MACKINNON MACKENZIE & CO. LTD. A

v.

AUDREY D'COSTA & ANR.

MARCH 26, 1987

[E.S. VENKATARAMIAH AND M.M. DUTT, JJ.] B

Constitution of India, 1950—Articles 14 and 39(d)—Equal remuneration—Liability to pay irrespective of sex—Necessity for.

Equal Remuneration Act, 1976—Ss. 2(h), 4(1) and 7—Equal work—'Same work or work of similar nature'—Considerations for determination of—Men and women workers—Performing same or similar nature of work—Whether lower remuneration to women workers discriminatory on ground of sex and violative of s. 4(1). C

Equal Remuneration Act, 1976—Ss. 2(g), 3 and 4(1)—Equal Pay—Settlement between management and employees—Whether a valid ground for discriminating in payment of remuneration between men and women workers performing same or similar nature of work. D

Equal Remuneration Act, 1976—Proviso to s. 4(3)—Applicability of—Settlement before commencement of Act—Provides common pay scale for men as well as women workers—After implementation of Act—Women workers given lessor remuneration—Whether s. 4(1) or proviso to s. 4(3) would apply. E

Equal Remuneration Act, 1976—Ss. 3 and 4—Applicability of the Act—Whether depends upon the financial ability of the management to pay equal remuneration. F

Statute Law—Proviso—Scope of—Cannot travel beyond the section.

After the services of the respondent No. 1, who was working as a Confidential Lady Stenographer with the petitioner-company, were terminated on June 13, 1977, she instituted a petition before the Authority appointed under sub-s. (1) of s. 7 of the Equal Remuneration Act, 1976 complaining that during the period of her employment, after the Act came into force, she was being paid remuneration at the rates less favourable than those paid to the Stenographers of the male sex in the petitioner's establishment for performing the same or similar work G H

A and claimed that she was entitled to recover the difference between the remuneration paid to her and the male Stenographers.

The petitioner opposed the petition contending, *inter alia,* that the business carried on by it was not one of those businesses notified under sub-s. (3) of s. 1 of the Act; that there was no difference in the scales or
B grades or pay between lady Stenographers and male Stenographers; that the respondent No. 1 and other lady Stenographers who had been doing the duty as Confidential Stenographers attached to the Senior Executives were not doing the same or similar work which the male Stenographers were discharging; and that since there was no discrimination in salary on account of sex s.4 of the Act had not been violated.

C

The Authority found that the male Stenographers and the lady Stenographers were doing the same kind of work, but rejected the complaint holding that in view of a settlement arrived at between the employee's Union and the management the respondent No. 1 was not entitled to any relief and that the petitioner had not committed the
D breach of s. 4 as no discrimination on the ground of sex has been made.

The Appellate Authority allowed the appeal of Respondent No. 1 holding that there was clear discrimination between the male Stenographers and the female Stenographers and the petitioner had committed the breach of the provisions of the Act and directed the petitioner to
E make the payment of the difference between the basic salary and dearness allowances paid to respondent No. 1 and her male counter parts from 26.9.1975 to 30.6.1977 and to contribute to the Employees Provident Fund.

In the petition under Article 226 the Learned Single Judge
F affirmed the order of the Appellate Authority but remanded the case for computing the amount due to the respondent No. 1 afresh. The Division Bench dismissed the further appeal.

Dismissing the Petition,

G HELD: 1. To implement Art. 39(d) of the Constitution of India and Equal Remuneration Convention, 1951 (adopted by International Labour Organisation), the Equal Remuneration Act, 1976 came to be enacted providing for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters
H connected therewith or incidental thereto. In so far as the establishment

of the petitioner was concerned, the Act came into force with effect from October 8, 1976. [668B-F] A

2. In order to grant relief under s. 4 of the Act the employees should establish that the remuneration paid by the employer, whether payable in cash or kind, is being paid at rates less favourable than those at which remuneration is paid by him to the employees of the opposite B **sex in his establishment for performing the same work or work of a similar nature. [670D-E]**

