GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
Course: **Human Resource Management**
Semester-V (Batch: 2018-23)

End Semester Online Examination: December 2020

Date: 27th December, 2020
Duration: 8 hours **Max. Marks: 50**

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- Draw diagrams wherever applicable
- Cite the reference source used for answering the question.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.

Answer any Four of the following questions **Marks**

Q.1 Majority of the Constitutions throughout the world have a basic document of Government called "Constitution". The 'Constitution' of a country is the fundamental law of the land on the basis of which all other laws are made and enforced. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the Constitution and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution. (12.5)

Discuss Constitutional bearing on industrial laws and industrial relations?

Q.2 Workers in various settings are beset with a multitude of issues which sometimes interfere with their personal effectiveness and overall productivity. The skills and knowledge that social workers possess can be applied to non-traditional settings in novel ways to increase employee productivity and organizational effectiveness. (12.5)

a) Explore how social work skills can enhance the methods that human resource management applies to the current problems of the workplace?
b) Examine the skills required by social workers and how those skills uniquely fit with the approaches used in human resources?

Q.3 In your capacity as a Human Resource management consultant you have been asked by the company to advice on the best way to proceed, enabling the Cool Call Centre Ltd. to benefit from an acceptable and effective performance management system. (12.5)

Read the below case and advise them on the given questions by using concept of Performance management system.

Case study of The Cool Call Centre Ltd.

The Cool Call Centre Ltd. has been in operation for the past 15 years. It is located in New York in a large multi-storey building, with 350 hourly paid employees spread over 5 floors. Its purpose is to receive and transmit a large volume of requests by telephone, providing product support and dealing with information inquiries from consumers.

Outgoing calls for telemarketing, product services and debt collection are also made. In addition it operates a 'contact centre' where there is collective handling of letters, faxes, live chat and e-mails for a wide range of clients. The company operates a performance management or appraisal system for all staff. It is primarily a rating scale system, where managers score workers on a scale of 1- 10 under 10 criteria: 1) Quantity of Work 2) Quality of Work 3)Attendance 4) Expertise 5)Telephone 6)Communication Skill 7)Teamwork 8) Initiative 9) Reliability 10) Determination & Flexibility 11) Honesty\Integrity.

The assessments entail a face-to-face meeting between each staff member and his\her manager or team leader twice per annum. Arising therefrom the maximum score available per employee under the system is 200. The score attained at these meetings by each employee is the main determinant of their annual bonus payment. Naturally all of the employees push for the award of the highest score at these meetings. Some managers comply with this and some do not. Notably the exclusive focus of these meetings tends to be the scores awarded. Frequently the meeting descends into a negotiation process between the two parties, as the reviewer tries to reduce the scores being awarded whilst the reviewed tries to increase the scores being awarded. This process is compounded by the nature of some of the criteria being assessed. As a result, the Human Resources department applies a 'calibration' technique which serves to 'average out' the scores across the company. It does this by collecting the scores awarded for each employee, calculating the company-wide average and the average for each section therein. It then adjusts the individual scores awarded for each employee in each section by the requisite amount to bring it into line with the company average. As a result, if the section's average was 180 and the company average was 150, each employee in the section would have his\her average reduced by 30 points. Likewise if the section's average was 150 and the company average was 180, each employee in the section would have his\her average increased by 30 points. Accordingly the bonus payments are awarded based upon the revised scores. In the first couple of years of the system's operation, the scores awarded were so high that the company board had to intervene to reduce the total bonus allocation by nearly 33 per cent. At that time the system operated on the basis that the higher the score the higher the overall company bonus pay-out. Under the current (revised) version of the system the board decides on the total amount available annually for bonus purposes, which is then allocated on the basis of the revised scores. As a result of the various revisions, the performance management or appraisal system is held in very low regard by both employees and their managers or team leaders. The feeling amongst managers is that there's no point in giving accurate assessments, and the higher the score they award the better for staff: management relations. However the scores they award seen to bear little resemblance to the eventual bonus pay outs. Likewise the employees are very frustrated with the system. This was one of the reasons that the employees sought permission for the formation of a staff association nearly two years ago. This request was denied. Alongside this frustration, there is also a strong feeling amongst top management that the incidence and extent of underperformance in the company is unacceptably high.

