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## **CASE COMMENTARY: STATE OF PUNJAB V. JAGJIT SINGH**

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### **ABSTRACT**

India being a welfare state, the right to equal pay for equal work, is a fundamental constitutional principle. Articles 14, 15, 16, and 39(d) of the Indian Constitution read together, give form to this concept. It is an evident constitutional goal under Article 39(d). The present case of State of Punjab v. Jagjit Singh, 2016 deals with the issue of whether the 'Equal pay for equal work' principle applies to employees engaged on temporary basis. Hence, it holds an important place in the discourse of employee rights.

According to the Supreme Court's decision in this case of State of Punjab and Ors. v. Jagjit Singh and Ors., temporary workers who execute tasks and duties that are similar to that of regular permanent workers, are entitled to receive remuneration that is at par with the pay that similarly situated permanent workers receive. Hence, temporary workers are entitled to the minimum of the regular pay scale, without a doubt. However, it is important to note that the work, duties and responsibilities carried out, must be similar for this to apply.

## FACTS OF THE CASE

This case of State of Punjab v. Jagjit Singh<sup>1</sup> was born out of conflicting rulings made by the Punjab & Haryana High Court.

1. Firstly, in the case of State of Punjab v. Rajinder Singh<sup>2</sup>, 2009, which was an intra-court appeal to the judgment by a single judge bench in 2003, a division bench of the High Court held that temporary workers would not be entitled to minimum of the regular wage scale that was being paid to permanent employees who were situated similarly.
2. However, in State of Punjab v. Rajinder Kumar<sup>3</sup>, decided in 2010, another division bench of the same High Court disagreed with the view taken in the Rajinder Singh case and held that temporary workers also would be entitled to the minimum of the regular wage scale that was being offered to similarly situated permanent workers.
3. Later, in the case of Avtar Singh v. State of Punjab<sup>4</sup>, decided in 2011, the matter was referred to a full bench of the High Court because of the dissenting opinions in the above mentioned two cases. This full bench held that temporary employees were not entitled to the minimum of the regular pay scale merely because the work done by the daily wage workers and the similarly situated permanent employees were similar. However, the High court laid down two exceptions to this norm:
  - If the temporary worker was hired for a regular authorised position following a selection procedure that ensured fairness and equal chance for all other qualified applicants.
  - Where the temporary employee was not hired for regular authorised post, their services were used continually for a sufficient amount of time.

As mentioned earlier, the present case is part of a bunch of cases that challenge the views of the High Court in this matter.

## ISSUES

1. Whether temporary employees who perform the similar work as that of regular employees in sanctioned posts, are entitled to minimum of the pay-scale?
2. What is the legal position of 'Equal pay for equal work' principle?

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<sup>1</sup> (2017) 1 SCC 148

<sup>2</sup> L.P.A. No 337 of 2003

<sup>3</sup> L.P.A. No.1024/2009

<sup>4</sup> CWP No 14796 of 2003

## CONTENTION

### APPELLANT'S CONTENTION

- The workers were paid on a daily basis at a wage that was disclosed to them. It is not that the agreed-upon wage was not paid.
- Daily wage workers constitute a class by themselves. Thus, they cannot claim that they are treated differently against regular employees hired based on the applicable rules.
- Assertion that a person employed on a daily pay should be treated equally to a regular employee systematically hired and given a permanent position in the company, cannot be supported.
- Temporary employees are not appointed on any sanctioned posts. Hence, they cannot get benefits of regularisation.

### RESPONDENT'S CONTENTION

- When employees perform equal work, there is no reason why they cannot be entitled to minimum of the wage scale merely because they are not regular employees.
- This would be violation of Article 14<sup>5</sup> of the Indian constitution, since there is no intelligible differentia bearing nexus to this classification. This classification is unreasonable.
- It would also amount to violation of Article 16<sup>6</sup> and would fail the goal set out in Article 38 (2)<sup>7</sup> and 39(d).<sup>8</sup>
- Paying less than minimum wages to temporary workers while regular employees enjoy higher wages for similar work, is exploitation.

## JUDGEMENT

Apex court said that it shall begin by firstly looking at instances when the “Equal pay for equal work” principle was applied to regular employees and then secondly move on to see how the same has been used in relation to temporary workers.

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<sup>5</sup> Article 14 of the Indian Constitution which guarantees right to equality to all citizens

<sup>6</sup> Article 16 of the Indian Constitution which guarantees equality of opportunity in matters of public employment

<sup>7</sup> Article 38(2) of the Indian Constitution which requires the state to work to eliminate and reduce income disparities and other disparities in people's access to opportunities, resources, and status.

<sup>8</sup> Article 39(d) of the Indian Constitution requires that the state work toward achieving equal pay for equal work for both men and women.

The following are a few of its first set of cases cited and observations made from them:

- Orissa University of Agriculture & Technology case<sup>9</sup> and few other cases: Court observed that under the tenet of "equal pay for equal work," it is the claimant's responsibility to demonstrate that the duties and responsibilities of the subject job and the reference post are comparable.
- Randhir Singh Case<sup>10</sup> and D.S. Nakara case<sup>11</sup>: People doing similar duties cannot be treated differently in regards to their remuneration only because they work for different government departments.
- Federation of All India Customs and Central Excise Stenographers case<sup>12</sup>: for the principle to apply, the work must not only be functionally equivalent but also be of the same qualitative nature and sensitivity.
- J.P. Chaurasia case<sup>13</sup>: People with similar work, obligations, and responsibilities may be assigned different pay scales, provided, there is legitimate basis, such as merit, seniority, or other pertinent factors.