3. In deciding whether the work is the same or broadly similar and whether any differences are of practical importance, the Authority should take an equally broad approach, for, the very concept of similar C **work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually and generally performed not those theoretically possible by men and women. Where, however, both men and women work at inconvenient times, there is no requirement that all those who work e.g. at night shall** D **be paid the same basic rate as all those who work normal day shifts. Thus a woman who works days cannot claim equality with a man on higher basic rate for working nights if in fact there are women working nights on that rate too, and the applicant herself would be entitled to that rate if she changed shifts. [670E-H]**

I.T. Smith and J.C. Wood; **Industrial Law, 2nd Edition** E **(Butterworths) page 308, referred to.**

4. It cannot be suggested that there can be no discrimination at all between men and women in the matter of remuneration on the basis of nature of work which women may not be able to undertake but in such cases there cannot be any discrimination on the ground of sex. F **Discrimination arises only where men and women doing the same or similar kind of work are paid differently. Wherever sex discrimination is alleged, there should be a proper job evaluation before any further enquiry is made. If the two jobs in an establishment are accorded an equal value by the application of those criteria which are themselves non-discriminatory (i.e. those criteria which look directly to the nature** G **and extent of the demands made by the job) as distinct from criteria which set out different values for men and women on the same demand and it is found that a man and a woman employed on these two jobs are paid differently, then sex discrimination clearly arises. [671A-C]**

Paul Davis and Mark Freedland: **Labour Law, Text and Material (1979) page 297, referred to.** H

A 5. In the instant case, the Authority, the Appellate Authority and the Single Judge have found that the Confidential Lady Stenographers were doing the same work or work of a similar nature as defined in s. 2(h) of the Act which the male Stenographers in the establishment of the petitioner were performing. The respondent No. 1 was working as a lady Stenographer. The lady Stenographers working in the establishment of the petitioner were called "Confidential Lady Stenographers" since they were attached to the senior Executive working in the petitioner-company. In addition to the work of the Stenographers they were also attending to the persons who came to interview the senior Executives and to the work of filing, correspondence. etc. There was practically no difference between the work which the Confidential Lady Stenographers were doing and the work of their male counter-parts. If the Lady Stenographers were found by the management to be proper persons to be Confidential Stenographers it does not mean that they should suffer for their loyalty, integrity, sincerity and punctuality and receive less pay for possessing those qualities when they are doing the same kind of work as men. Applying the true tests to the facts of the instant case there is no ground to take a different view from the view taken by the Authorities and the Single Judge. [671D-H]

6. Though a settlement was arrived at between the employee's Union and the management in the year 1975 after negotiations, but after the settlement the respondent No. 1 was getting every month Rs.730.20 paise less than the remuneration which her male counter-part was getting. In view of the provisions of s. 3 the management cannot rely upon the settlement arrived at between the parties. The settlement has to yield in favour of the provisions of the Act. The fact that the management was not employing any male as a Confidential Stenographer attached to the senior Executives in the establishment and that there was no transfer of Confidential Lady Stenographer to the general pool of Stenographers where males were working ought not to make any difference for purposes of the application of the Act. Once it is established that the lady Stenographers were doing practically the same kind of work which the male Stenographers were discharging the employer is bound to pay the same remuneration to both of them irrespective of the place where they were working unless it is shown that the women are not fit to do the work of the male Stenographers. Nor can the management deliberately create such conditions of work only with the object of driving away women from a particular type of work which they can otherwise perform with the object of paying them less remuneration elsewhere in its establishment. [672B-H; 673A-B]

7. The meaning of sub-s. (3) to s. 4 of the Act is that if for doing the same or similar work there are more than two or three rates of remuneration, the higher or the highest of such rates shall be the rate at which the remuneration shall be payable from the date of the commencement of the Act to men and women workers doing the same or similar kind of work in the establishment. The proviso provides that nothing in the sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of the Act. [673E-F]