a) What performance management or appraisal scheme or combination of schemes should be used in the given case? (3 Marks)
b) Should there be different objectives and scheme types for different staff categories in the given case? (3 Marks)
c) How will the system relate to the organisation's remuneration system? Is there a performance-pay link? How will it work in practice? (6.5 Marks)

Q.4 The constitutional principle of 'equal pay for equal work' has been upheld by the Supreme Court of India ("SC") with respect to temporary employees' vis-à-vis permanent employees in the Government sector. In State of Punjab and Ors. v. Jagjit Singh and ors1., the SC has ruled that temporary employees performing similar duties and functions as discharged by permanent employees are entitled to draw wages at par with similarly placed permanent employees. The principle must be applied in situations where the same work is being performed, irrespective of the class of employees. (12.5)
Looking at the given case material, decide dispute by presenting issues, arguments and reasoning for the decision.

Q.5 Human resource management involves all that can be done to improve the effectiveness of an organization or business. It involves premeditated and comprehensive approaches for managing employees along with managing the workplace culture and the environment of the organization. The function of HR experts is to guarantee that an organization's most significant resource its human capital is being sustained and upheld through the creation and the board of projects, arrangements, and systems, and by cultivating a positive workplace through successful worker business relations. (12.5)

What are the effective methods of HRM that can improve the efficiency of law firms?

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PART II

CONSTITUTIONAL FRAMEWORK AND INDUSTRIAL RELATIONS

I. THE POLICY

"The founding fathers of the Constitution cognizant of the reality of life-wisely engrafted the Foundational Rights and Directive Principles... by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life and to minimise the inequalities in income and endeavour to climinate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas and engaged in different vocations."[1]

The preamble of the Constitution, *inter alia,* seeks to provide:

- Justice, Social, Economic and Political
- Liberty of thought, expression, belief, faith and worship
- Equality of status and of opportunity
- Fraternity, assuring the dignity of the individual and unity and integrity of nation

The above principles enshrined in preamble of our Constitution provide the bedrock for framing all labour and social legislation and their progressive and creative interpretation in favour of working classes. These principles run through our labour legislations like invisible golden threads and provide them strength and stamina to meet the aspirations of working classes; whether it is protective legislations, social security legislations, welfare legislations or even industrial relations legislations, they all heavily lean towards working classes due to the philosophy provided in the preamble.[2]

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[1] *Air India Statutory Corporation* v. *United Labour Union,* 1997 LLR 288 at 300.

[2] Indira Gandhi National Open University, School of Management Studies, Introduction to Labour Legislation-1, MS-28 *Labour Laws* (2001) p. 37.

II. CONSTITUTIONAL PROVISIONS SETTING OUT GOAL VALUES

Part IV of the Constitution contains the Directive Principles of State Policy. The provisions contained in this part even though not judicially enforceable but nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Some of these specify the goals and values to be secured by labour legislation for workmen. They are: (i) an adequate means to livelihood; (ii) prevention of the concentration of wealth and means of production; (iii) equal pay for equal work for both men and women; (iv) protection and preservation of the workers' health; (v) the right to work, the right to education, and the right to public assistance in cases of old age, sickness disablement and in other cases of undeserved want; (vi) just and humane conditions of work and maternity relief; (vii) a living wage, (viii) participation of workers in management and (ix) a decent standard of life.

By and large, industrial legislation has been directed towards the implementation of these directives. The Factories Act, 1948, the Employees' State Insurance Act, 1948, the Workmen's Compensation Act, 1948, the Child Labour (Regulation and Abolition) Act and several other labour legislation seek to regulate the employment of women and children in factories and other industrial establishments; the provision of just and humane conditions of work; the protection of health; and compensation for injuries received during work. The Minimum Wages Act provides for the fixation of minimum wages; the Payment of Wages Act regulates wage payment; and the Payment of Bonus Act seeks to bridge the gap between the minimum wage and a living wage. But the directives relating to distribution of wealth, living wages, and even the equal remuneration and public assistance in cases of undeserved want have not been generally implemented as yet.

