(2011) 11 P&H CK 0215

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 14796 of 2003

Avtar Singh		APPELLANT
	Vs	
State of Punjab and others		RESPONDENT

Date of Decision: Nov. 11, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 142, 16, 226, 309

Hon'ble Judges: Surya Kant, J; Jaswant Singh, J; Hemant Gupta, J

Bench: Full Bench

Judgement

Hemant Gupta, J.

CWP No.14796 of 2003 has been placed before this Bench in terms of the order passed by the learned Single Judge of this Court for consideration of issue of "equal pay for equal work" in respect of daily wage employees of the State Government by the Larger Bench in view of the contrary opinion expressed by two Division Benches of this Court. CWP No.8903 of 2010 and 22092 of 2010 have been ordered to be listed along with CWP No.14796 of 2003. However, for facility of reference, the facts are taken from CWP No.14796 of 2003.

2. The issue is whether a work-charge/ daily wage employee, is entitled to minimum basic pay and/or Dearness Allowance in regular pay scale in view of the assertion of the writ petitioners that they are doing the same work as is performed by a incumbent holding regular sanctioned post. Therefore, the action of discrimination in the matter of payment of pay is not sustainable on the touch stone of Article 14 of the Constitution of India.

3. One Division Bench of this Court in LPA No.337 of 2003 titled "State of Punjab and others v. Rajinder Singh and others" decided on 07.01.2009 has set aside the judgment of the learned Single Judge in CWP No.1536 of 1988 titled "Rajinder Singh and others v. State of Punjab and others" decided on 05.02.2003. The learned single Judge has directed the State to pay to the writ petitioner''s minimum of the pay scale

as revised from time to time with permissible allowances which are being given to the similarly placed regular employees for the last three years prior to the date of filing of the writ petition relying upon the Hon''ble Supreme Court judgment in State of Haryana and others Vs. Piara Singh and others etc. etc., and on the basis of order passed in Civil Appeal No.4492 of 1997 titled "State of Punjab v. Devinder Singh" decided on 21.07.1997.

4. Another Division Bench in LPA No.1024 of 2009 titled "State of Punjab and others v. Rajinder Kumar" and other 22 connected cases in its order dated 30.08.2010 allowed CWP No.14050 of 1999, which was dismissed by the learned Single Judge on 20.11.2002. The Bench held that the writ petitioners are entitled to minimum of the pay scale of the categories to which they belong with all allowances as revised from time to time but with a rider that the benefit shall be confined to three years preceding the filing of the respective writ petitions. The earlier LPA judgment in Rajinder Singh''s case (supra) was not noticed by the later Division Bench. It was on the basis of said conflict in the two Division Benches of this Court, the matter was referred by the learned Single Judge on 11.05.2011 for decision by the larger Bench.

5. In the present writ petition, the petitioner was engaged as Pump Operator on work charge basis on 07.11.1996. The grievance of the petitioner is that he has worked for more than six years but is being paid Rs.3731/-for a month of 31 days, whereas similarly situated Pump Operators, who are doing same work are being paid basic pay of Rs.3420/-plus Dearness Allowances in the admissible pay scale. It is also pleaded that some of the similarly situated employees have filed writ petition bearing CWP No.7533 of 1995, which was allowed vide order dated 18.03.1998 (Annexure P-1). LPA No.292 of 1998 was dismissed on 15.07.1998 (Annexure P-2) against the said order. It is pointed out that State is in Special Leave Petition, but no stay has been granted.

6. It was pleaded in the written statement that no daily wage employee working in the Department has been granted minimum of regular pay scale and allowances except those who have been granted such relief by a Court. Reference was made to the number of appeals including LPA No.337 of 2003 which was stated to be pending. The said appeal has since been allowed as mentioned above on 07.01.2009 i.e. in Rajinder Singh''s case (supra). LPA No 466 of 2009 and LPA No. 910 of 2009 were stated to be pending, but the said appeals have since been dismissed in Rajinder Kumar''s case (Supra).

7. It is averred in the written statement that the petitioner was engaged as daily wage worker on on-going works and was not engaged against any existing sanctioned post. The petitioner was neither engaged by following laid down procedure of inviting applications through publication of advertisements in newspapers nor through the Employment Exchange giving equal opportunity to all. The petitioner has not undergone any selection procedure. It is also pleaded that the petitioner is getting wages more than those approved by a Deputy

Commissioner for daily wagers. He is getting wages as per Schedule of Rates plus premium prescribed for the purpose.