8. Under the settlement of 1975 the male Stenographers came under the category of "Clerical and Subordinate Staff". Undisputedly the terms regarding the fitment to lady Stenographers either in the 'A' Grade or 'B' grade, referred to in the settlement is less favourable to them and the same conditions were allowed to remain in force even after the Act came into force. The very fact that the lady Stenographers are treated differently and as a class different from the clerical and subordinate staff by paying less remuneration even though they have put in the same length of service and they are placed in the same scale of pay smacks of discrimination. The discrimination thus brought about by the terms of settlement only on account of the sex of the employees cannot be allowed to persist in view of s. 4 of the Act. The work of the Confidential Lady Stenographer cannot be said to be sex based one like the work of air hostesses. There is no custom or rule that only ladies can be Confidential Stenographers. If only women are working as Confidential Stenographers it is because the management wants them there. Women are neither specially qualified to be Confidential Stenographers nor disqualified on account of sex to do the work assigned to the male Stenographers. Even if there is a practice in the establishment to appoint women as Confidential Stenographers such practice cannot be relied on to deny them equal remuneration due to them under the Act. [675B-E]

9. The management is liable to pay the same remuneration to all the Stenographers on the same basis irrespective of their sex. The salary and remuneration payable to the lady Stenographers should be computed in accordance with the terms applicable to all the male Stenographers. When so computed, undisputedly the Respondent No. 1 would be entitled to higher remuneration as observed by the Appellate Authority and the Single Judge. The management cannot derive any benefit from sub-s. (3) of s. 4 of the Act and the proviso thereto because sub-s. (3) would be attracted only where in an establishment or an employment rates of remuneration payable before the commencement

of the Act for the men workers and for the women workers for the same work or work of similar nature are different. In the instant case, after the settlement was arrived at there was a common pay scale both for men and women as can be seen from the settlement. The discrimination was, however, brought about while carrying out the fitment of the lady Stenographers in the said scale of pay. [675E-H; 676A]

10. The proviso to sub-s. (3) to s. 4 comes into operation only where sub-s. (3) is applicable. Since there are no different scales of pay in the instant case sub-s. (3) of s. 4 of the Act would not be attracted and consequently, the proviso would not be applicable at all. The proviso cannot travel beyond the provision to which it is a proviso. This is a case to which sub-s. (1) to s. 4 of the Act applied because the impugned remuneration payable to lady Stenographers has been reduced on account of the inequitable provision regarding fitment in the common scale of pay which is applicable to both men and women Stenographers. [676A-C]

11. The Act does not permit the management to pay to a section of its employees doing the same work or a work of a similar nature lesser pay contrary to s. 4(1) of the Act only because it is not able to pay equal remuneration at all. The applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it. [676E]

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 1265 of 1987.

From the Judgment and Order dated 24.11.1986 of the Bombay High Court in Appeal No. 1042 of 1986.

J.P. Cama and Raju Ramachandran for the Petitioner.

Miss Indira Jaisingh and Ravi P. Wadhwani for the Respondents.

The Order of the Court was delivered by

VENKATARAMIAH, J. In this Special Leave Petition filed under Article 136 of the Constitution of India, which is filed against the decision dated November 24, 1986 of the High Court of Bombay in Appeal No. 1042 of 1986, the question whether the petitioner had violated the provisions of section 4 of the Equal Remuneration Act, 1976 (No. 25 of 1976) (hereinafter referred to as 'the Act') arises for consideration.