III. FUNDAMENTAL RIGHT AS LIMITATIONS ON LEGISLATIVE COMPETENCY

The fundamental rights, which are contained in Part III of the Constitution, limit and control legislative competency. Any law including labour legislation contravening any fundamental right is void. Any citizen affected by such a law has a right of access to the courts under articles 32 and 226; whereunder it is the duty of the Supreme Court, or a high court, respectively, to enforce fundamental rights by issuing writs or suitable orders or directions.

The fundamental rights likely to affect labour legislation are:

Article 14 — The State shall not deny to any person equality before the law or the equal protection of the laws.

Article 19 (1) — All citizens shall have the right—

(a) to freedom of speech and expression

(b) to assemble peaceably and without arms

(c) to form associations or unions. . . .

(d) to practice any profession, or to carry on any occupation, trade or business.

Article 21: No person shall be deprived of his life and personal liberty except according to procedure established by law.

Article 23 (1) Traffic in human beings and *begar** and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste, or class or any of them.

Article 24: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The rights of freedom of speech, freedom of assembly, and freedom of association, the prohibition of forced labour, employment of children in factories and protection of life and personal liberty, protect some of the vital interests of the workers, strengthening their hands in forming trade unions, staging demonstrations, and carrying on collective bargaining. The freedom of trade and occupation may presumably be of help principally to the employers. The right to equality, however, protects both capital and labour, though in different ways.

IV. THE SCHEME OF DISTRIBUTION OF POWERS

The distribution of legislative power imposes another limitation in making legislation. Under the Constitution there are three-ways of distribution of legislative powers between the Union and the states : a Union List, of subjects of general and national importance; a State List, of subjects of local and regional importance only; and a Concurrent List, of subjects of local and regional importance which might also, now or later, be of general and national importance. The Parliament receives exclusive power over the 97 entries in the Union List; the state legislatures receives exclusive power (in most circumstances) over the 66 entries in the State List. Both the Parliament and the state legislatures receive concurrent powers over the 47 entries in the Concurrent List. If and to the extent that Parliament acts on any subject in this last list, Parliament's power is paramount. All residuary powers of legislation are given to the Parliament.

Parliament and the state legislatures can make laws with respect to the subjects assigned to them in these lists, but they cannot delegate this essentially legislative

* Begar means forced labour. *Eds.*

function, entrusted to them by the Constitution. This does not, however, preclude a legislature from laying down a general policy and authorizing the executive to lay down rules to implement and apply that policy to the various situations that may arise.

Inspite of the precision of this scheme, however, conflicts are bound to occur and do occur. On concurrent subjects, Parliament's action may bar, or oust, action by a state. Article 254 provides that in case of repugnancy between Union law and state laws in the concurrent field the Union law shall prevail. But there is one great exception : the same article says that if a state law, thus repugnant, has been reserved for the consideration of the President and has received his assent, it shall prevail notwithstanding the repugnancy, subject, however, to any further action by Parliament.

As Parliament may make laws for the whole or any part of the territory of India, so a state legislature may make laws for the whole or any part of the state. The territorial jurisdiction of Parliament is subject, however, "to the provisions of the Constitution".[3] And the general jurisdiction both of the Parliament and of the state legislatures is also subject to the provisions of the Constitution on fundamental rights (Part III) and to the provisions of various other articles, such as those which deal with interstate commerce.[4]

While the Parliament has extraterritorial powers, the state legislatures have none. Therefore, a state law purporting to exercise extraterritorial powers is, at least to that extent, invalid. To support jurisdiction, there must be a territorial connection of some kind between the state law and the object. The object need not, however, be situated within the territory of the state; it is enough if it has some territorial nexus with it. Thus, for example, the Bihar Hindu Religious Trusts Act affecting trust property situated outside Bihar, but appertaining to a trust situated in Bihar, was sustained as valid.[5] Similarly in industrial disputes, there must be some nexus between the appropriate government and the enterprise, or part thereof, involved in the dispute.