8. The present writ petition was earlier allowed on 08.07.2004 on the basis of the orders passed by this court and relied upon by the Petitioner as Annexure P-1 and P-2. However, Civil Appeal No.310 of 2008 titled "State of Punjab v. Avtar Singh" was accepted by the Hon''ble Supreme Court on 10.01.2008 and the matter was remanded to this Court for decision afresh by passing the following order:

Leave granted. It has been stated that in State of Punjab and others v. Lakhwinder Singh and others Civil Appeal No.7995 of 2002, the matter has been remanded to the High Court for a fresh decision. In our view, the appellants are entitled to the same order. Accordingly, the Civil Appeal is allowed, impugned judgment rendered by the High Court is set aside and the matter is remanded to that Court for decision of the writ application afresh on merits in accordance with law.

9. It may be mentioned that Civil Appeal No.7995 of 2002 titled "State of Punjab v. Lakhwinder Singh" arises out of CWP No.11290 of 1998. The said writ Petition and many other connected petitions were remitted back to this Court vide order dated 07.09.2006 in view of the judgment of the Constitution Bench of Hon''ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, and after referring to another judgment reported as State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., . The Court said to the following effect:

These appeals, by special leave, have been filed by State of Punjab challenging the judgment and order of High Court of Punjab and Haryana by which the writ petitions filed by the respondents were disposed of with certain directions regarding regularisation of their service and payment of salary.

Learned counsel for the appellant has submitted that the issue of regularisation of service has been recently examined by a Constitution Bench of this Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the doctrine of ''equal pay for equal work'' has also been examined in State of Haryana & Ors. v. Charanjeet Singh & Ors. JT 2005 (12) SCC 475 and the judgment rendered by the High Court is not in accordance with law laid down in the aforesaid cases. Learned counsel for the respondent-employees has, on the other hand, submitted that the Government of Punjab has announced a policy for regularization of employees, whereunder the respondents are entitled to be regularised. Learned counsel for the appellant has not disputed the said fact but has submitted that regularization of service can be done only in accordance with the conditions which are enumerated in the said policy and in terms thereof.

Having considered the submissions made by learned counsel for the parties, we are of the opinion that the matter requires a fresh consideration by the High Court in the light of the decisions referred to above and other decisions of this Court and also the policy issued by the Government of Punjab.

The appeals are, accordingly, allowed and the judgment and orders under challenge are set-aside. The matters are remanded back to the High Court for a fresh decision of the writ petitions. It is made clear that this Court is not expressing any opinion on the merits of the claim made by the concerned employees.

10. After the said order, CWP No.11290 of 1998 has not been listed for hearing, whereas few writ petitions have been dismissed for want of prosecution, whereas few are still pending.

11. With this factual back ground, we have heard learned counsel for the parties. Learned counsel for the parties have referred to almost the same set of judgments rendered by the Hon''ble Supreme Court. But before we discuss the judgments referred to by the learned counsel for the parties, we may state that earlier, a Full Bench of this court in a judgment reported as Ranbir Singh v. State of Haryana 1998 (4) SLR 11 overruled the judgment of Division Bench of this Court in CWP No.17741 of 1991 titled "Neelam Rani v. State of Haryana" decided on 28.04.1992 and the decision in CWP No.9192 of 1995 titled "Rajkumar and others v. State of Haryana and others" decided on 23.11.1995. In the aforesaid cases, the Division Benches have noticed the judgments reported as Randhir Singh Vs. Union of India (UOI) and Others, ; P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, ; Dhirendra Chamoli and Another Vs. State of U.P., ; Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, ; Bhagwan Dass and Others Vs. State of Haryana and Others, ; Jaipal and Others Vs. State of Haryana and Others, ; V. Markendeya and Others Vs. State of Andhra Pradesh and Others, ; State of UP v. J.P.Chaurasia, AIR 1989 SC 19 ; Grih Kalyan Kendra Workers'' Union Vs. Union of India and others, , State of Haryana Vs. Jasmer Singh and others, ; Ghaziabad Development Authority and others v. Vikram Chaudhary and others 1995 (5) SCC 219 ; Harbans Lal and Others Vs. State of Himachal Pradesh and Others, ; Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others, and Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, . The Full Bench held to the following effect:

5. A Division Bench of this Court, in which one of us (R.S.Mongia, J.) was a member in CWP No.9766 of 1995, decided on November 8, 1995, after noticing the judgment of the apex Court in Ghaziabad Development Authority''s case (supra) had held that a daily wage employee cannot be equated with regular employee for the purpose of pay scale. It was observed that "a daily wage employee is not subject to disciplinary control of the employer inasmuch as he may come for work on a particular day or may not may come for work on a particular day or may not come and still the employer would have no right to take any disciplinary action against such an employee who may be absent for a day or for a longer period. He is not required to take any leave from the employer for a particular day on which he does not wish to come.