The petitioner is a company carrying on the business of rendering supporting services to water transport, like operation and maintenance of piers, docks, pilotage, light-houses, loading and discharging of vessels etc. referred to as Item No. 12 under the heading 'Water Transport' in the list of establishments and employments to which the Act has been made applicable under sub-section (3) of section 1 of the Act. Respondent No. 1 Audrey D'Costa was one of the employees working under the petitioner till June 13, 1977 on which date her services were terminated. During the period of her employment under the petitioner she was working as a Confidential Lady Stenographer. After her services were terminated, she instituted a petition before the Authority appointed under sub-section (1) of section 7 of the Act complaining that during the period of her employment, after the Act came into force, she was being paid remuneration at the rates less favourable than those at which remuneration was being paid by the petitioner to the Stenographers of the male sex in its establishment for performing the same or similar work. She claimed that she was entitled to recover from the petitioner the amount equivalent to the difference between the remuneration which she was being paid and the remuneration which was being paid to the male Stenographer who had put in the same length of service during the period of operation of the Act. The petitioner opposed the said petition. The petitioner contended *inter alia* that the business which was being carried on by it was not one of those businesses notified under sub-section (3) of section 1 of the Act; that there was no difference in the scales or grades of pay between lady Stenographers and other male Stenographers at the time when the case was pending before the Authority referred to above; that the Respondent No. 1 and other lady Stenographers who had been doing the duty as Confidential Stenographers attached to the senior Executives of the petitioner-company were not doing the same or similar work which the male Stenographers were discharging; and that there was no discrimination in salary on account of sex. The petitioner contended that section 4 of the Act had not been violated by it.

After hearing both the parties, the Authority which heard the complaint of the Respondent No. 1, found that the male Stenographers and the lady Stenographers were doing the same kind of work, but it, however, rejected the complaint holding that in view of a settlement which had been arrived at in 1975 between the employees' Union and the management, the Respondent No. 1 was not entitled to any relief. The Authority held that the petitioner had not committed the breach of section 4 of the Act as no discrimination on the ground of sex had been made. It accordingly rejected the complaint of the

A Respondent No. 1 by its order dated March 30, 1982. Aggrieved by the order of the Authority appointed under sub-section (1) of section 7 of the Act, the Respondent No. 1 filed an appeal before the Deputy Commissioner of Labour (ENF), Bombay, who was the Appellate Authority appointed under sub-section (6) of section 7 of the Act. The
B Appellate Authority came to the conclusion that there was clear discrimination between the male Stenographers and the female Stenographers working in the establishment of the petitioner and the petitioner had committed the breach of the provisions of the Act. Accordingly, the appeal was allowed by the Appellate Authority on May 31, 1982. It directed the petitioner to make payment of Rs.7,196.67 paise which was the difference between the basic salary of
C the Respondent No. 1 and the basic salary of her male counter-parts from 26.9.1975 to 30.6.1977 on which date her services came to be terminated. The petitioner was also directed to make payment of the difference in the amount of dearness allowance paid to the Respondent No. 1 and the dearness allowance paid to her male counter-parts
D during the said period. The petitioner was also directed to contribute to the Employees' Provident Fund account on the basis of the above directions. Aggrieved by the decision of the Appellate Authority, the petitioner filed a writ petition in the High Court under Article 226 of the Constitution of India in Writ Petition No. 1624 of 1982. The learned Single Judge who heard the writ petition found that there was
E no doubt that the work performed by the female Stenographers and work performed by the male Stenographers were indentical and that the Respondent No. 1 and other female Stenographers were being paid less than their male counter-parts who were in service for an equal number of years and the Respondent No. 1 was entitled to the difference between the pay and allowances which had been paid to a
F male Stenographer who had put in service for the same number of years as the Respondent No. 1 and the amount of pay and allowances actually paid to her for the period between October 8, 1976 and June 13, 1977. Since the Appellate Authority had committed an error as regards the period in respect of which Respondent No. 1 was entitled to relief the case was remanded to the Appellate Authority for com-
G puting the amount due to the Respondent No. 1 afresh. The order of the Appellate Authority was affirmed in other respects. Aggrieved by the decision of the learned Single Judge, the petitioner filed an appeal in Appeal No. 1042 of 1986 before the Division Bench of the High Court which came to be dismissed on November 24, 1986. Aggrieved by the decision of the Division Bench, the petitioner has filed this
H petition under Article 136 of the Constitution of India.

