

HIGH COURT OF CHHATTISGARH, BILASPUR

SB: HON'BLE PRASHANT KUMAR MISHRA, J

WRIT PETITION (S) No. 4740 of 2006

<u>PETITIONER</u>	Bajnath Shrivas (died) through Durga Bai
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vs.

<u>RESPONDENTS</u>	State of Chhattisgarh and others
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WRIT PETITION (S) No. 5022 of 2006

<u>PETITIONER</u>	Banvari Sahu
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vs.

<u>RESPONDENTS</u>	State of Chhattisgarh and others
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Present:

Mr. Neeraj Choubey, counsel for the petitioner(s).
Mr. A.V. Sridhar, Panel Lawyer, for the State.

ORAL ORDER
(03.10.2013)

- 1.** The petitioners in both the writ petitions (which includes the widow of petitioner Bajnath Shrivas in W.P(S).No.4740/2006) are working as ***Skilled Attendants*** in the Government Engineering College, Bilaspur. They have prayed for equal salary as is paid to their counter-parts in the Government Engineering College, Raipur. Therefore, since both the writ petitions involve common issue, they are decided by this common order.
- 2.** In W.P(S).No.4740/2006, Respondent/State has filed an application (I.A.No.1/2007) for dismissal of the writ petition on the ground that the original petitioner having died during the pendency of the writ petition, the cause of action does not survive in favour of the legal heir for continuing the writ petition, however, it is to be seen that by order dated 01.07.2009, this Court has already allowed prayer for substitution of name of legal heir of the deceased

petitioner and otherwise also the benefit which might accrue in favour of the deceased petitioner shall be payable to his legal heir, hence the said application for dismissal of W.P(S).No.4740/2006 is dismissed.

3. The facts of the case, briefly, stated are that the petitioners are working as *Skilled Attendants* in Government Engineering College, Bilaspur. They had earlier preferred a joint writ petition bearing W.P. No.6613/2005 which was disposed off on 03.01.2006 vide Annexure P-10 with a direction to the competent authority of the respondents to consider their prayer for grant of “equal pay for equal work” and pass appropriate order within a period of 4 months. Pursuant to the said order, the petitioners preferred representation which has been dismissed vide impugned order dated 24.05.2006 (Annexure P-1).

4. According to the petitioners, they are working as *Skilled Attendants* in Government Engineering College, Bilaspur and are paid inferior pay scale than the pay scale allowed in favour of similarly placed *Skilled Attendants* working in the Government Engineering College, Raipur. According to them, both the Engineering Colleges being Government Engineering College under the Department of the Technical Education, grant of inferior pay scale to the petitioners is discriminatory, arbitrary and illegal.

5. According to the learned State Counsel, petitioners were earlier working on daily wages and were later on promoted as *Skilled Attendants* in the year 1974. Therefore, they are governed by M.P. Manpower Planning Department (Technical Branch) Class IV Recruitment Rules, 1982 (for short “Rules, 1982”) and are not governed by M.P. Education Department Technical Branch Class-III (Non-ministerial) Recruitment Rules 1980 (for short “Rules, 1980”) and as such they are not discriminated in the matter of grant of

pay-scale.

6. This Court has heard learned counsel for the parties at length and perused the record.

7. It is not the case of the State/respondents that *Skilled Attendants* working in Engineering College, Raipur, are getting the same pay scale as is paid to the petitioners.

8. One Mukund Lal Yadu working as *Skilled Attendant* in Government Engineering College, Raipur, had earlier preferred M.P.No.64/1982 in the High Court of M.P., claiming similar pay-scale as is granted to his counter-parts in the Engineering Colleges at Ujjain. By judgment dated 09.07.1984 (Annexure P-7), the said writ petition was allowed by the M.P. High Court. In the said judgment, it has been held that different Engineering colleges managed by the Director of Technical Education is obliged to pay equal wages to all similarly placed *Skilled Attendants* who perform similar job. It has also been held therein that artificial banner of classification into various classes is not sufficient to justify discrimination which is otherwise not permitted under the Statutory Rules. The High Court concluded that the said petitioner is entitled to the pay scale of Rs.155-252 from January 1981 as is granted to his counter-parts in other Engineering Colleges of the State.

9. Although the doctrine of *equal pay for equal work* is a part of directive principles of the State Policy as enshrined in Article 39(d) of the Constitution, however, in the matter of ***Randhir Singh Vs. Union of India AIR, 1982 S.C. 879***, the Supreme Court held that it is the constitutional obligation of the State to grant *equal pay for equal work* considering it to be an integral part of constitutional guarantee under Articles 14 & 16 of the Constitution of India. Although the learned State Counsel have referred to the Rules of 1982 and 1980 to carve out a case of classification based on

different set of rules, however, no document has been filed to substantiate the averment and submission that the petitioners are employees working in the Manpower Planning Department (Technical Branch) of the State Government. Therefore, the contention that the petitioners are governed by 1982 Rules does not appear to be well founded. Even otherwise the order rejecting their representation has been issued by the Directorate of Technical Education and not by the Manpower Planning Department (Technical Branch) and the said impugned order does not mention this defence which is now sought to be raised in the return.

10. In view of the law laid down by Hon'ble the Supreme Court in the matter of ***Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405*** it is not permissible for the respondents to improve their case in the return on the basis of some reasoning which is not mentioned in the impugned order by which the petitioners' representation has been rejected.

11. It is also to be seen that Schedule-I of Rules of 1980 provides the names of posts included in the service and their corresponding pay scales in the Engineering Colleges of Jabalpur, **Raipur**, Rewa, **Bilaspur** and Ujjain. Entry No.28 of the said Schedule mentions name of the post as “***Skilled Assistant/Attendant***” with corresponding pay-scale mentioned as Rs.155-252/-. Therefore, it is this pay scale which has been made admissible to the *Skilled Assistant/Attendant* working in Government Engineering Colleges of **Raipur** and **Bilaspur**, therefore, in absence of any plea in the return that *Skilled Attendants* working in Government Engineering College Raipur are getting the same pay scale as is granted to the petitioners who are working as *Skilled Attendants* in the Government Engineering College, Bilaspur, the petitioners have

successfully made out a case of discrimination which is not permissible under Articles 14 & 16 of the Constitution of India.

12. As an upshot of the above discussion, this Court is of the considered opinion that the writ petitions deserve to be and are hereby allowed in the following terms:

(i) The petitioners are entitled for the same pay scale of *Skilled Attendant* which are granted to the *Skilled Attendant* working in Government Engineering College, Raipur.

(ii) The petitioners are entitled for the said pay scale from the date of enforcement of Rules of 1980 i.e., from 26.12.1980. They are thus also entitled for the entire arrears on the basis of calculation of applicable pay scale under different revision of pay Rules. The arrears of pay shall be paid to the petitioners within a period of 4 months from today alongwith interest @ 6% per annum.

(iii) There shall be no order as to costs.

JUDGE

HEAD NOTE

Skilled Attendants working in Government Engineering College, Bilaspur and Raipur are entitled for equal salary.

शासकीय अभियांत्रिकी महाविद्यालय बिलासपुर और रायपुर में कार्यरत कुशल सहायक एक समान वेतन के हकदार हैं ।