6. In view of the authoritative pronouncement of the apex Court, we are of the opinion that the view expressed by the Division Bench in CWP No.1774/1991 and CWP No.9192 of 1995 and in any other judgment to the same effect would be no longer good law and would stand over-ruled. Consequently, the petitioner would not be entitled to claim the same salary as is being paid to a regular Ticket Verifier.

12. Later, another Full Bench of this court in a judgment dated 13.12.2001 reported as Vijay Sharma v. State of Punjab 2002 (1) SLR 694, in CWP No.14050 of 1999 and other five cases, considering the judgments, mentioned above as well as in State of Punjab and others v. Devinder Singh and others Civil Appeal No.4942 of 1997 decided on 21.07.1997); Talwinder Singh v. State of Punjab CWP No.7533 of 1995 decided on 18.03.1998) Annexure P-1; Kulbir Singh v. State of Punjab 1999 (1) SCT 344 ; State of Punjab v. Talwinder Singh Civil Appeal No.4867 of 1998 decided on 13.12.2000); Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, ; Food Corporation of India Vs. Shyamal K. Chatterjee and Others, ; Chandigarh Admn. and others etc. v. Ved Pal and others SLP (Civil) No.6285 of 1997 decided on 17.10.2000); Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., ; Sandeep Kumar and others Vs. State of Uttar Pradesh and others, ; G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, ; Nagar Panchayat Bhikhiwind v. Kulbir Singh Civil Appeal No.1879 of 1999; Vemula Siviah Naidu Vs. State of Andhra Pradesh and another, ; U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India (UOI) and Others, and Delhi Municipal Karamchari Ekta Union (Regd.) Vs. P.L. Singh and Others, , returned a finding that the Full Bench in Randhir Singh''s case (supra) does not enunciate the correct law and is not in comity to the Larger Bench judgments of the Hon''ble Supreme Court. It was held to the following effect:
42. Once it is admitted that petitioners before us are discharging similar functions for a reasonably long span and their work is satisfactory, not much of a dispute, thus, would remain for applying the above enunciated principles to the facts of the present case. In fact, it is neither pleaded in the counter-affidavit nor argued before us that the petitioners in all these cases, do not possess the requisite qualifications alike their counter parts in the regular cadre. Similarity of functions and no differentiation being pleaded in regard to responsibilities of these employees, the State cannot deny the relief of equality in pay on any fair grounds. The distinguishing features pleaded in the counter and as already stated by us, are a creation of the State itself. None prevents the State from exercising better control, supervision and proper method of recruitment of these class of employees i.e. daily rated/casual workers, particularly when this has become a regular and integral process of the State employment. None of the above judgments have inflicted any restriction upon the State to exercise such a right. On the contrary, the Courts have always commanded the State to formulate the schemes for regular appointments of the persons employed for years and years together.

43. The petitioners in numerous cases before the Apex Court were the employee who had worked for a very long period i.e. ten years and above, when they were granted the relief and various submissions of the State were rejected. In other words, continuity in service for a reasonable time was one of the paramount factor, which was taken into consideration by the Apex Court, while granting the relief.

13. CWP No.14050 of 1999, in which Full Bench gave its decision was subsequently dismissed on 20.11.2002 by the learned Single Judge of this Court and it was LPA No.1024 of 2009 -Rajinder Kumar''s Case (supra) which was allowed on 30.08.2010.

14. On the basis of the aforesaid judgment and opinion of the Full Bench, different Benches have taken different views within this Court. CWP No.2237 of 2000 was allowed on 10.01.2002 by the Division Bench of this Court in view of the opinion of Full Bench in Vijay Sharma''s case (supra), but the said judgment has been set aside by the Hon''ble Supreme Court in a judgment reported as E. Palanisamy Vs. Palanisamy (D) by Lrs. and Others, . CWP No.9723 of 1992 was allowed by the Division Bench on 13.03.2002 again on the basis of Vijay Sharma''s case (supra), but the said judgment was set aside on 05.10.2005 and the matter remitted to this Court vide judgment reported as State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., . After remand, the writ petition has been dismissed as withdrawn on 27.09.2006. CWP No.6780 of 1999 has been allowed by the Division Bench on 20.12.2001 again on the basis of Full Bench judgment in Vijay Sharma''s case (supra), but the said judgment has been set aside on 04.08.2009 in a judgment reported as State of Punjab and Another Vs. Surjit Singh and Others, .