Before dealing with the contentions of the parties, it is necessary to set out the relevant legal provisions governing the case. Article 39 (d) of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. The Convention Concering Equal Remuneration for Men and Women Workers for Work of Equal Value (for short, Equal Remuneration Convention, 1951) was adopted by the General Conference of the International Labour Organisation on June 29, 1951. India is one of the parties to the said Convention. Article 2 of that Convention provides that each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value and that this principle may be applied by means of (a) national laws or regulations, (b) legally established or recognized machinery for wage determination, (c) collective agreements between employers and workers, and (d) a combination of these various means. Article 3 of the Convention provides that where such action will assist in giving effect to the provisions of the Convention, measures shall be taken to promote appraisal of jobs on the basis of the work to be performed. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or where such rates are determined by collective agreements, by the parties thereto. In England the above Convention is given effect to by the enactment of Equal Pay Act, 1970. Almost all other European community States have also signed the convention. The European Economic Community Treaty also provided that during the first stage that is before 31st December, 1961 each member State should ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work. (See E.E.C. Treaty Art. 119, Ist Para). Many cases have been since decided by the national courts in those States and also in the European Court of Justice on the basis of the several laws enacted by the said States in implementation of the Equal Remuneration Convention, 1951. The E.E.C. States are obliged to observe this Convention faithfully. A short account of this branch of law is to be found in Halsbury's Laws of England 4th Edn. Vol. 52, paras 20.11. to 20.18. Many interesting cases are referred to in those paragraphs. In one case it is held that (i) where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on the ground of sex. In another case concerning the pay of a woman who claimed equal pay with her

predecessor, a man, the European Court held that the concept of equal pay in the E.E.C. Treaty was not restricted to cases where men and women were employed contemporaneously but also applied where a woman received less pay than a man employed prior to her by the employer on equal work (See *Macarthy's Ltd.* v. *Smith,* 1981 Q.B. 180.).

In order to implement Article 39 (d) of the Constitution of India and the Equal Remuneration Convention, 1951, referred to above, the President promulgated on the 26th September, 1975 the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39(d) of the Constitution of India might be implemented in the year which was being celebrated as the International Women's Year. The said Ordinance provided for payment of equal remuneration to men and women workers for the same work or the work of a similar nature and for the prevention of discrimination on account of sex. The Ordinance also ensured that there was no discrimination against recruitment of women and provided for the setting up of Advisory Committees to promote employment opportunities for women. The above Ordinance was replaced by the Act which received the assent of the President on February 11, 1976. The long title of the Act states that it is intended to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected therewith or incidental thereto. Sub-section (3) of section 1 of the Act provides that the Act shall come into force on such date, not being later than three years from the passing of the Act, as the Central Government may, by notification, appoint and different dates may be appointed for different establishments or employments. Insofar as the establishment of the petitioner was concerned, the Act came into force with effect from October 8, 1976. The expressions 'commencement of this Act', 'remuneration' and 'same work or work of a similar nature' are defined in section 2(b), (g) and (h) respectively of the Act. 'Commencement of this Act' means in relation to an establishment or employment, the date on which the Act comes into force in respect of that establishment or employment by the issue of the necessary notification under section 1(3) of the Act. 'Remuneration' means the basic wage or salary and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled. 'Same work or work of a similar nature' means work in respect of which the skill, effort and responsibility required are the same when performed under similar

working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a women are not of practical importance in relation to the terms of conditions of employment. Section 3 of the Act has given overriding effect to the provisions of the Act. It provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act, or in any instrument having effect under any law for the time being in force. The crucial section which arises for consideration in this case is section 4 of the Act. It reads thus:

> "4. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature—(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.
>
> (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.
>
> (3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers:
>
> Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act."

A Section 5 of the Act prohibits any kind of discrimination being made while recruiting men and women workers. Section 6 of the Act provides for the appointment of an Advisory Committee to advise the appropriate Government with regard to the extent to which women may be employed in such establishments or the employments as the Central Government may, by notification, specify in that behalf. Sec-
B tion 7 of the Act provides for the appointment of the adjudicating Authority whenever a dispute arises between the management and the employees as also an Appellate Authority which can hear an appeal against the decision of the Authority. Section 16 of the Act provides that where the appropriate Government is, on a consideration of all the circumstances of the case satisfied that the differences in regard to
C the remuneration or a particular species of remuneration of men and women workers in any establishment or employment is based on a factor other than sex, it may, by notification make a declaration to that effect and any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of the Act.

