of Punjab and others vs. Jagjit Singh [(2017) 1 SCC 148]** and other decisions to conclude that in the facts of the case, the petitioners were not entitled to seek the benefit of equal pay for equal work vis-a-vis the other secondary teachers, in different subjects who had the qualification of the degree whereas the petitioners were Diploma holders teaching the subject of drawing. The petitions seeking the benefit of equal pay for equal work were dismissed.

3.4.1 The other batch of petitions, as stated above, were by the Drawing teachers against whom the orders of reduction of pay from Rs. 5000-8000/- to Rs.4500-7000/- were passed. According to these petitioners the pre-revised pay-scale granted

to them as Rs. 5000-8000/- ought to have been translated into 6th pay in the scale of Rs.9300-34800/-, Grade Pay Rs. 4200/-, however their pay-scale was reduced. In other words, these petitioners also wanted their pay-scale to be at par with other secondary teachers in the pay band of Rs.9300-34800. The orders reducing the pay-scale were challenged. Their claim of pay-scale of Rs.9300-34800/- with grade pay was not believed and therefore, they were also declined to be extended 'equal pay for equal work' principle. Thus, the petitions were dismissed in which the core issue was also entitlement of higher pay-scale on the footing of equal pay for equal work.

3.4.2 Learned Single Judge held, extracting from paragraph 5.1 of the order,

"What is evident from the various appointment orders that have been produced along with the petition is that the petitioners came to be appointed in the year 2002 on probation basis and were confirmed in the year 2007. It is not for the first time in the year 2002 or at the time of their confirmation, that there was a valid differentiation of scales of the petitioners, art teachers who are holding ATD and teachers of other secondary sections. As is evident from the notifications produced in the respondent government's affidavit-in-reply, the initial pay-scale of those who were appointed as art teachers with a qualification of a degree had their pay-scale fixed in Rs.440-750 which was subsequently revised to Rs.1400-2600 whereas in the case of incumbents who are lower qualified, having qualification less than a degree had their pay-scales fixed at Rs.440-640 which was revised to Rs.1400-2300 and then the subsequent revisions in their pay-scales respectively for the purposes of graduates was from Rs.1400-2600 to Rs.5000-8000 and those with a diploma had their pay-scales fixed at Rs.4500-7000. It, therefore, clearly indicates that it is not a case when a sudden disparity and pay-

scales appeared post the petitioners appointment."

3.4.3 The conspicuous aspect was noticed that the case of the petitioners was not one of creation of sudden disparity in the pay-scale, which may have occurred post appointment. The classification for pay-scale based on the different qualification existed from the year 1973, it was observed further in the same paragraph,

"The classification of pay-scales based on qualification existed right from 1973 and was reflected in consequential and subsequent pay revisions. From the notification dated 14.08.1978 produced alongwith the reply, what is also evident is that this inter-se differentiation in pay-scales not only existed amongst the art teachers holding degree or diploma but also was the case in the other faculties, such as Music teachers, P.T teachers etc. For instance, in the case of teachers of music, those who had a degree of Visharad were given a higher pay-scale of Rs.440-750 which was then revised to Rs.1400-2600 whereas those who did not have a Visharad but had a lower qualification in Music were given Rs.440-640 revised to Rs.1400-2300 and corresponding revision of 6th pay inasmuch as the pay-scales of the certificate holders was Rs.5000-8000 and revised to Rs.9300-34800 but those with a lower qualification than a degree qualification were placed in the scale of Rs. 5200-20200, which the petitioners at present are drawing."

3.4.4 It was noted by learned Single Judge that the petitioners were appointed in the year 2002 and came to be regularised in service in 2007. The petitions were filed in the year 2020 and 2022. Learned Single Judge also observed that in order to claim the benefit of equal pay for equal work, incumbent has to bring evidence or proof to show that there was similarity in the nature of work, quantum of work, quality of

work, nature of duties and similarity in qualification.

3.4.5 The view taken by the learned Single Judge that the onus to prove all those aspects would lie on the person seeking the application of principle of equal pay for equal work, was the correct approach in view of the proposition of law in this regard laid down by the Supreme Court in **Orissa University of Agriculture & Technology and Anr. Vs. Manoj K. Mohanty, JT [(2003) 4 SC 104]** and other decisions in which it was held that the onus to prove about parity in duties and responsibilities attached to the post while pleading 'equal pay for equal work' lies on the person who claims it. It was held by learned Single Judge that nothing was shown about parity of work, quality of work, quantum of work and nature of duties to be similar.