15. For facility of reference, the cases decided prior to Full Bench in Vijay Sharma''s case (supra) are termed as the cases of first phase, whereas the cases decided by this Court or by the Hon''ble Supreme Court after the judgment in Vijay Sharma''s case (supra) are termed as cases of second phase. The Hon''ble Supreme Court has set aside the judgments of this Court passed on the basis of the decision of the Full Bench in Vijay Sharma''s case (supra) in Tilak Raj, Charanjit Singh and Surjit Singh''s cases (supra). The order passed by the Division Bench of this Court allowing the present writ petition on 08.07.2004 has been set aside in Civil Appeal No.310 of 2008 on 10.01.2008 as per order reproduced above as well in Civil Appeal No 7995 of 2002. We are refraining ourselves from referring the other judgment of the Hon''ble Supreme Court referred to and dealt with in Vijay Sharma''s case (supra) i.e. judgments delivered in the first phase for the sake of brevity.

16. The Division Bench vide order dated 13.12.1999 referred the matter to the Larger Bench, which came to be decided in Vijay Sharma''s case (supra). The reference was based upon an order passed by the Hon''ble Supreme Court in Civil Appeal No. 4942 of 1997 titled State of Punjab and others v. Devinder Singh and others (decided on 21.07.1997) and the judgment dated 18.03.1998 (Annexure P-1) in the present writ petition and another judgment in CWP No.10017 of 1995 decided on 20.08.1998. The Court observed to the following effect, when the matter was

referred to the Larger Bench:

36. ....''Equal pay for equal work'' in the present day has emerged not only as a legitimate expectancy on the part of the employee, but is a legitimate legal right, a right which has become enforceable and executable in accordance with law. The catena of judgments afore-noticed specifically repel the various limitations put forward by the State to avoid its liability to give equal pay for equal work or even minimum of the pay scale. Leaving aside the various Two Judges Benches Judgments of the Apex Court part, the Three Judges Benches dealt with these limitations and were answered against the State in the following manner: -

(a) In the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, , the plea of the State that the daily rated casual workers do not possess the requisite qualifications was rejected while holding that long experience is a substantial compliance of the prescribed qualifications, more particularly when they have worked to the satisfaction of all concerned;

(b) The ground of financial limitations/financial burden of the State was repelled in the case of Chief Conservator of Forest v. Jagannath Maruti Kondhare 1996 (2) SCT 165;

(c) The plea that method and manner of recruitment being distinct and different and, thus, State was not liable to adhere to the principle of equality was not accepted in the case of Sandeep Kumar v. State of Uttar Pradesh 1992 (2) SCT 252 (Two Judges Bench in Jail Pal and others, Bhagwan Dass and others);

(d) That no sanctioned posts are available for recruitment of the workers, non-availability of sanctioned posts, was held to be no excuse for denying equal pay for equal work, directions for regulation passed in the case of Dhirendra Chamoli and another v. State of U.P. 1986 (1) LLJ 134.

17. In Tilak Raj''s case (supra), a Bench of two Judges'' of the Hon''ble Supreme Court relied upon State of Haryana and Others Vs. Jasmer Singh and Others, ; State of U.P. and Others Vs. J.P. Chaurasia and Others, ; Harbans Lal and Others Vs. State of Himachal Pradesh and Others, ; Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others, and State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., and observed as under:

11. A scale of pay is attached to a definite post and in case of a daily-wager he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile determination before becoming eligible to claim rights on a par with the other group vis-�-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not

possible to hold that the principle of "equal pay for equal work" is an abstract one.

12. Equal pay for equal work" is concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay and scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

13. Judged in the background of the aforesaid legal principles, the impugned judgment of the High Court is clearly indefensible and the same is set aside. however, the appellant State has to ensure that minimum wages are prescribed for such workers and the same is paid to them. The appeal is allowed to the extent indicated above. There will be no order as to costs.

18. In Charanjeet Singh''s cases (supra), the matter was taken up for hearing after the same was referred to Larger Bench vide order dated 23.08.2004 noticing conflict in different judgments of coordinate Benches of the said Court. The said three Judges'' Bench of the Hon''ble Supreme Court was considering the decisions of this Court passed on the basis of the Full Bench decision in Vijay Sharma''s case (supra). The Hon''ble Supreme Court considered the Devinder Singh''s case (supra) and set aside the judgments of this court by observing, inter alia, as under:

15. In State of Punjab and Others Vs. Devinder Singh and Others, it was noted that the ledger clerks concerned were found to have been given similar work as regular ledger clerks. This Court without any further discussion or consideration held that the ledger clerks concerned would be entitled to the minimum of the pay scale of ledger clerks. It was directed that this be paid for a period of three years prior to the filing of the writ petition. It seems that attention of this court was not brought to the earlier authorities, which lay down when the principle of equal pay for equal work can apply. Also we are unable to accept the finding that for similar work the principle of equal pay applies. Equal pay can only be given for equal work of equal value.