D The point which arises for consideration in this petition is whether the Respondent No. 1 is entitled to any relief within the scope of section 4 of the Act. In order to grant such relief under section 4 of the Act the employee should establish that the remuneration paid by the employer, whether payable in cash or kind, is being paid at rates less favourable than those at which remuneration is paid by him to the
E employees of the opposite sex in such establishment for performing the same work or work of a similar nature. Whether a particular work is same or similar in nature as another work can be determined on three considerations. In deciding whether the work is the same or broadly similar, the Authority should take a broad view; next, in ascertaining whether any differences are of practical importance, the
F Authority should take an equally broad approach for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed not those theoretically possible. In making comparison the Authority should look at the duties generally performed by men and women. Where however both men and women
G work at inconvenient times, there is no requirement that all those who work e.g. at night shall be paid the same basic rate as all those who work normal day shifts. Thus a woman who works days cannot claim equality with a man on higher basic rate for working nights if in fact there are women working nights on that rate too, and the applicant herself would be entitled to that rate if she changed shifts. (See I.T.
H Smith and J.C. Wood: Industrial Law, 2nd Edition, (Butterworths)

page 308). We do not suggest that there can be no discrimination at all between men and women in the matter of remuneration. There are some kinds of work which women may not be able to undertake. Men do work like loading, unloading, carrying and lifting heavier things which women cannot do. In such cases there cannot be any discrimination on the ground of sex. Discrimination arises only where men and women doing the same or similar kind of work are paid diferently. Wherever sex discrimination is alleged, there should be á proper job evaluation before any further enquiry is made. If the two jobs in an establishment are accorded an equal value by the application of those criteria which are themselves non-discriminatory (i.e. those criteria which look directly to the nature and extent of the demands made by the job) as distinct from criteria which set out different values for men and women on the same demand and it is found that a man and a woman employed on these two jobs are paid differently, then sex discrimination clearly arises. (See Paul Davis and Mark Freedland: Labour Law, Text and Material 1979 page 297).

It has been found by the Authority, the Appellate Authority and by the learned Single Judge that the Confidential Lady Stenographers were doing the same work or work of a similar nature as defined by section 2(h) of the Act which the male Stenographers in the establishment of the petitioner were performing. The Respondent No. 1 was working as a lady Stenographer. The lady Stenographers working in the establishment of the petitioner were called 'Confidential Lady Stenographers' since they were attached to the senior Executives working in the petitioner-company. In addition to the work of Stenographers they were also attending to the persons who came to interview the senior Executives and to the work of filing, correspondence etc. There was practically no difference between the work which the Confidential Lady Stenographers were doing and the work of their male counter-parts. It was suggested that the lady Stenographers were found by the management to be proper persons to be Confidential Stenographers. It may be so. It, however, does not mean that they should suffer for their loyalty, integrity, sincerity and punctuality and receive less pay for possessing those qualities when they are doing the same kind of work as men. In the circumstances of the case, applying the true tests which are discussed above to the facts of this case, we do not find any ground to take a view different from the view taken by the learned Single Judge, the Appellate Authority and the Authority who have dealt with this case.