3.4.6 It was stated in paragraph 5.4,

"Parity is sought viz-a-viz graduates in the respective disciplines of Science, Maths etc to suggest that they must be given the pay-scale that has been given to teachers teaching Science, Maths or other subjects inasmuch as arts or drawing is also a subject and based on such artificial classification, the petitioners cannot be entitled to pay-scale as is given to graduate teachers in other subjects. What is evident from the contents of the affidavit-in-reply is that the classification of pay of a secondary teacher based on the subject is largely based upon qualifications. Two different types of pay-scales were prescribed for art teachers holding diploma and/or a degree."

3.4.7 It was further observed that diploma holder and degree holder could not be compared and that there could not be a competition between them to secure equal treatment,

"A teacher holding a diploma in Arts and Drawing would not be able to compete shoulder to shoulder with a degree holder in language or Science. What is also made out is that the work load of teachers holding a diploma in arts as compared to other subject teachers holding a graduation degree is different. A table of the allotment of work annexed to the affidavit-in-reply would suggest that as far as a diploma holder in art subject and teacher of drawing is concerned, an incumbent has to take at the most two to three classes a week which is not the case in context of subject teachers whose workload is far more higher than that of an art teacher. These aspects would indicate that the classification of pay between an art teacher and other secondary teacher is reasonable and based upon intelligible differentia. The classification is done while taking into consideration the qualifications to be taken into consideration at the time of recruitment and the content of work."

4. Learned senior advocate Mr. Yatin Oza assisted by learned advocate Ms. Shruti Thula for the appellants and learned Assistant Government Pleader Mr. Manan Mehta for the respondent State in all the appeals reiterated the same contentions, which were canvassed before the learned Single Judge.

4.1 What was harped by learned senior advocate for the appellants was that the appellants-petitioners and other secondary teachers were selected without any difference in the selection process or the eligibility criteria. It was submitted that Fine Arts could not be said to be different subject than other subjects. It was submitted that though the salary is paid to the present petitioners, in the new advertisement for new recruitment of teachers in which several posts of Drawing

Teachers are vacant, the salary declared is in the pay-scale of Rs. 9300-34800 even with qualification of Diploma in Drawing. Learned senior advocate also submitted that the teachers serving in Navodaya Vidhyalaya are getting higher pay-scale as also the P.T. Teachers.

4.1.1 On the basis of all these submissions, learned senior advocate thereafter elaborated the grounds raised in the memorandum of the Letters Patent Appeal to contend that the secondary teachers teaching in other disciplines or subjects and the petitioners, on the other hand could not be divided into two classes to differentiate them in the matter of granting pay-scale and that the petitioners are entitled to draw the same salary along with other secondary teachers on the footing of principle of equal pay for equal work. Learned senior advocate heavily relied on two decisions of the Supreme Court in **State of Punjab vs. Senior Vocational Staff Members Association[(2017) 9 SCC 379]**.

4.2 Learned Assistant Government Pleader raised the following succinct submissions to support the judgment and order of learned single Judge.

(a) The petitioners are seeking equal treatment in the matter of the pay scale and seeking equality with secondary teachers. While the petitioners and other similarly situated persons are the Art Teachers, appointed on the qualification of the diploma holder and not the degree holder. While seeking such benefit, the petitioners have overworked the aspects of not possessing of equivalent education qualification to a secondary teacher who

are degree holders and bachelors, as prescribed under Regulation 20 (3) of Gujarat Secondary Education Regulation, 1974.

(b) The principle and doctrine of equal pay for equal work could not be applicable in the case on hand because the same principle would only be applicable in cases of two identical classes of employment. While on case on hand, there cannot be any similarity of the Diploma Holder and Degree Holder. It is well settled legal position that the pay fixation can always be made subject to the reasonable classification, which could be experience, educational qualification, nature of work, responsibilities. If there are two separate classes, the doctrine of disparity cannot be pressed into service.

(c) The educational qualification of secondary teachers are prescribed in regulation 20 of the Gujarat Secondary And Higher Secondary Education Regulation, 1974 and as prescribed therein, the case of the present petitioners cannot be considered simply because they are diploma holder and the secondary teachers are Trained Graduates in respective discipline, in which they impart education like science teacher, mathematics teacher.

