

## Equal pay for equal work

'EQUAL pay for equal work' is a doctrine having constitutional sanction. Equal pay for equal work for both men and women is one of the Directive Principles of State Policy laid down in Article 39(d) of the Constitution. Though Article 37 makes it non-justiciable, it must be borne in mind by the Legislature while making laws.

Moreover, the doctrine was read into the scheme of Articles 14 and 16 (which guarantee equality) by the Supreme Court in *Randhir Singh v. Union of India* (1982 1 SCC 618). The Supreme Court, construing Articles in the light of the preamble.

The doctrine has since been applied in cases of irrational discrimination in the pay scales of workers doing the same or similar work in an organisation. But it has not been applied in cases where there is a basis or an explanation for the difference.

Historically, equal pay for work of equal value has been a slogan of the women's movement. Equal pay laws, therefore, usually deal with sex-based discrimination in the pay scales of men and women doing the same or equal work in the same organisation. For example, the Equal Remuneration

Act 1976 provides for payment of equal remuneration to men and women workers and is meant to prevent discrimination on the grounds of sex against women in the matter of employment. The same doctrine has also sought to protect disadvantaged groups against similar discrimination.

The Supreme Court interpreted and applied the doctrine even more widely to prevent discriminatory pay scales within an organisation which is owned by or is an instrumentality of the State, provided different pay scales exist to employees doing work of equal value and there is no rational explanation for the difference.

Can this doctrine be stretched to demand parity of pay with the employees of another organisation? Not generally, says the Supreme Court (*JT* 1997(8) SC 422).

Many ingredients go into the shaping of wage structure in any organisation. Historically it may have been shaped by negotiated settlements with employees' unions, or through industrial adjudication. It may have been revised or reshaped with the help of expert committees.

The economic capacity of the employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. If the employing organisation functions in a competitive area, it may, if it is economically strong, offer higher wages than its competitors doing similar work to attract better talents. Or it may offer

higher wages to the better qualified.

A simplistic approach granting higher remuneration just because another organisation has granted it, may lead to undesirable results. Even within the same organisation, when the differential wage structure is based on similar considerations, the application of the doctrine would be fraught with danger, and may seriously affect the efficiency, and at times, even the functioning of the organisation.

The doctrine is designed to correct irrational and inexplicable pay differentiation which can be looked upon as discrim-

doing comparable work, the stretching of the doctrine, if at all it is done, must be done with caution lest the doctrine snaps.

In this case, the employees of the subsidiary banks of the State Bank of India had claimed higher terminal benefits, better medical benefits and extra increments in their payscale on the grounds that such benefits were available to the employees holding equivalent or similar ranks in SBI.

The court held that the employees of subsidiary banks could not be treated as employees of the SBI. The State Bank of India and the subsidiary banks are also not in a compar-

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ination against an employee or a given set of employees. It is easier to identify such discriminated groups when the discriminated group is sex-based (women) or colour-based (blacks in the US) or caste-based (Scheduled Castes etc); and more difficult to identify in other cases. But unless there is such identifiable discrimination, the doctrine should not be applied. Mere difference is not discrimination.

So, when the principle is extended to compare pay scales in one organisation with the pay scales in another organisation, although between employees

able position. Therefore, the employees of subsidiary banks are not entitled to claim the same benefits as the SBI employees and doctrine of equal pay for equal work cannot be invoked.

## Admission of additional evidence by appeal court

Can an insurance company which has failed to produce a copy of the policy of insurance before a Motor Accidents Claims Tribunal, be permitted to produce the same before the