A. Constitutional Operation of the Scheme in the Field of Industrial Relations

Even though entries relating to labour relations occur in all three lists, the most important are in the concurrent list. These are : industrial and labour disputes; trade unions; and many aspects of social security and welfare such as employers' liabil-

[3] Some of the provisions limiting Parliament's territorial jurisdiction are: Article 240(2), and para 5 of the fifth schedule.

[4] Articles 301, 303 and 394.

[5] *State of Bihar* v. *Charulisa Dasi*, AIR 1959 SC 1002; See also *Anant Prasad* v. *State of Andhra Pradesh*, AIR 1963 SC 853.

ity and workmen's compensation, provident funds, old age pensions and maternity benefits. This list also includes employment and unemployment an conditions of service.

On most of these subjects, there are central Acts only, *e.g.*, the Industrial Disputes Act, 1947, the Industrial Employment (Standing Orders) Act, 1946, the Trade Unions Act, 1926, the Minimum Wages Act, 1948, and the Employees' State Insurance Act, 1948. Nevertheless, some states have enacted separate amending acts adapting some of these acts to local needs. They can do this in different ways: in some cases by amendment with the assent of the President; and in others by promulgating rules pursuant to a power delegated by the central Act (in which cases the President's assent is not needed).

Thus the Industrial Disputes Act, 1947, has been amended by many states. For example, U.P. Industrial Disputes Act with the President's assent, added a few additional qualifications to those required of any person serving as a labour court. Similarly, the Industrial Disputes (Mysore Amendment) Act, 1953, with the President's assent, added to the central Act a new clause facilitating the transfer of industrial disputes from one state tribunal to another. A few states have amended the Central Act in various other ways.

Under rule-making powers, delegated by the centre, the states have often been able to adapt central Acts to local needs without the President's assent. The central acts often give such powers. For example, section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many cases is the state government, a power to promulgate such rules as may be needed for making the Act effective. Similarly, sections 29 and 33 of the Minimum Wages Act and section 26 of the Payment of Wages Act delegate rule-making powers to the state. In pursuance thereof several states, including Assam, Bihar and Bombay have promulgated separate Minimum Wages Rules and Payment of Wages Rules. The Factories Act, too, contains similar provisions, and they have been similarly availed of.

There is yet another method by which a state can operate machinery created by a central Act. For example, under the Industrial Disputes Act, the "appropriate government", which includes the state government is empowered to use the machinery created by the Industrial Disputes Act for the investigation and settlement of any industrial dispute coming within its jurisdiction. For example, it can refer an industrial dispute arising in an industry situated within its jurisdiction to any of the authorities for investigation and settlement.

This flexible framework, created by the Constitution, has probably tended to lessen the tensions and frictions between the centre and the state, and has made it possible for both these governments to co-ordinate their efforts in resolving their complex and varied problems.

Because of this flexibility, some of the states have introduced certain reforms in industrial relations, which the centre has never ventured to introduce. Thus the

Indian Trade Unions Act, 1926, did not provide for compulsory recognition of trade unions by employers. The Trade Unions (Amendment) Act, 1947, which proposed to provide for that, never came into force, and has lapsed. The state of Bombay, and Madhya Pradesh, however, introduced their own systems of compulsory recognition.