(d) The educational qualification of a teacher would have much bearing upon the original fixation and subsequent revision. The petitioners being SSC+ATD are not the only class, who are getting the pay scale which cannot be compared to a secondary teacher, who is a Trained Graduated degree holder.

(e) The same pay scale and different classification, which are the present petitioners getting, are also applied to Music teachers, PT Teachers and few other language teachers, who are not Trained Graduate/Degree holders.

(f) The comparison pressed into service by the petitioners of the pay scale of teachers of Kendriya Vidyalay and Navoday Vidyalay, is misplaced as the same are governed by Central Civil Service Rules and as held by the Hon'ble Supreme Court in 2008 10 SCC page 1, a comparison between subject post and reference post, under the principle of equal pay for equal work, cannot be made, where the subject post and the reference post are different in establishments, having a different management.

(g) The pay scales payable to teachers teaching at Diploma Centres and fine Arts Colleges cannot be equated with the Teachers Of Secondary School/Diploma Holders. The level, standard of education of both cannot be equated with.

4.2.1 Learned Assistant Government Pleader took the Court through the decisions of the Supreme Court in **Jagjit Singh (supra), Tarun K. Roy (supra), Dibyendu Bhattacharya (supra)**, which were also referred to by the learned Single Judge to submit that the classification of the petitioners and other secondary teachers on the basis of different educational qualification was reasonable classification and it was permissible for the State to extend different pay-scales. It was submitted that the petitioners who are Diploma holders and other secondary teachers in different subjects holding degree could not be compared and the distinction is

based on intelligible differentia. Learned Assistant Government Pleader defended the Resolution dated 16.04.2009 of the Government to further highlight that the pay-scales of class of secondary teachers has been prevailing since 1973.

5. Having considered the facts and rival submissions, it is to be observed at the outset that the ground raised by the respondents that the petitions suffer from vice of delay, could not be brushed aside. The petitioners were appointed in the year 2002 on the basis of their qualification of S.S.C. and Diploma in Arts. As per the conditions of appointment, their services came to be regualrised upon satisfactory passage of five years. In the year 2007, petitioners were placed in the scale for which they have been not raising grievance. There is no gainsaying that since 2002, and even after 2007, no grievance was raised by the petitioners seeking parity in pay with other secondary teachers-degree holders. It was rightly contended by respondent, that when in Special Civil Application No.15701 of 2016 to 15721 of 2016, interim order was passed, the petitioners jumped into the fray, therefore, could be termed as fence-sitter. Notably, the said group of petitions came to be dealt with in the very impugned judgment and order, and are dismissed by learned Single Judge. Entire edifice of the case of the petitioners was grounded as without substance. The petitions would have been dismissed on the ground of delay, laches and acquiescence alone on the part of the petitioners.

5.1 The moot question is whether the difference in the educational qualifications amongst the Secondary Teahcers would form a valid basis for classifying them differently for the purpose of giving them different pay-scale. While learned Single

Judge has highlighted the principles in that regard taken from judicial pronouncements, surveying other and further judgments in addition, would be useful.

5.2 It is trite that in order to make the classification to be reasonable and valid classification in terms of Article 14, it must be backed by intelligible differentia and a rational distinguishing aspect. In **P. Narasinga Rao [AIR 1968 SC 349]**, it was observed that,

“It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. (para 16)

5.3 Law is categorically settled that the classification based on educational qualification is a reasonable and acceptable classification, when the different pay-scales are prescribed on the basis of such classification, it can be said to have rational nexus with the objects as sought to be achieved.

5.4 In **Tarun K. Roy (supra)**, the facts were that the Irrigation Department of the West Bengal there existed the post

of Operators cum Mechanics and Sub-Assistant Engineer. The sub-assistant engineer were directly recruited whereas for the purpose of appointment to the post of Operators cum Mechanics, there was no such procedure envisaged. The minimum qualification required for Operators-cum-Mechanics was pass in school final examination and certificate from ITI, whereas for sub-assistant engineer, in addition to the passing in the school final examination, a Diploma from Polytechnic was necessary. In the West Bengal Services (Revision of Pay and Allowances) Rules, the pay scale for the post of Operators cum Mechanics were prescribed to be Rs.230-425 with effect from 1.4.1970, while the pay scale for the post of sub-assistant engineer was prescribed at Rs.300-600 with a higher initial start with effect from the same date.