The next question is whether the lady Stenographers were being

A paid the remuneration, which included basic pay, and any additional emoluments whatsoever payable either in cash or in kind, less than what was being paid to their male counter-parts who had put in service for the same number of years. It is true that there was a settlement arrived at between the employees' Union and the management in the year 1975 and it had been arrived at after negotiations between the B parties to the settlement. Prior to the settlement the Respondent No. 1 was getting as basic salary of Rs. 560 in the pay scale of Rs.150-15-180-20-340-25-440-28-496-32-560 in addition to a fixed D.A. of Rs.525 per month. Thus the Respondent No.1 was getting a remuneration to the tune of Rs.1085 per month. Under the settlement her basic salary was reduced to Rs.245 from Rs.560 and the D.A. was increased to C Rs.935.25 paise. In all she was getting a remuneration of Rs.1180.25 paise per month under the settlement, thus increasing her gross salary by Rs.95.25 paise. On the other hand, her male counter-part who had put in service for an equal number of years was being paid Rs.585 by way of basic pay and Rs.1325.45 paise by way of dearness allowance under the settlement. In all he was being paid Rs.1910.45 paise. Thus it D is seen that the Respondent No. 1 was getting every month Rs.730.20 paise less than the remuneration which her male counter-part was getting. The question for consideration is whether the management was justified in paying such remuneration to her. It was urged on behalf of the management that the difference between the remuneration of the male Stenographers and the remuneration of the Confiden- E tial Lady Stenographers was on account of the settlement which was arrived at after proper negotiation and that the Court must have regard to it. Section 3 of the Act clearly provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the comm- F encement of the Act, or in any instrument having effect under any law for the time being in force. The petitioner cannot, therefore, rely upon the settlement arrived at between the parties. The settlement has to yield in favour of the provisions of the Act. It was next contended on behalf of the petitioner that the discrimination between the male Stenographers and the Confidential Lady Stenographers had not been G brought about only on the ground of sex. We find it difficult to agree with this contention. It may be that the management was not employing any male as a Confidential Stenographers attached to the senior Executives in its establishment and that there was no transfer of Confidential Lady Stenographers to the general pool of Stenographers where males were working. It, however, ought not to make any differ- H ence for purposes of the application of the Act when once it is es-

tablished that the lady Stenographers were doing practically the same kind of work which the male Stenographers were discharging. The employer is bound to pay the same remuneration to both of them irrespective of the place where they were working unless it is shown that the women are not fit to do the work of the male Stenographers. Nor can the management deliberately create such conditions of work only with the object of driving away women from a particular type of work which they can otherwise perform with the object of paying them less remuneration elsewhere in its establishment. In the present case the place where the employees worked is irrelevant for purposes of section 4 of the Act.

We shall now proceed to consider the effect of sub-section (3) of section 4 of the Act on which much emphasis was placed by the management. It provides that where in an establishment or an employment the rates of remuneration payable before the commencement of the Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers. The meaning of sub-section (3) to section 4 of the Act is that if for doing the same or similar work there are more than two or three rates of remuneration, the higher or the highest of such rates shall be the rate at which the remuneration shall be payable from the date of the commencement of the Act to men and women workers doing the same or similar kind of work in the establishment. The proviso provides that nothing in the sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of the Act. The salient features of the settlement of 1975 are as follows:-

"I. *Clerical & Subordinate Staff:*

Pay scales remain unaltered. However they will be granted increments as under:-

(a) All staff who have completed one or more than one year's service as on 1.5.75 will get one increment in their respective scales with effect from 1.5.75.

(b) All staff who have reached the maximum of their

respective pay scales including those in 'E' grade who have completed 35 years of service will receive one increment as per the last increment of the scale, with effect from 1.5.75.

(c) In addition to this, those who retire during the course of the Agreement, i.e., during the period 1.5.75 to 30.4.78 will receive one increment in the year of their retirement.

II. *Lady Stenographers:*

Their pay scales will be brought on par with their male counterparts in the following manner:

(a) All those who have completed 7 years of service or less on 1.5.75 will be fitted to the starting figures of 'B' grade clerical scale.

(b) All those with more than 7 years of service but less than 10 years of service as on 1.5.75 will be fitted to that stage of 'B' grade which is one step higher than the starting figure.

(c) All those with more than 10 years of service as on 1.5.75 will be first fitted to the starting salary of grade 'A' and then given one increment in the scale for every 5 years of service or a fraction thereof, over and above 10 years of service.

