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18:59:45 +0530IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9442 OF 2019

Gajanan Namdeo Oge & Ors.

...Petitioners

Versus

Vasai-Virar City Municipal Corporation & Ors.

...Respondents

Mr. Alankar Kirpekar a/w Susmit Phatale Ayush Tiwari a/w Somanath Kale i/b.
Susmit Phatale for Petitioner.

Ms. Swati Sagvekar for Respondent No.1 to 4.

Mr. Ketan Joshi, 'B' Panel Counsel for Respondent Nos. 5 & 6.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 9th MARCH 2026

ORAL JUDGMENT : Per (G. S Kulkarni, J.):-

1. Rule. Respondents waive service. With the consent of the parties heard finally.

2. The Petitioners, who are 28 in number, have filed this Petition under Article 226 of the Constitution of India, espousing the principle of equal pay for equal work. At the outset, the prayers as made in the Petition are required to be noted, which read thus:-

“a. this Hon'ble Court be pleased to issue writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to pay Salary to the Petitioners as per the regular pay scale along with all other monetary benefits, allowances and arrears as per regular pay scale.

b. this Hon'ble Court to direct the Respondents to grant all the benefits of Seventh Pay Commission to the Petitioners.

c. Pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to direct the Respondents to decide the proposal for grant of regular pay scale to the Petitioners in a time bound manner.”

3. From the pleadings on record, it appears to be not in dispute that Respondent No.1 Vasai-Virar City Municipal Corporation (for short “**Municipal Corporation**”) was formed on 3rd July 2009 pursuant to the merger of four Municipal Councils and 53 Gram Panchayat/Villages. It is the case of the Petitioners that they were initially the employees of the Gram Panchayat appointed on various posts (Safai Kamgar, Clerk, Peon) which came to be merged with the Municipal Corporation constituted by the State Government by exercising the powers under Section 3 of the Maharashtra Municipal Corporation Act 1949 with effect from 3rd July 2009.

4. It is also not in dispute that subsequent to the merger of the Gram Panchayats, the Petitioners continued in employment with the Municipal Corporation. However, the grievance of the Petitioners is that they have been denied the revised pay scale, and are being paid wages which are not at par with those granted to the regular employees of the Municipal Corporation. The Petitioners have several grievances in that regard. In such context, our attention is drawn to the representation dated 24th April 2012, as also the RTI application dated 27th August 2015, which were submitted by the Petitioners seeking information regarding the reasons for not granting to the Petitioners the pay parity.

It also appears that in the General Body Meeting of the Municipal Corporation held on 15th September 2012, cognizance was taken of the demand of the Petitioners for increasing the wages by granting parity. However, although a decision on the Petitioners' proposal was taken, no benefit on parity in the pay-scales and wages with that of the regular employees was granted to the Petitioners.

5. It is the case of the Petitioners that they are discharging duties similar to the other regular employees of the Municipal Corporation, who are paid salaries as per the prescribed pay scale of the respective post/grade. However, the Petitioners are being discriminated and not paid salaries as per the regular pay scale and are only being paid minimum wages.

6. The learned Counsel for the Petitioners has placed reliance on the decision of the Supreme Court in *State of Punjab and Others v. Jagjit Singh and Others*¹ enunciating the principle of "equal pay for equal work", to hold that there cannot be any discrimination between employees performing similar duties, including those employed on ad-hoc basis, casual employees, contractual employees, and other similarly situated employees. It is therefore submitted that it was incumbent upon the Municipal Corporation to grant to the Petitioners the regular pay scale in parity with other similarly placed employees. It is submitted that, following the decision of the Supreme Court, a Co-ordinate Bench of this Court in *Vinayak Kalu Jadhav & Ors. v. State of Maharashtra & Ors.* (Writ Petition No. 4398 of 2021, decided on 2nd May 2023) directed the Respondent Municipal Corporations to grant parity in pay.

¹ (2017) 1 SCC 148

7. On the other hand, the learned Counsel appearing for the Municipal Corporation has placed reliance on the reply affidavit filed by Tanaji Narale, Deputy Municipal Commissioner of Respondent No.1. In the said affidavit, a stand has been taken that the Petitioners were originally appointed by the erstwhile Gram Panchayats and, therefore, they have been continued on a lump sum pay basis in terms of the appointments granted to them by the Gram Panchayats. The relevant extract of the said affidavit is required to be noted, which reads thus:—

“3. I say that Vasai Virar City Municipal Corporation ("Municipal Corporation") came in existence under the provisions of B.P.M.C. Act and was constituted vide Government Resolution dated 3rd July, 2009 under which areas of 4 Municipal Council and 53 villages are declared to be forming the part of the Municipal corporation. I say that this Corporation came into force in the year 2009 and took over the charge as the Planning Authority in the year July 2010.

