

ERGO

Analysing developments impacting business

EQUAL PAY FOR EQUAL WORK: SUPREME COURT OF INDIA REITERATES

9 January 2019

In the case of *Sabha Shanker Dube v Divisional Forest Officer* (Civil Appeal No 10956 of 2018), a division bench of the Supreme Court of India (Supreme Court) comprising of Mr. Justice S A Bobde and Mr. Justice Nageswara Rao, has reiterated the law on equal pay for equal work as long as the employees are engaged in similar work and responsibilities. The Supreme Court, while considering the correctness of a judgment passed by a division bench of the High Court of Allahabad (High Court), upheld the law on the subject of parity of pay scales on the principle of equal pay for equal work.

Background

The appellants are daily wagers engaged by the Forest Department of the State of Uttar Pradesh and had filed various writ petitions before the High Court. The Appellants had sought regularization of their services and minimum pay available to their counterparts working in regular posts. Further, it was also contended that the appellants should be treated as being in continued service while condoning breaks in their service.

In dismissing the writ petitions, and the subsequent writ appeals, the High Court relied on judgments passed by the Supreme Court in *State of Haryana v Tilak Raj* ((2003) 6 SCC 23) and *State of Punjab v Surjit Singh* ((2009) 9 SCC 514).

The appellants had initially filed a writ petitions before the High Court. The single judge of the High Court observed that the Government can consider regularization of daily wagers in accordance with the relevant rules by condoning breaks in service if they are less than 3 months. However, the single judge refused to issue directions for regularization and application of minimum pay scales since such directions cannot be granted under Article 226 of the Constitution of India. The division bench of the High Court dismissed the appeal filed by the appellants.

Supreme Court's Order

The Supreme Court, while allowing the appeal, held that temporary employees are entitled to draw wages at the minimum pay scales which are applicable to the regular employees holding the same post. The Supreme Court referred to the judgment in *State of Punjab v Jagjit Singh* (Civil Appeal Nos. 884-885 of 2016 and 879-883 of 2016) (*Jagjit Singh Case*) and held that an employee who performs the same work cannot be paid less than another who is placed similarly. The Supreme Court concluded that temporary

employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post

The Court further held that in view of the clear law declared in the Jagjit Singh Case, the judgment of the High Court was not sustainable, and the appellants are entitled for equal pay on par with their counterpart regular employees of the Forest Department. Further, the Supreme Court directed the State of Uttar Pradesh to pay such equal pay with effect from 1 December 2018.

Comment

This judgment reiterates the principle of pay parity amongst employees engaged in similar work. However, it appears that the Supreme Court has not gone into other aspects of the issue such as, the liability of contract employee vis-à-vis permanent employee who are exposed to departmental disciplinary actions for any wrong committed by them, period of their engagement.

- Udayarkar Rangarajan (Partner) and Praveenkumar Hiremath (Associate)

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2018 Khaitan & Co. All rights reserved.

Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com