The First National Commission on Labour while dealing with the position emerging out of the inclusion of 'labour' in the 'Concurrent List' in the Constitution and the consequences thereof both in the framing of labour policy and in its administration observed:

> The current dichotomy between laying down policy and its administration has not been without difficulties. Equally serious has been the States' desire to have new legislation. On occasions, there have been debates over the responsibilities of administering specific pieces of legislation as between the Centre and the States, as also over defining the 'appropriate Government' for certain industries under the Industrial Disputes Act. For a long time since Independence, questions of this type were sorted out in the Labour Ministers' Conference or in the tripartite. There have been instances when, on the advice of the Central Government, a State had stayed its proposed action in the field of labour legislation. In some other States, in the light of criticism or advice emerging out of the ILC/SLC, the State law is made more acceptable in the All-India forum. Similar amity has prevailed in the matter of administration. This situation is likely to be affected by political developments leading to the formation of governments at the Centre and in the States by different and even opposing political parties.... If this is going to be the pattern for the future, the tripartite will have its limitations in promoting uniformly.[6]

V. CONSTITUTIONAL PROVISIONS RELATING TO APPEALS FROM AWARDS

Under the Constitution any person aggrieved by a tribunal's award can, on the ground of a violation of a fundamental right guaranteed by Part III, move the Supreme Court, or the high court, under articles 32 and 226, respectively, for an appropriate writ, order or direction. He can also move the high court under article 226 on the ground of a violation of any other right. A high court's dismissal on the merits of a petition under article 226 operates as *res judicata*, barring the same or similar petition under Article 32.[7]

Another possible course is for the person aggrieved to invoke the Supreme Court's discretionary jurisdiction under article 136. This he can do, on any ground,

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[6] Govt. of India, *Report of the National Commission on Labour* (1969) p. 315.

[7] *Daryao* v. *State of Uttar Pradesh*, AIR 1961 SC 1457.

by special leave of that court. Article 136 is designed to authorize the Supreme Court to intervene, in its discretion, in any case where the requirements of justice warrant.

After a high court has passed upon an award, the person aggrieved can appeal to the Supreme Court, in varying circumstances, under article 132 (constitutional questions) or under article 133 (civil appeals). Under article 132 he must obtain a certificate (from the high court or in default thereof from the Supreme Court) that the case involves the interpretation of the Constitution. An appeal so certified may bring in other issues if the Supreme Court permits [Art. 132(3)].

Lacking a constitutional question, the person aggrieved can appeal to the Supreme Court only if the high court certifies to the amount or value in dispute [Art. 133(1) (a) (b)] *provided*, however, that if the high court's decision was an affirmance, it must also certify to the existence of a substantial question of law. Or he can appeal if the high court certifies to the fitness of the case for review [Art. 133(1)(c)]. In any appeal under article 133, the claim can be raised that a constitutional question has been decided wrongly below [Art. 113(2)].

In addition to all these provisions, article 227 confers on a high court a power of superintendence over all courts and all tribunals in its jurisdiction. A high court can exercise this power even *suo motu*, for the purpose of correcting any flagrant abuse of law or any grave miscarriage of justice. It cannot, however, substitute its judgment for that of the lower court.

BHARAT BANK LTD. v. THEIR EMPLOYEES
Supreme Court, (1950) 2 LLJ 921

[The question was whether under article 136 the Supreme Court had jurisdiction to entertain an appeal by special leave against the award of the industrial tribunal. Excerpts from the judgment follow:]

Kania C.J. [majority opinion] : [T]he functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a court. The rules framed by the Tribunal require evidence to be taken and witnesses to be examined, cross-examined and re-examined. The Act constituting the Tribunal imposes penalties for incorrect statements made before the Tribunal. While the powers of the Industrial Tribunal in some respects are different from those of an ordinary civil court and it has jurisdiction and powers to give reliefs which a civil court administering the law of the land (for instance, ordering the reinstatement of a workman) does not possess in the discharge of its duties it is essentially working as a judicial body. The fact that its determination has to be followed by an order of the Government which makes the award binding, or that in cases where Government is a party the legislature is permitted to revise the decision, or that the Government is empowered to fix the period of the operation of

the award do not, to my mind, alter the nature and character of the functions of the Tribunal. Having considered all the provisions of the Act it seems to me clear that the Tribunal is discharging functions very near those of a court, although it is not a court in the technical sense of the word.