4. I say that the present Petitioners were appointed by the erstwhile Grampanchayats on "Lumpsum Pay" basis and they have been working on said lumpsum pay since inception. Hereto annexed and marked as "Exhibit - A" are the documents proving that they were appointed on lumpsum pay basis by the erstwhile Grampanchayats.

5. I say that after the formation of the present Municipal Corporation, various employees from the Municipal Councils and Grampanchayats were absorbed in the Municipal Corporation on the same basis i.e., lumpsum pay basis, by the Municipal Corporation as stipulated in Section 493 of the Maharashtra Municipal Corporation Act, 1949 read with Appendix IV with clause 5(c) of the said Appendix. I say that from the bare perusal of said documents it can be seen that the Petitioners were appointed only before the formation of the Corporation except for Petitioner Nos. 12 and 7 (now retired). I say that due process of law was not followed at relevant time by the erstwhile Grampanchayats while appointing the Petitioners like no advertisements were given, or written tests were conducted or interviews were taken. The Petitioners were given lumpsum pay of Rs. 1000/-, Rs. 1500/- or Rs. 2000/-. Thus it can be seen that there is a backdoor entry of the Petitioners in the Municipal Corporation.

6. I say that after absorbing the Petitioners into the Municipal Corporation, the General Body of this Respondent has passed a resolution dated 15/09/2012 thereby granting all the benefits such as minimum guaranteed wages, E.S.I.C. and E.P.F to the Petitioners.

Hereto annexed and marked as "Exhibit - B" is the copy of the General Body Resolution dated 15/09/2012. Further insuarncce of the Petitioners are also taken out by the Municipal Corporation every year. Hereto annexed and marked as "Exhibit - C" is the copy of list of Petitioners, their appointment date and minimum guaranteed wages they are getting now.

7. I say that when the Petitioners were appointed in the erstwhile Grampanchayats, there were no terms and conditions on which they were appointed. I say that procedure as laid down in the law was not followed by the erstwhile Grampanchayats while appointing the Petitioners. I say that since the Petitioners appointment is a backdoor entry, the same cannot be regularised by this Corporation.

8. I say that on the basis of the representation made by the Petitioners a proposal with respect to the same was sent to the State Government on 20/03/2015. Hereto annexed and marked as "Exhibit - D" is the copy of the proposal dated 20/03/2015.

9. I say that with respect to the same, a report was also sent the State Government on 25/08/2021 in response to the letter received from the State Government dated 22/02/2021. Hereto annexed and marked as "Exhibit - E" are the copies of the letter dated 22/02/2021 along with the report submitted by this Respondent dated 25/08/2021.

10. I say that the State Government has rejected the proposal given by the Corporation vide its letter dated 21/01/2022. Hereto annexed and marked as "Exhibit - F" is the copy of the letter dated 21/01/2022. I say that this Respondent has also vide its letters dated 24/05/2017 and 25/08/2022 has informed the Petitioners that their appointment cannot be regularised by the Corporation. Hereto annexed and marked as "Exhibit G" are the copies of the letters dated 24/05/2017 and 25/08/2022.

11. I say that in "State of Karnataka vs. Umadevi - (2006 (4) SCC 1)", the Constitution Bench of Hon'ble Supreme Court has held that the appointments made without following the due process or the rules relating to the appointment did not confer any right on the appointees and courts cannot direct their absorption, regularisation or re-engagement nor make their service permanent. Thus the order passed by the Ld. Labour Court interferes with the economic arrangement of the affairs of the State and its instrumentalities, thus bypasses the statutory mandates.

12. I thus say that from the above it can be seen that there cannot be back door entry and in case if this Hon'ble Court comes to the conclusion that the the Petitioners needs to be taken into permanent services, then the procedure laid down under the law will have to be followed."

8. A reply affidavit has also been filed on behalf of the State by Mr. Shankar Trambak Jadhav, Deputy Secretary, Urban Development Department, Mantralaya, Mumbai to *inter alia* state that the Petitioners, after being absorbed in the transition to the Respondent No.1/Municipal Corporation since the year 2009, are being paid minimum wages. It is stated that in regard to the grievances raised by the Petitioners, the Department had addressed several communications to Respondent No.1, however, no response has been received from the Respondent-Corporation on the said issue. The relevant extract of the said affidavit is required to be noted, which reads thus:-

“2. I say and submit that earlier, Commissioner, Vasai Virar Municipal Corporation have submitted a proposal to this department vide letter dated 20.3.2015 (Hereto annexed as Exhibit 'B') seeking directions from the State Government regarding allowing regular payment to the employees of erstwhile Grampanchayat which were included in Vasai Virar Corporation in year 2009. During these years the employees were paid to minimum wages.