Following are a few of the court's second set of cited cases and observations made from them:

- Dhirendra Chamoli case<sup>14</sup>: failing to pay same wage despite similar work is exploitative and is violative of Article 14 of the Constitution.
- Surinder Singh case<sup>15</sup>: Temporary worker entitled to equal wages. This right is derived from Article 39 of the Constitution.
- Putti Lal case<sup>16</sup>: daily wager performing equal work as regulars is entitled to wages at minimum of pay scale.

The court observed that the benefit of "Equal pay for equal work" was denied only when they were unable to prove the similarity of work, duties, and responsibilities, and that they would follow the majority cases where pay parity was awarded as opposed to the singular judgment of Jasmer Singh case<sup>17</sup> where the opposite was held.

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<sup>9</sup> (2003) 5 SCC 188

<sup>10</sup> (1982) 1 SCC 618

<sup>11</sup> (1983) 1 SCC 304

<sup>12</sup> (1988) 3 SCC 91

<sup>13</sup> (1989) 1 SCC 121

<sup>14</sup> (1986) 1 SCC 637

<sup>15</sup> (1986) 1 SCC 639

<sup>16</sup> (2006) 9 SCC 337

<sup>17</sup> (1996) 11 SCC 77

Considering the impugned judgement, the Supreme court said that the High court seemed to have mixed the legal position established by it about regularising employees, with the issue of pay parity and that the exceptions laid down by the High court based on term of employment of the temporary employees were not sustainable.

The Court set aside the Avatar Singh case judgement and held that temporary employees shall have right to wages at minimum of pay scale when there is no significant difference between the work of the temporary employees and the regular employees. Hence, the principle would apply.

## **COMMENT**

Markets are fluctuating in nature. That said, temporary employment system is a win-win for both the employers and the employees. The gig economy benefits both employers and employees. For employers, it saves their business money by conserving business resources and fulfilling their labour requirements without adding to their fixed overheads. For employees, it gives advantages like greater work-life balance and flexibility by granting them opportunity to choose work profiles that are in line with their conveniences and interests.

However, merely because it is temporary work, such employees should not be discriminated against regular employees in any aspect, especially in matters of remuneration because that would lead to double sided labour exploitation. Meaning, it will turn out to be disadvantageous to both, regular employees as well as temporary employees. Granting lower wages to temporary employees for same work would mean that temporary contract labour would become cheaper. This might put permanent employees in a disadvantaged position because temporary labour engagement would then be cheaper for employers, compared to engaging regular employees. On the other hand, it would mete out unfair treatment to temporary employees because they will be getting paid way lesser than what they deserve, for the work they do. The fact that temporary employees get paid lesser despite their work being similar to that of regular employees, takes this unfairness to the next level.

Equal pay for equal work for both men and women is an important constitutional goal under Article 39. Moreover, it would be a violation of Articles 14, 15 and 16 to keep temporary employees bereft of this right. It would undermine their basic human dignity. Nobody would willingly work for less money unless they are coerced into doing it. Any action that results in

lower wages than those paid to others in a comparable position is an act of objectionable slavery.

That said, recruitment of temporary employees is a good system. But they must get paid equally for equal work and they must be entitled to the minimum of the regular pay scale. There are no second thoughts about it both on humanitarian grounds as well as legal grounds.

Hence, the Honourable Supreme court's judgement has to be applauded for affirming this idea.

## **CONCLUSION**

A few years after this landmark judgement of the Apex court in this case, the Indian Parliament created a new code of social security fund, with emphasis on gig and platform workers in 2019. Temporary workers now get protection under this code.

However, temporary/gig workers still seem to remain out of coverage of India's primary central labour legislations.

Even though temporary workers will now have protection in regard to minimum wage issues, there are still other serious challenges in other important aspects like occupational health and work safety that are posed before us.

## **CASE LAWS REFERRED**

1. State of Punjab v. Jagjit Singh, (2017) 1 SCC 148
2. State of Punjab v. Rajinder Singh, L.P.A. No 337 of 2003
3. State of Punjab v. Rajinder Kumar, L.P.A. No.1024/2009
4. Avtar Singh v. State of Punjab, CWP No 14796 of 2003
5. Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188
6. Randhir Singh v. Union of India, (1982) 1 SCC 618
7. D.S. Nakara v. Union of India, (1983) 1 SCC 304
8. Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India, (1988) 3 SCC 91
9. State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121
10. Dharendra Chamoli v. State of U.P., (1986) 1 SCC 637
11. Surinder Singh v. Engineer-in-Chief, CPWD, (1986) 1 SCC 639
12. State of U.P. v. Putti Lal, (2006) 9 SCC 337
13. State of Haryana v. Jasmer Singh, (1996) 11 SCC 77

## REFERENCES

- [State Of Punjab And Ors vs Jagjit Singh And Ors on 26 October, 2016 \(indiankanoon.org\)](#)
- [Supreme Court Disallows Wage Discrimination \(indialaw.in\)](#)
- ['Equal Pay For Equal Work' For Temporary Employees As Well: SC \[Read Judgment\] \(livelaw.in\)](#)
- ['Equal pay for equal work' principle constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis | SCC Blog \(scconline.com\)](#)
- [Laws in India for GIG or Temporary Workers \(indialawoffices.com\)](#)