....In my opinion the wording of Article 136 is wide enough to give jurisdiction to the court to entertain an application for leave to appeal, although it is obvious that having regard to the nature of the functions of the Tribunal this court will be very reluctant to entertain such an application.

Fazal Ali J. [majority opinion] Can we then say that an industrial tribunal does not fall within the scope of Article 136? If we go by a mere label the answer must be in the affirmative. But we have to look further and see what are the main functions of the tribunal and how it proceeds to discharge those functions. This is necessary because I take it to be implied that before an appeal can lie to this court from a tribunal it must perform some kind of judicial function and partake to some extent of the character of a court.

[T]he industrial tribunal has, to use a well-known expression, "all the trappings of a court" and performs functions, which cannot but be regarded as judicial. This is evident from the rules by which the proceedings before the tribunal are regulated. It appears that the proceedings before it commences on an application which in many respects is in the nature of a plaint. It has the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of discovery, inspection, granting adjournment, reception of evidence taken on affidavit enforcing the attendance of witnesses, compelling the production of documents, issuing commissions, etc. This to be deemed to be a civil court within the meaning of Sections 480 and 482 of the Criminal Procedure Code, 1898. It may admit and call for evidence at any stage of the proceeding and has the power to administer oaths. The parties appearing before it have the right of examination, cross-examination and re-examination and of addressing it after all evidence has been called. A party may also be represented by a legal practitioner with its permission.

The matter does not rest there. The main function of this tribunal is to adjudicate on industrial disputes, which implies that there must be two or more parties before it with conflicting cases, and that it has also to arrive at a conclusion as to how the dispute is to be ended. *Prima-facie* therefore, a tribunal like this cannot be excluded from the scope of Article 136...

It is necessary here to say a few words as to the scope of the appeal. As was pointed out by this court in *Pritam Singh* v. *The State*, the power under Article 136 of the Constitution being a special power is to be exercised only in special cases. The rule so laid down is bound to restrict the scope of the appeal in practice in almost all the cases, which fall under Article 136. But in some cases a limitation will be imposed on the scope of the appeal by the very nature of the case and of the tribunal from which an appeal is sought to be brought, and a case under the Industrial Disputes Act seems to be an example of such a case.

Mahajan J. [majority opinion] : The language employed in... article [136] is very wide and is of a comprehensive character. Powers given are of an overriding nature. The article commences with the words 'Notwithstanding anything in this Chapter. These words indicate that the intention of the Constitution was to disregard in extraordinary cases the limitations contained in the previous article on this court's power to entertain appeals. These articles dealt with the right of appeal against final decisions of High Courts within the territory of India. Article 136, however, overrides that qualifications and empowers this court to grant special leave even in case where the judgment has not been given by a High Court but has been given by any court in the territory of India; in other words, it contemplates grant of special leave in cases where a court subordinate to a High Court has passed or made any order and the situation demands that the order should be quashed or reversed even without having recourse to the usual procedure provided by law in the nature of an appeal, etc. The word "order" in Article 136 has not been qualified by the word "final". It is clear, therefore, that the power to grant special leave under this Article against an order of a court could be exercised with respect to interlocutory orders also. Another new feature introduced in Article 136 is the power given to grant special leave against orders and determinations, *etc.* of any *tribunal* in the territory of India. This word did not find place in the Judicial Committee's Act, where the phrase used was "a court of justice". It is the introduction of this new expression in Article 136 that has led to considerable argument as to its scope. Another expression that did not find place in the Judicial Committee Act but has been introduced in Article 136 is the word "determination".... In construing the Articles of the Constitution it has always to be remembered that India has been constituted into a *sovereign democratic republic* in order to ensure justice to all its citizens. In other words, the foundations of this republic have been laid on the bedrock of justice. To safeguard these foundations so that they may not be undermined by injustice occurring anywhere this court has been constituted....

It is now convenient to consider whether a tribunal constituted under the Industrial Disputes Act, 1947, exercises all or any of the function of a court of justice and whether it discharges them according to law or whether it can act as it likes in its deliberations and is guided by its own notions of right and wrong. The phrase "industrial dispute" has been defined in section 2 clause (k), of the Act....