5.4.1 The Supreme Court examined the concept of parity in employment and application of principles on 'equal pay for equal work'. It was held that source and applicability of doctrine that 'equal pay for equal work' envisages with Article 39(d) read with Article 14 of the Constitution is not automatically applicable merely on the basis of identical of work irrespective of educational qualification and other relevant considerations.

5.4.2 It was held that the holders of higher educational qualifications can be treated as separate class and can be treated deferentially. The following was observed,

“Article 14 read with Article 39 (d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only

*because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. **The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently.***

(para 14)

(emphasis supplied)

5.5 In **State of Jammu & Kashmir Vs. Triloki Nath Khosa, [AIR (1974) SC 1]**, it was propounded that, '*Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification.*' (para 35) Similarly also in **State of West Bengal Vs. Debdas Kumar and Other, [1991 Supp. (1) SCC 138]**, referred in **Tarun K. Roy (supra)**, it was observed that giving lower time scale to operators cum mechanics against Sub-Assistant Engineer, who are accorded higher scale was not a result of anomaly and it was not denial for 'equal pay for equal work'. Negating such contention, it was reiterated that, 'It is well settled that difference in pay of employees belonging to the same cadre post or educational qualification is constitutionally valid and permissible and is not violative of Articles 14 and 16 of the Constitution.'

5.6 In **M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and Another [(2004) 4 SCC 646]**, the applicability of doctrine was considered by the Apex

Court in context of two different pay scales provided in the same cadre of Rural Agriculture Extension Officers Association. The different pay scales were given to the Rural Agriculture Extension Officers by classifying them on the basis of educational qualification namely graduates and non-graduates. The submission was advanced that different pay scales to the employees belonging to the same cadre was not permissible,

“...Learned Senior Counsel appearing on behalf of the appellant, would submit that the Tribunal as also the High Court went wrong in passing the impugned judgments and orders insofar as they failed to take into consideration that as by reason of the impugned rule no new post or cadre was created, sanction of different pay scale to the employees belonging to the same cadre was impermissible. The purported classification between the two sets of employees whose posts are interchangeable and who are carrying out the same work and have undergone the same training could not have been placed in two different classes only on the basis of educational qualification, the learned Counsel submitted.” (para 6)

5.6.1 It was emphasized,

“Educational qualification, ... can be a valid criteria only where new cadre is created and where no minimum qualification was fixed at the time of initial appointment, but in a situation where the employees irrespective of their qualification had been performing the same functions in the same grade, the doctrine of equal pay for equal work would be applicable.” (para 6)

5.6.2 The Supreme Court held that the classification which was based on the educational qualification, was reasonable and valid. It was held that recommendations of the Pay Commission were not binding to the State and cannot be enforced by issuing writ of mandamus. The classification based on the educational qualification is held to be reasonable and valid classification.

5.7 In **State of Madhya Pradesh Vs. Rameshchandra Bajpayee [(2009) 13 SCC 635]**, the respondent who was physical training instructor in Government Ayurvedic College had been claiming the UGC pay scale. The court held that it was well settled that the doctrine for 'equal pay for equal work' could only be invoked when the employees were similarly circumstanced in every way. Mere similarity of designation or similarity in quantum of work was not determinative of equality in the matter of pay scales, the court has to consider the host of the relevant factors. After extensive survey of the decisions on the applicability of 'equal pay for equal work' the criteria for classification becoming reasonable for the purpose of extending the equal pay, the Supreme Court in **State of Punjab Vs. Jagjit Singh [(2017)1 SCC 148]**, summarized the principles.

5.8 In **Union of India, through Secretary, Department Of Personnel, Public Grievances & Pension & Anr. [(2015) 3 SCC 653]**, the Supreme Court highlighted that classification of posts and determination of pay structure exclusively falls within the domain of Executive. The Courts and Tribunal, it was stated, cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in particular service. The doctrine of equal pay for equal work was viewed

not to be an abstract doctrine to be capable of being enforced in Court of law. **In the State of Punjab and Others Vs. Charanjit Singh [(2006) 9 SCC 321]**, the Supreme Court observed that the principle of equal pay for equal work has no mechanical application. If the educational qualification are different, then also the doctrine may have no application. It was stated that even though the persons may be in the same work, their quality of work may differ. It was reiterated that classification based on different in educational qualifications justify difference in pay-scales.

