

ITEM NO.101(PH)

COURT NO.

SECTION XVIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4453 OF 2000

JAMMU & KASHMIR INDUSTRIES LTD.& ORS.

Appellant (s)

VERSUS

NAZIR AHMED BEIGH AND ORS.

Respondent(s)

(With office report)

Date: 29/03/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Appellant(s)

Mr. A.K. Raina, Adv.

Mr. A.K. Kaul, Adv.

Mr. Anil Kumar Jha, Adv.

For Respondent(s)

Mr. M.L. Bhat, Sr. Adv.

Ms. Purnima Bhat, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

No costs.

(Ravi P. Verma)

Court Master

(Anand Singh)

Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4453 OF 2000

JAMMU & KASHMIR INDUSTRIES
LTD. & ORS.

APPELLANT(S)

Versus

NAZIR AHMED BEIGH & ORS.

RESPONDENT(S)

O R D E R

The challenge in this appeal is to the order dated

11/10/1999 passed by the Division Bench of Jammu & Kashmir in

LPA No.61/1996 whereby the Division Bench has allowed the claim

of the respondents (weavers) for equating their pay with the pay of

warpers by applying the doctrine of 'equal pay for equal work'.

Respondents, 90 in number, were working as weavers in Government Silk Weaving Factory at Rajbaugh, Srinagar, Jammu & Kashmir. Undisputedly, they were working as piece rated workers. The warpers were working in the pay scale of Rs.430-850 and Rs.412-566. On the basis of a Government Policy, the weavers were granted the pay scale sometimes in 1995 w.e.f. 01/04/1994. The

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weavers were regularised in the pay scale of Rs.750-1000 w.e.f. 01/04/1994. At that time, the scale of warpers were Rs.1240-2140. Aggrieved thereby, the weavers approached learned single Judge claiming, inter alia, 'equal pay for equal work' in CWP No.1477-1566/1997. The ground taken in the writ petition, inter alia, is that weavers and warpers had similar functions and, therefore, the weavers be paid pay parity with the pay of warpers. In other words, there is functional similarities between the weavers and the warpers and, therefore, the weavers should get pay parity with the warpers. The learned single Judge by a detailed order, which in our view,

correctly dismissed the writ petition holding that there is no functional similarity between the weavers and warpers and, therefore, the weavers are not entitled to pay parity with the pay scale of warpers. Aggrieved thereby, the respondents herein preferred an appeal before the Division Bench and, by the impugned order, the well-reasoned order of the learned single Judge has been upset. Hence, this petition by special leave has been preferred by the Jammu & Kashmir Industries Ltd. & Ors.

The learned Division Bench, in our view, by observing on the basis of surmises and conjunctures held that there is functional similarities between the weavers and warpers and, therefore, on the

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principle of 'equal pay for equal work' weavers should get pay parity with the warpers. The learned Division Bench was further of the view that the difference of pay fixed by the appropriate authority between the weavers and warpers is discriminatory and it is hit by Article 14 of the Constitution. On the premises of the aforesaid reasoning, the order of the learned single Judge was upset.

At the outset, we do not agree with the observations of the learned Division Bench that the work charge of the weavers and warpers are similar in nature. We may say that there was no such evidence before the learned Division Bench on the basis of which such conclusion could have been arrived at. The said observation of the Division Bench was on surmises and conjunctures. Similarly, the question of discrimination does not arise at all in the present case. Article 14 of the Constitution is attracted when equal has been treated unequal. In the present case, as is presently advised, considering the functions of the weavers and warpers, we are of the view that they are not equal. The converse is that they are unequal and cannot be treated equally which is also violative of Article 14 of the Constitution. It is common knowledge that the job of the warpers is to prepare design, select the threads and put patterns for weaving. In this connection a 'Flow Chart' prepared by the appellant has been brought to our notice which is as under:-

FLOW CHART

|
YARN GODOWN

|
SOAKING

-----WINDING-----

|
WARPING

|
DRAWING IN

|
THROWING

|
DOUBLING

|
TWISTING

|
REWINDING

|
PIRN

WINDING

-----WEAVING-----

|
RAW CLEANING

|
FINISHING

|
DE-GUMMING

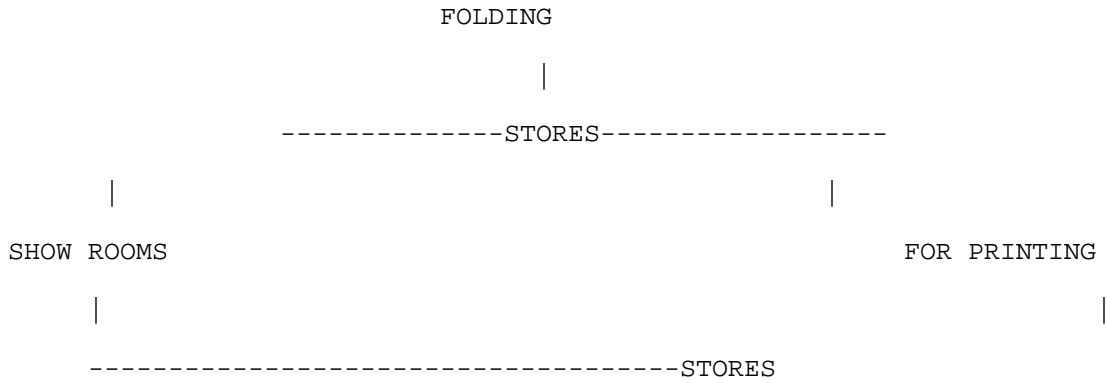
|
WASHING

|
HYDRO-EXTRACTOR

|
STENTER

|
DECATISING

|



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The 'Flow Chart', as indicated above, would clearly show that

there is functional dissimilarity between the weavers and warpers.

The 'Flow Chart' also discloses that the warpers are performing more

onerous and responsible duties than the weavers. This, however, has

been plainly denied by the respondents without any justification.

It is now well-settled principles of law that to sustain the

claim of 'equal pay for equal work' one must establish the functional

similarities and responsibilities. In the case at hand, the respondent

has miserably failed to show that the weavers discharge similar duties

as that of the warpers.

Learned counsel for the respondents heavily relied on the

earlier judgment of the High Court in WP No.1042/1986. The facts of that case is confined to the benefit of 75 paise wages increase to all the workers. The decision in that case has no relevance with the case at hand.

For the reasons afore-stated, the order of the Division Bench

is, accordingly, set aside and that of the learned single Judge is restored.

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The appeal is allowed.

No costs.

.....J.

(H.K. SEMA)

New Delhi;

.....J.

March 29, 2007.

(V.S. SIRPURKAR)