(d) The revisions will come into effect with effect from 1.5.75.

(e) While effecting fitments as explained in (a), (b) and (c) above, if the revised gross emoluments happen to be less than the existing gross salary, or, if the enhancement of gross emoluments as a result of the revision works out to less than Rs.50, then, in such individual cases, the basic salaries in the respective scales will be stepped up in such a way, as to ensure a minimum of Rs.50 increase in gross salary.

(f) The figures for comparison will be the gross salaries for the month of May 1975.

(g) All other terms and conditions as applicable to clerical and subordinate staff will also apply to lady stenographers with effect from 1.5.75 .....

It is not disputed that the male Stenographers came under the category of 'Clerical & Subordinate Staff'. It is also not disputed that the terms regarding the fitment of lady Stenographers either in the 'A' grade or 'B' grade, referred to in the settlement is less favourable to them and the same conditions were allowed to remain in force even after the Act came into force. The very fact that the lady Stenographers are treated diferently and as a class different from the clerical and subordinate staff by paying less remuneration even though they have put in the same length of service and they are placed in the same scale of pay smacks of discrimination. The discrimination thus brought about by the terms of settlement only on account of the sex of the employees cannot be allowed to persist in view of section 4 of the Act. We do not agree that the work of the Confidential lady Stenographers is a sex based one like the work of air hostesses. There is no custom or rule that only ladies can be Confidential Stenographers. If only women are working as Confidential Stenographers it is because the management wants them there. Women are neither specially qualified to be Confidential Stenographers nor disqalified on account of sex to do the work assigned to the male Stenographers. Even if there is a practice in the establishment to appoint women as Confidential Stenographers such practice cannot be relied on to deny them equal remuneration due to them under the Act. The management is liable to pay the same remuneration to all the Stenographers on the same basis irrespective of their sex. The salary and remuneration payable to the lady Stenographers should be computed in accordance with the terms applicable to all the male Stenographers. When so computed, it is not disputed, that the Respondent No. 1 would be entitled to higher remuneration as observed by the Appellate Authority and the learned Single Judge of the High Court. We are of the view that the petitioner cannot derive any benefit from sub-section (3) of section 4 of the Act and the proviso thereto because sub-section (3) would be attracted only where in an establishment or an employment rates of remuneration payable before the commencement of the Act for the men workers and for the women workers for the same work or work of similar nature are different. In the instant case after the settlement was arrived at there was a common pay scale both for men and women as can be seen from the settlement, referred to above. The discrimination was, however, brought about while carrying out the fitment of the lady

A Stenographers in the said scale of pay. The proviso to sub-section (3) to section 4 comes into operation only where sub-section (3) is applicable. Since there are no different scales of pay in the instant case sub-section (3) of section 4 of the Act would not be attracted and consequently, the proviso would not be applicable at all. The proviso
B cannot travel beyond the provision to which it is a proviso. This is a case to which sub-section (1) to section 4 of the Act applies because the impugned remuneration payable to lady Stenographers has been reduced on account of the inequitable provision regarding fitment in the common scale of pay which is applicable to both men and women Stenographers. Having stated that there was a common pay scale for both male Stenographers and female Stenographers it is not open to
C the petitioner to contend that the order of the High Court was contrary to the proviso to sub-section (3) to section 4 of the Act. We, therefore, reject the contention that the order passed by the High Court is contrary to the proviso to sub-section (3) of section 4 of the Act.

D It is lastly urged on behalf of the petitioner that the enforcement of the Act will be highly prejudicial to the management, since its financial position is not satisfactory and the management is not able to pay equal remuneration to both male Stenographers and female Stenographers. The Act does not permit the management to pay to a section of its employees doing the same work or a work of similar
E nature lesser pay contrary to section 4(1) of the Act only because it is not able to pay equal remuneration to all. The applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it.

We do not find any ground to interfere with the judgment of the
F High Court. The petition, therefore, fails and it is dismissed. There shall, however, be no order as to costs.

A.P.J. Petition dismissed.