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19. Having considered the authorities and submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for purposes of pay in order to promote efficiency in

administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection in Committee on the `basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. (emphasis supplied) Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.

20. A stated above in all these cases, the High Court has followed a Full Bench, decision of that Court. The Full Bench has also observed that the essential ingredient is similarity. This would (sic not) be correct. However, at one stage the Full Bench observes that even if some dispute is raised, that would be wrong law. In each case, the Court must satisfy itself that the burden of proving that the work and conditions are equal is discharged by the aggrieved employees.

21. We, therefore, set aside all the impugned judgments and remit all these matters back to the High Court. The High Court shall now examine each case and see whether the necessary averments are there. It shall then consider all relevant facts as enumerated above, and decide whether everything is identical and equal. If the High Court feels that there is a dispute which would necessitate extensive evidence

it may direct that partly to raise an appropriate dispute where such questions could be dealt with and which, in fact, would be the appropriate proceedings.

19. The said Larger Bench of the Hon''ble Supreme Court has also considered the claim of equal pay of the persons employed on contract basis.It observed that when a person is employed under a contract, it is the terms of the contract which will govern the terms and conditions of service. The Court observed as under:

24. Thus, it is clear that persons employed on contract cannot claim equal pay on the basis of equal for equal work. Faced with this situation it was submitted that all these persons were in fact claiming that their respective appointments were regular appointments by the regular process of appointment but that instead of giving regular appointments they were appointed on contract with the intention of not paying them regular salary. It was admitted that the petitions may be badly drafted and such a contention was not put forth specifically. The High Court has disposed of these petitions also on the footing that the principle of equal pay for equal work applied. We therefore set aside the impugned in these cases also and remit the matter back to the High Court for disposal. The High Court shall permit these petitioners to amend their petitions to make necessary averments and will also permit the respondents in these cases to file replies to the amended petitions.

20. Later in Surjit Singh''s case (supra), again a two Judges'' Bench of the Hon''ble Supreme Court set aside the order passed by the Division bench of this Court wherein reliance was upon the opinion of the Full Bench in Vijay Sharma''s case (supra). The Court observed as under:

22.We may also place on record that the Full Bench of the Punjab and Haryana High Court in Ranbir Singh v. State of Haryana (1998) 2 SCT 189 and Vijay Sharma v. State of Punjab (2002) 1 SCT 931 wrongly relied upon State of Punjab and Others Vs. Devinder Singh and Others, which as noticed hereinbefore has been partly over ruled in State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., . The High Court in the impugned judgment even refused to consider this aspect of the matter and chose to adopt a short cut.

21. The Bench further observed that the grant of benefit of the doctrine of "equal pay for equal work" depends upon large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity. The Court held as under:

36.With utmost respect, the principle as indicated hereinbefore has undergone a sea change. We are bound by the decisions of larger Benches. This Court had been insisting on strict pleadings and proof even in that case has wrongly been placed on the State which in fact lay on the writ petitioners claiming similar benefits. The factual matrix obtaining in the said case particularly similar qualification, interchangeability of the positions within the regular employees and the casual employees and other relevant factors which have been noticed by us also had some

role to play.

37. This Court in State of Punjab v. Gurcharan Singh Kahlon (2007) 15 SCC 525 , although noticed the Constitution Bench decision of this Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, declined to interfere with the order of the High Court having regard to the fact that no order of stay having been passed, the State of Punjab had implemented the order of the High Court. Furthermore, a scheme of regularization had already been drawn up. It is of some significance to notice that similar orders passed by some Benches of this Court relying on or on the basis of para 53 in Umadevi''s case (supra) vis-a-vis para 43 and other paragraphs thereof, have been severally (sic severely) criticized by this Court in Official Liquidator case (supra). We are bound by the law laid down therein.

38. We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by appointed an expert committee as to whether the principles of law laid down herein viz. as to whether the respondents satisfy the factors for invocation of the decision in State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., in its entirety including the question of appointment in terms of the recruitment rules have been followed.

39. We would however before parting make an observation that the submission of the learned counsel that only because some juniors have got the benefit, the same by itself cannot be a ground for extending the same benefit to the respondents herein. It is now well known that the equality clause contained in Article 14 should be invoked only where the parties are similarly situated and where orders passed in their favour are legal and not illegal. It has a positive concept.