5.9 In **State of Madhya Pradesh Vs. Seema Sharma [(2022) SCC OnLine SC 809]**, the Supreme Court allowed the appeal of the State and refuse to extend the equal pay for equal work principle. In that case, pertinently, the eligibility criteria for appointment of Museum Assistant cum Librarian under the 1987 Rules, were different from the eligibility criteria from appointment of Librarian under the 1990 Rules. Under the 1987 Rules, the minimum qualification for the post of Museum Assistant cum Librarian was graduate but under the 1990 Rules, the minimum qualification was post graduate degree. The Supreme Court also observed that there can be no equality to a wrong or illegality. It was stated that just because a Librarian may have been erroneously granted the UGC pay scale, that would not entitle the others to claim the UGC pay scale.

6. The decision in **Senior Vocational Staff Members Association (supra)**, stands valid for the principles laid down on its own facts and the context. In that case both degree

holders and diploma holders were appointed as Vocational Masters pursuant to common selection process. They were treated as same classes and were doing the same work. Subsequently, the authorities made artificial distinction by re-designating degree holders and post graduates as Vocational Lecturers despite there being no change in responsibilities and financial matters between the degree holders and diploma holders. There was no distinction between Vocational Lectures and Vocational Masters as they formed unified cadre and class. It was held that there was no rational behind making classification between the two, more particularly when these two categories were treated as one in past since 1978. It was in above background of facts that it was held that the Vocational Masters were entitled to pay-scale of Vocational Lecturers. The facts of the present case are entirely different, to which the above decision could hardly be applied.

7. In recent decision of the Apex Court in **Union of India and Others Vs. Rajib Khan and Others [2023 SCC OnLine SC 28]**, the respondents- Nursing Assistants working in various hospitals under the establishment of Border Security Force were getting Hospital Patient Care Allowance. The original petitioners claimed allowance at par with nursing staff which was opposed by the appellants contending that they were paid the special allowance. The question was the original writ petitioners who were the nursing Assistants were entitled to nursing allowance at par with Staff Nurses. The qualification of staff nurses was four years course and sofar as the Nursing Assistants were concerned, they had completed one year course, which was the requirement for the post of Nursing Assistants. The extension of

benefit of Nursing Allowance to the Nursing Assistants was opposed on the ground that the educational qualification of both were different. The Guwahati High Court took the view that educational qualification cannot be a ground for denying the Nursing Allowance at par with the Staff Nurse who can also be said to be an integral part of the nursing service in general.

7.1 The Apex Court disapproved the view and it was observed,

*“The view taken by the High Court is just contrary to the decisions of this Court in the case of **Punjab State Cooperative Milk Producers Federation Limited [(2021) 8 SCC 784] (supra)**, **Pramod Kumar Sahoo [(2019) 10 SCC 674](supra)** and **T.V.L.N. Mallikarjuna Rao (supra)**. In the case of **T.V.L.N. Mallikarjuna Rao [(2015) 3 SCC 653] (supra)** it is observed by this Court that the classification of posts and determination of pay structure comes within the exclusive domain of the Executive and the Tribunal cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service. In the case before this Court, this Court upheld the different pay scales/pay structure based on different educational qualifications. It is observed and held that considering the educational qualifications prescribed for appointment to the post of Data Entry Operators, Grade B and the order assigning duties, the classification of Data Entry Operators in different grades, does not violate any right of equality guaranteed by Articles 14 and 16 of the Constitution nor does it violate the constitutional protection against hostile or arbitrary discrimination. In the case of **Punjab State Cooperative Milk Producers Federation Limited (supra)**, it is observed and held by this Court that different educational qualification and experience prescribed for appointment can be a ground to have different pay scales/pay structures.”*

7.1.1 The aspect of academic qualification was also highlighted,

*“In the case of **Pramod Kumar Sahoo (supra)** it is observed and held that nature of work may be more or less the same but the scale of pay may vary based on academic qualification or experience which justifies classification. It is further held and observed that inequality of men in different groups excludes applicability of the principle of ‘equal pay for equal work’ to them. In the case before this Court, this Court upheld the classification based upon the higher educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification.”*

7.1.2 It was finally held,

“Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand the view taken by the High Court that the educational qualification cannot be a ground for denial of Nursing Allowance to the Nursing Assistants is unsustainable. In the present case the respective Nursing Assistants are being paid ‘Hospital Patient Care Allowance’. The Nursing Assistants in the BSF neither have relevant experience for appointment as Staff Nurse nor they possess any educational qualification for appointment as Staff Nurse. Therefore, the case of Nursing Assistants cannot be compared with that of the Staff Nurses as both carry different educational qualification. Under the circumstances, the High Court has committed a serious error in holding and directing that the Nursing Assistants serving in the Assam Rifles/BSF are entitled to Nursing Allowance at par with the Staff Nurses.” (para 5)