3. I say and submit that in connection to the above mentioned proposal, this department have communicated Commissioner, Vasai Virar Municipal Corporation to submit details on various issues vide series of letters dated 27th August 2015, 09th February 2016, 3rd August 2017 and 17th December 2018 respectively (Hereto annexed as - Exhibit 'C', 'D' 'E' & F').

However this department hasn't received any communication from the corporation on the said matter. Meanwhile in present Writ Petition no.9442/2019 before the Hon'ble High Court, on 24th February 2021, the respondent Vasai Virar Municipal Corporation have submitted that they have forwarded a report to the State Government.

4. I say and submit that although this department have received communication from the Commissioner, Vasai Virar Municipal Corporation vide letter dated 22nd February 2021 (Hereto annexed as - Exhibit 'G'), the concerned Corporation didn't submit the entire set of documents required to decide the same proposal on its own merits.

The same fact was submitted to Hon'ble High Court on 11th March, 2021.

5. I say and submit that further, this department have informed the Commissioner, Vasai Virar Municipal Corporation on various instances, vide letters dated 10th March, 2021, 25th March, 2021, 19th April, 2021 & 23rd June 2021 (Hereto annexed as - Exhibit 'H', 'I' 'J' & 'K') directing him to provide details on the said issue as early as possible. However this department hasn't received requisite information in this regard.

6. I say and submit that in compliance to this department letter dated 18th August, 2021, Commissioner Vasai Virar Municipal Corporation have submitted a fresh report vide letter dated 25th August, 2021 (Hereto annexed as Exhibit 'L') consisting of facts regarding the said issue.

Meanwhile Hon'ble High Court have given direction to Urban Development Department to take decision on the said matter within ten weeks vide order dated 27.10.2021.

7. I say and submit that based on the facts submitted by Commissioner Vasai Virar Municipal Corporation vide letter dated 20th March, 2015, 22nd February, 2021 & 25th August, 2021 respectively, this department have come to the conclusion that the said 32 employees mentioned in the present matter have not been appointed following due process of law and procedures. Hence these employees are not eligible for regular salary/payments and other service benefits as like that of regular staff of the Corporation. Accordingly after the approval from competent authority this department have instructed Commissioner Vasai Virar Municipal Corporation to take necessary action in the said matter vide letter dated on 21.01.2022. (Here to attested as Exhibit "M")

9. The learned Counsel appearing for the Respondent–Corporation, as also the learned AGP, have made their submissions on the case of these Respondents averred in the respective reply affidavits as placed on record.

10. Having heard the learned Counsel for the parties and having perused the record, the Petitioners' case is that the principle of "equal pay for equal work" needs to be recognised and implemented qua the Petitioners by the Respondent/Municipal Corporation by granting parity to the Petitioners in the pay

scales with that of the regular employees, when they were discharging similar work needs to be accepted.

11. The principle of law on “equal pay for equal work” recognized as the constitutional principle is by now well settled. In such context, we may refer to the celebrated judgment of the Supreme Court in **Randhir Singh Vs. Union of India & Ors.**² wherein the Supreme Court was considering the case of the petitioner who was a driver-constable in the Delhi Police Force under the Delhi Administration, who demanded that his scale of pay should at least be the same as the scale of pay of other drivers in the service of the Delhi Administration. In such context the celebrated observations of O. Chinnappa Reddy, J., a *locus classicus* on the doctrine of ‘equal pay for equal work’ being firmly embedded in the constitutional scheme, are required to be noted, which read thus:

1. “Equal pay for equal work” is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies, by the enforcement of constitutional rights. So the petitioner claims, so the petitioner asserts. Article 39(d) of the Constitution proclaims, as a directive principle, the constitutional goal of “equal pay for equal work for both men and women”. Articles 14 and 19 guarantee respectively the fundamental rights to equality before the law and equality of opportunity in the matter of public employment. Hitherto the equality causes of the Constitution, as other articles of the Constitution guaranteeing fundamental and other rights, were most often invoked by the privileged classes of their protection and advancement and for a “fair and satisfactory” distribution of the buttered loaves amongst themselves.

... ..

8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Art. 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the

2(1982)1 SCC 618

fundamental rights as a matter of interpretation. Art. 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean some thing to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular Governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word 'Socialist' must mean something. Even if it does not mean 'To each according to his need', it must atleast mean 'equal pay for equal work'. The principle of 'equal pay for equal work' is expressly recognized by all socialist systems of law, e.g, Section 59 of the Hungarian Labour. Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance (vide: International Labour Law by Istvan Szaszy p. 265). The preamble of the Constitution of the International Labour Organization recognises the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled". Construing Articles 14 and 16 in the light of the Preamble and Art. 39(d) we are of the view that the principle 'Equal pay for Equal work' is deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do identical work under the same employer."