22. In LPA No.1024 of 2009-Rajinder Kumar''s Case (supra), the Bench has allowed the appeal by observing as under:

12. When the aforementioned principles are applied to the facts of the present cases, we find no legal infirmity in the orders dated 22.09.2008, 04.02.2009, 31.10.2008, 09.07.2009 and 24.07.2009 passed by the learned Single Judge. We are further of the view that the appeals are squarely covered by the Full Bench judgment of this Court rendered in the case of Vijay Sharma (supra) and the ratio of the judgment of Hon''ble the Supreme Court rendered in the case of U.P. Land Development Corporation v. Mohd. Khursheed Anwar 2010 (3) SCT 327. Accordingly, the claim of petitioner-daily wagers for grant of minimum of the regular pay scale deserves to be allowed.

23. Learned counsel for the petitioner relies upon Uma Devi''s case (supra), a Constitutional Bench judgment, wherein the payment of minimum pay scale and allowances has been upheld. Therefore, keeping in view the aforesaid principle, it is argued that the ad hoc or daily wagers, who have worked for sufficiently long period are entitled to minimum of pay scale and allowances.

24. In Uma Devi''s case (supra), though at the first impression, it appears that the Bench has maintained the payment of minimum wages to the persons engaged on contract or daily wage basis, but a careful reading would show that such principle was not accepted. The Court has noticed that the concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. In the aforesaid case, the Division Bench of the High Court directed that daily wager be paid wages equal to the salary at the lowest grade of employees of the equivalent cadre in the Commercial Taxes Department from the date of their respective appointment. Such directions were modified and wages equal to the salary at the lowest grade of employees were ordered to be paid from the date of judgment of the Division Bench of the High Court, but without any allowances. The said directions are consequent to the argument raised before the Hon''ble Supreme Court, in respect of directions of payment from the date of appointment. It was the said argument, which was accepted. The relevant extract from the order reads as under:

"55. ...The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employee of their cadre in Government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these dailywage employees with effect from the date of its judgment....

25. The said observation has to be read along with paras 44 & 48 of the judgment, when it is held that the employees engaged on daily wages form a class by themselves and that they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. The Court observed as under:

44. The concept of ''equal pay for equal work'' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following

the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment....

... It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

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48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

26. The said finding in Uma Devi''s case (supra) has been noticed by the Hon''ble Supreme Court in Surjit Singh''s case (supra), when it was held to the following effect:

27. While laying down the law that regularization under the constitutional scheme is wholly impermissible, the Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, had issued certain directions relating to the employees in the services of the Commercial Taxes Department, as noticed hereinbefore. The employees of the Commercial Taxes Department were in service for more than ten years. They were appointed in 1985-1986. They were sought to be regularized in terms of a scheme. Recommendations were made by the Director, Commercial Taxes for their absorption. It was only when such recommendations were not acceded to, the Administrative Tribunal was approached. It rejected their claim. The High Court, however, allowed their prayer which was in question before this Court.

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30. We, therefore, do no see that any law has been laid down in para 55 of the judgment in Umadevi case. Directions were issued in view of the limited controversy. As indicated, the State''s grievances were limited.

27. Still further, in Satya Prakash and Others Vs. State of Bihar and Others, , a two Judges'' Bench considered the claim of the daily wagers working for over ten years claiming benefit as noticed in paragraph 53 of the Constitutional Bench judgment in Uma Devi''s case (supra). Such claim was negated, inter alia, for the reason that the appellants have not been appointed on any sanctioned post and that para 53 of Uma Devi''s case (supra) deals with irregular appointments and not illegal appointments. Still further, considering the directions in Uma Devi''s case (supra) in respect of employees of Commercial Taxes Department, the Court concluded that the appellants would fall under the category of persons mentioned in paras 8 & 55 of the judgment and not in para 53 of the judgment. The relevant extracts from the judgment read as under:

7. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. Appellants were only engaged on daily wages in the Bihar Intermediate Education Council.

8. In Umadevi''s case (supra) this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees. This Court held that such directions issued could not be said to be in consistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.

9. Paragraph 53 of Umadevi''s judgment, deals with irregular appointments (not illegal appointments). Constitution Bench specifically referred to the judgment in State of Mysore and Another Vs. S.V. Narayanappa, , R.N. Nanjundappa Vs. T. Thimmiah and Another, , in paragraph 15 of Umadevi''s judgment as well.

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15. In our view, the appellants herein would fall under the category of persons mentioned in paragraphs 8 and 55 of the judgment and not in

paragraph 53 of judgment of Umadevi''s.

28. In Balaram Sahu''s case (supra), while considering the concept of ''equal pay for equal work'', it was held that equal pay would depend upon not only the volume of work, but also on the qualitative difference as regards reliability and responsibility though the functions may be same. It was observed as under:

11. ...Though "equal pay for equal work" is considered to be a concomitant of Article 14 as much as "equal pay for unequal work" will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference.