8. Turning back to the facts of the present case, the petitioners who are secondary teachers, teaching the subject of drawing and holding diploma in drawing, want themselves to be

grouped with the other secondary teachers teaching the subjects of math, science, english, etc., who are the degree holder in their respective discipline, for instance the secondary teacher in science subject holds the degree of Bachelors in science stream, as prescribed. By virtue of different qualifications of Diploma and Degree, the secondary teachers became divisible in two class of such intelligible differentia of different qualifications. The different pay-scales are applied since 1973.

8.1 Educational qualifications of the secondary teachers are prescribed in the statutory Regulations in particular, Regulation 20 of the Gujarat Secondary and Higher Secondary Educational Regulations, 1974. The secondary teachers other than the petitioners in their respective subjects are trained graduates and degree holders. They are extended the pay-scale of Rs. 9300-34800 with grade pay of Rs. 4200, whereas the petitioners' pay scale is fixed at Rs. 5200-20200/- with the grade pay of Rs. 2800. It will not be open for the petitioners to compare themselves with other trained graduate degree holder secondary teachers to seek parity in the pay-scales.

8.2 The case put forth by the petitioners on the basis of the secondary teachers in Kendriya Vidhyalayas or Navodaya Vidhyalayas is misplaced inasmuch as the Central Civil Services Rules apply to those teachers. Therefore, the class of Kendriya Vidhyalaya teachers and the petitioners are governed under different Rules. The Supreme Court in **Official Liquidator Vs. Dayananad & Ors [(2008) 10 SCC 1]**, has observed that 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 different management. In the similar way, petitioners could not have compared themselves to seek the higher pay-scale with Art teachers who are also degree holders. They are Arts Teacher possessing degree with B.A. (Fine Arts) constituting class on the basis of rational consideration of difference in educational qualifications to justify the grant of different pay-scales.

9. The reasons supplied by learned Single Judge in dismissing the petitions to deny the petitioners the benefit to equal pay for equal work could be said to be eminently legal. On the basis of those reasons as well as the discussions supplied herein, highlighting the position of law with regard to the doctrine of equal pay for equal work, the challenge to the learned Single Judge's common judgment and order stands meritless.

9.1 In some cases, the authorities proceeded to recover the amount pursuant to lowering of the pay-scale effected for the petitioners concerned. In this regard, in paragraph 16 of the impugned judgment, it was stated thus and orders of recovery were set aside,

"As far as the orders of reduction having consequentially caused financial recovery from the petitioners' pay is concerned, it is well established position of law especially in the case of State of Punjab & Ors. vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, that if the pay-scale is recovered on the ground that there is no misconduct based on which the incumbents were granted higher pay-scale and that the recovery would cause undue hardship to the petitioners especially when in some cases they were about to retire and that such recovery causes financial stress, the orders of recovery need to be set aside."

10. The above direction and order setting aside the recovery is eminently just and proper and the decision of the Supreme Court in **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) [(2015) 4 SCC 334]** has been rightly relied on by the learned Single Judge.

11. Resultantly, the common judgment and order of the learned Single Judge dated 18.02.2022 does not book any error whatsoever, requiring no interference. All the Letters Patent Appeals are hereby dismissed.

In view of disposal of the Appeals, the Civil Applications will not survive. They are accordingly disposed of.

(N.V.ANJARIA, J)

(NIRAL R. MEHTA, J)

FURTHER ORDER

At this stage, learned advocate Ms. Shrushti Thula for the appellants requested that since the interim stay was granted initially in some of the Special Civil Applications, and as the same was also extended by learned single Judge, the stay may be continued for four months in order to enable the appellants-petitioners to approach the higher forum. She submitted that longer time of four months is prayed for in view of intervening summer vacation.

The above request was opposed by learned Assistant Government Pleader Mr. Manan Mehta.

In the facts and circumstances of the case, when the relief was earlier granted and has operated throughout, the court is inclined to consider the request of the appellants. Therefore, it is directed that in whichever Special Civil Applications, stay was granted and has remained in operation, the same shall continue to operate till 17.8.2023.

(N.V.ANJARIA, J)

(NIRAL R. MEHTA, J)

Manshi