12. The aforesaid principles of law, again find recognition in one of the significant judgments of the Supreme Court in **State of Punjab & Ors. vs. Jagjit Singh & Ors.** (supra) wherein the doctrine has been further expanded and made

applicable to the daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like. The relevant observations of the Supreme Court are required to be noted, which read thus:-

“58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:

"7. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(1) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work,

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

(emphasis supplied)

India is a signatory to the above Covenant having ratified the same on 10-4-1979. There is no escape from the above obligation in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of "equal pay for equal work" constitutes a clear and unambiguous right and is vested in every employee-whether engaged on regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post."

13. Adverting to the aforesaid principles, the Petitioners cannot be discriminated against and/or paid a lower pay or pay scales, than what is granted to the regular employees, performing similar duties. This would amount to discrimination violating the Petitioners fundamental rights under Article 14 & 16 of the Constitution of India.

14. We are not persuaded to accept the contentions urged on behalf of the Municipal Corporation that the Petitioners' demand for "equal pay for equal work" and for grant of parity in the pay scale cannot be considered on the ground that the Petitioners were originally appointed by the Gram Panchayats. In fact, such contention would be contrary to what has been held by the Supreme Court in ***State of Punjab and Others v. Jagjit Singh and Others*** (supra), particularly when the Petitioners are now serving in the Municipal Corporation since the year 2009 and are discharging duties similar to the duties/work performed by the regular employees. Thus, to subject the Petitioners to grant of such abysmal wages/pay scale who are indisputedly working with the Municipal Corporation on the same terms and conditions applicable at the time of their original appointments with the Gram Panchayats, amounts to denying them pay parity with the other regular employees and the legitimate service benefits for the period during which they have served the Municipal Corporation. It is also not the case of the Municipal Corporation that the nature of work performed by the Petitioners is different from the one performed by the regular employees. In such circumstances, in our clear opinion those employees who have continued in service under the Municipal

Corporation would be entitled to complete parity in pay, recognizing the principle of “equal pay for equal work.”

15. In fact, this Court has taken a similar view in the order dated 2nd May 2023 passed by a Division Bench of this Court in *Vinayak Kalu Jadhav & Ors. v. State of Maharashtra & Ors.* (supra), which reads thus:—

“P.C.:

1 The Affidavit is filed today by the Respondent No.4-Corporation. The dispute is raised by the Respondent-Corporation as to the regularization of the services of the Petitioners.

2 It is the contention of the Petitioners that the Petitioners are regularized in services by their first employer i.e. Zilla Parishad. According to the learned Counsel for the Petitioners sanction was granted to the regularization of the Petitioners by the State Government.

3 It appears that the Petitioners were brought on Converted Regular Temporary (CRT) under orders dated 4th July 2019 and 6th November 2019 however with effect from earlier date.

4 It is the contention of the Respondent-Corporation that in the year 2019 the Petitioners were not the employees of the Zilla Parishad. As such Zilla Parishad could not have passed the order of regularization or bringing them on CRT.

5 The said issue would be considered.

6 If the Petitioners are working with the Respondent-Municipal Corporation today as a full time then they are to be paid on par with the other employees of the Respondent-Corporation discharging similar work. The same stands substantiated by the judgment of the Apex Court in the case of *State of Punjab & Others vs. Jagjit Singh & Ors.* reported in (2017) 1 SCC 148.

7 In light of that, in case the Petitioners are working with Respondent-Corporation then the Respondent-Corporation shall pay to the Petitioners on par with the other employees discharging same duties.”

16. In the aforesaid circumstances, we are inclined to allow this Petition in terms of prayer clauses (a) and (b).

17. The Municipal Corporation is directed to calculate the arrears of salaries/wages payable to the Petitioners and pay the sum along with interest at the rate of 8% per annum. The payment of the arrears of pay shall be made to the Petitioners within a period of four weeks from today.

18. Considering that the Petitioners have raised a legitimate demand for parity in pay, the Municipal Corporation ought not to delay the payment of such amounts and/or drag the Petitioners into further litigation as in many cases, despite orders being passed by this Court, the same are not complied by the Municipal Corporation, thereby compelling the workers/employees to initiate further proceedings. Such a situation ought not to arise in the present case. Accordingly, any failure on the part of the Municipal Corporation to discharge its obligations of making payment as per the law laid down by the Supreme Court in *State of Punjab and Others v. Jagjit Singh and Others* (supra) and as accordingly directed in the present order, shall be treated as a breach of these orders for appropriate action in that regard to be taken on any non-compliance.

19. Rule made absolute in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)