29. In Mahendra L. Jain and Others Vs. Indore Development Authority and Others, , a Bench of two Judges'' of the Hon''ble Supreme Court held as under:

43. The appellants having been employed on daily wages did not hold any post. No post was sanctioned by the State Government. They were not appointed in terms of the provisions of the statute. They were not, therefore, entitled to take recourse to the doctrine of "equal pay for equal work" as adumbrated in Articles 14 and 39(d) of the Constitution. The burden was on the appellants to establish that they had a right to invoke the said doctrine in terms of Article 14 of the Constitution. For the purpose of invoking the said doctrine, the nature of the work and responsibility attached to the post are some of the facts which were bound to be taken into consideration. Furthermore, when their services had not been regularized and they had continued on a consolidated pay on ad hoc basis having not undergone the process of regular appointments, no direction to give regular pay scale could have been issued by the Labour Court. (See Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty,).

30. In Official Liquidator''s case (supra), a Larger Bench of three Judges'' reviewed the entire case law and noticed the shift in the opinion of the Court. The Court quoted from Jasmer Singh case (supra), Harbans Lal case (supra) and Canteen Mazdoor Sabha Vs. Metallurgical Engg. Consultants (I) Ltd. and Others, and declined the claim for regular pay scale and other monetary benefits for the mere fact that they were doing work similar to the regular employees of the office of the Official

Liquidators. It held:

66. The judgments of 1980s and early 1990s - Dhirendra Chamoli and Another Vs. State of U.P., Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, , Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, , The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., , Bhagwati Prasad v. Delhi State Mineral Development Corporation (supra), State of Haryana v. Piara Singh (supra) are representative of an era when this Court enthusiastically endeavored to expand the meaning of equality clause enshrined in the Constitution and ordained that employees appointed on temporary/ad hoc/daily wage basis should be treated at par with regular employees in the matter of payment of salaries and allowances and that their services be regularized. In several cases, the schemes framed by the governments and public employer for regularization of temporary/ad-hoc/daily wag/casual employees irrespective of the source and mode of their appointment/ engagement were also approved. In some cases, the courts also directed the State and its instrumentalities/agencies to frame schemes for regularization of the services of such employees.

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68. The above noted judgments and orders encouraged the political set up and bureaucracy to violate the soul of Article 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoil system which prevailed in the United Stats of America in sixteenth and seventeenth century got firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system.....

69. The menace of illegal and backdoor appointments compelled the Courts to have rethinking and in large number of subsequent judgments this Court declined to entertain the claims of ad-hoc and temporary employees for regularization of services and even reversed the orders passed by the High Courts and Administrative Tribunals. .....

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93. The respondents'' claim for fixation of pay in the regular scale and grant of other monetary benefits at par with those appointed against the sanctioned posts has been accepted by the High Courts on the premise that their duties and functions are similar to those performed by regular employees. In the opinion of the High Courts, similarity in the nature of work of the company paid staff on the one hand and

regular employees on the other hand, is by itself sufficient for invoking the principle of equal pay for equal work, In our view, the approach adopted by the High Courts is clearly erroneous and directions given for bringing about parity between the company paid staff and regular employees in the matter of pay, allowances etc. are liable to be upset.

94. The principle of equal pay for equal work for men and women embodied in Article 39(d) was first considered in Kishori Mohanlal Bakshi Vs. Union of India, and it was held that the said principle is not capable of being enforced in a Court of law. After 36 years, the issue was again considered in Randhir Singh v. Union of India (supra), and it was unequivocally ruled that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India.

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100. As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor they were paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the office of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company paid staff in the regular pay scale from the Consolidate Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits at par with regular employees by applying the principle of equal pay for equal work.

31. Recently, in Steel Authority of India Ltd. and Others Vs. Dibyendu Bhattacharya, , again a three Judges'' Bench observed as under:

16. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules etc. The doctrine of `equal pay for equal work'' as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality,

functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is only on person claiming such right.

17. This Court while deciding a similar issue in State of West Bengal & Anr. v. West Bengal Minimum Wages Inspectors Association & Ors., (2010) 5 SCC 225, held as under:

The evaluation of duties and responsibilities of different posts and determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts.

The principle `equal pay for equal work'' is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees.

The burden to prove disparity is on the employees claiming parity.

(Emphasis added)

(See also State of Kerala Vs. B. Renjith Kumar and Others,)

32. As mentioned in the preceding paragraphs, the judgment in Vijay Sharma''s case (supra) consistently has not found favour with the Hon''ble Supreme Court and the judgments based on the said opinion have been set aside time and again. Such aspect was not brought to the notice of the Division Bench of this Court in Rajinder Kumar''s case (supra). The judgment in Mohd. Khursheed Anwar''s case (supra) referred to by the Division Bench, arises out of a fact wherein against two sanctioned posts for Assistant Engineers, the employees were engaged on contract basis. The direction was given to U.P. Land Development Corporation to pay minimum of the pay scale, as such employees were appointed against the sanctioned posts after following a selection process. Since the judgment in Vijay Sharma''s case (supra) has been set aside and the judgment in Mohd. Khursheed Anwar''s case (supra) is distinguishable; therefore, the LPA judgment of this Court in Rajinder Kumar''s case (supra) does not lay down correct law.

33. The writ petitioners have been engaged by the State or its instrumentalities at the lowest level i.e. Baildars, Malis, Chowkidars & Pump Operators etc. There would be hardly any difference in respect of physical work of a Chowkidar, Mali or Pump Operator engaged on daily wage basis or on regular basis. But the daily wager is

engaged by the Officer In-charge locally to carry out the work without intending to fill up the post by providing fair and equal opportunities to all eligible candidates. The daily wagers are engaged to meet out the emergent situation even when no post is available or even if the post is available but without complying with the selection process. Still further, daily wager does not hold any post as observed in Tilak Raj''s case (supra) or as held in Balaram Sahu''s case (supra). The right of equal pay would depend not only on the nature or volume of the work, but also on the qualitative difference and responsibility as well though the function may be same. In State of Haryana Vs. Surinder Kumar and others, , interchangeability between daily wager and regular employees was also not found sufficient for entitlement of regular pay scale to daily wagers as object of selection is to test the eligibility and to make selection as per rules prescribed for the recruitment. Therefore, the similarity of work by itself may not be relevant and conclusive to determine the entitlement of a daily wager to get minimum of pay scale.

34. In Surjit Singh and Charanjit Singh cases (supra), the Hon''ble Supreme Court has ordered that an Expert Committee should be constituted to examine the similarity of nature of work before the claim of such employees for regular pay scale is considered. The onus of proof that the writ petitioners are carrying out similar work is on the writ petitioners and such fact is required to be examined by the Expert Committee. In Surjit Singh''s case (supra), the grant of benefit of doctrine of "equal pay for equal work" is said to depend upon large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity. In Charanjeet Singh''s case (supra), it was held that principle of "equal pay for equal work" has no mechanical application in every case. In Uma Devi''s case (supra), the Court held that a daily wager cannot be said to be holders of a post. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. Article 39(d) permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. It was noticed the fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluation by the competent authority cannot be challenged. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity.

35. In State of U.P. and others v. Putti Lal (2006) 9 SCC 337, the employees claimed regular wages keeping in view the fact that they have been working on daily wage basis for number of years. The High Court allowed the writ petition holding that all daily wage workers, who have rendered 10 years of service should be regularized by making appropriate scheme. In terms of proviso to Article 309 of the Constitution, rules were framed for regularization of daily wage employees. In the aforesaid case, a three Judges'' Bench of Hon''ble Supreme Court upheld the order that daily wagers discharging the similar duties as those in the regular appointment would be entitle to draw at the minimum of pay scale being received by their counter-parts and would not be entitled to any other allowances or increment so long as they continue as daily wager. After returning such finding, the Court observed as under:

6. ... The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the Court to indicate as to how many posts would be created for the absorption of these daily-wage workers. Needless to mention that the appropriate authority will consider the case of these daily-wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned, as we have stated in the case of the State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counterpart in the Government until his services are regularized and he is given regular scale of pay.

36. Keeping in view the various parameters delineated above and till such time, the Expert Committee examines the similarity of work which may entitle a daily wager to get minimum of pay scale, a daily wager engaged by the Head of the Department or in any other manner is not entitled to claim minimum of pay scale as that of regular employee without undergoing regular selection process and the absence of any post. The fact that he has not undergone regular selection process and the fact that he has not subject to disciplinary control and transfer in administrative exigencies, does not entitle a daily wager to the minimum of the regular pay scale. Thus, we do not approve the decision of Division Bench in LPA No.1024 of 2009 -Rajinder Kumar''s case and overrule the same, whereas the decision of Division Bench in LPA No.337 of 2003 -Rajinder Singh''s case is approved.

37. However, it is also noticed that certain daily wagers are permitted to continue for long number of years. Keeping in view the ratio of the aforesaid judgments, we hold that daily wagers, ad hoc or contractual appointees are not entitled to minimum of the regular pay scale from the date they were engaged merely for the reason that the physical activity carried out by the daily wager and the regular employee is similar, but such general principle shall be subject to the following exceptions:

(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum

of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.

38. Accordingly, the writ petitions be posted for hearing before an appropriate Bench for decision in view of the above opinion.