Such a dispute concerns the rights of employers and employees. Its decision affects the terms of a contract of service or the conditions of employment. Not only may the pecuniary liability of an employer be considerably affected by the adjudication of such dispute but it may even result in the imposition of punishments on him. It may adversely affect the employees as well. Adjudication of such a dispute affects valuable rights. The dispute and its results can always be translated in terms of money. The point for decision in the dispute usually is how much money has to pass out of the pocket of the employer to the pocket of the employee in one form or another and as to what extent the right of freedom of contract stands modified to

bring about industrial peace. Power to adjudicate it on such a dispute is given by section 7 of the statute to an Industrial Tribunal and a duty is cast on it to adjudicate it in *accordance with the provisions of the Act.* The words italicized clearly imply that the dispute has to be adjudicated in accordance with the provisions of the Act, it follows that the tribunal has to adhere to law, though that law may be different from the law that an ordinary court of justice administers. It is noteworthy that the tribunal is to consist of experienced judicial officers and its award is defined as a determination of the 'dispute'. The expression "adjudication" implies that the tribunal is to act as a judge of the dispute; in other words, it sits as a court of justice and does not occupy the chair of an administrator. It is pertinent to point out that the tribunal is not given any executive or administrative powers. In section 38 of the Act power is given to make rules for the purpose of giving effect to the provisions of the Act. Such rules can provide in respect of matters which concern the *powers* and *procedure* of tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject matter and as to appearance of legal practitioners in proceedings under this Act. Rule 3 of these rules provides that any application for the reference of an industrial dispute to a tribunal shall be made in form (A) and shall be accompanied by a statement setting forth *inter alia* the names of the parties to the dispute and the specific matters of dispute. It is in a sense in the nature of a plaint in a suit. In rule 13 power is given to administer oaths. Rule 14 provides as follows:

"A tribunal may accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit."

Rule 17 provides that in its first sitting the tribunal is to call upon the parties to *state their case.* In rule 19 provision has been made for proceedings *ex parte.* Rule 21 provides that in addition to the powers conferred by sub-section 3 of section 11 of the Act, a tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of the following matters, namely, (a) discovery and inspection; (b) granting of adjournment; (c) reception of evidence taken on affidavit; and examine *suo motu* any person whose evidence appears to it to be material. It further says that the tribunal shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. Rule 21 says that the representatives of the parties appearing before a tribunal, shall have the right of examination, cross-examination and re-examination and of addressing the court or tribunal when all evidence has been called. In rule 30 it is provided that a party to a reference may be represented by a legal practitioner with the permission of the tribunal and subject to such condition as the tribunal may impose. In section 11(3) it is laid down that a tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of the following matters, namely (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examina-

tion of witnesses; (d) in respect of such other matters as may be prescribed; and every inquiry or investigation by a tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. It is difficult to conceive in view of these provisions that the Industrial Tribunal performs any functions other than that of a judicial nature. The tribunal has certainly the first three requisites and characteristics of a court as defined above. It has certainly a considerable element of the fourth also inasmuch as the tribunal cannot take any administrative action, the character of which is determined by its own choice. It has to make the adjudication in accordance with the provisions of the Act as laid down in section 7. It consists of persons who are qualified to be or have been judges. It is its duty to adjudicate on a serious dispute between employers and employees as affecting their right of freedom of contract and it can impose liabilities of a pecuniary nature and disobedience of its award is made punishable. The powers exercisable by a tribunal of the nature were considered in a judgment of the Federal Court of India in *Western India Automobile Association* v. *Industrial Tribunal, Bombay*, [(1949) F.C.R. 321; 1949 LLJ , 249)] and it was observed that such a tribunal can do what no court can, namely add to or alter the terms or conditions of the contract of service. The tribunal having been entrusted with the duty of adjudicating a dispute of a peculiar character, it is for this reason that it is armed with the extra-ordinary powers. These powers, however, are derived from the statute. These are the rules of the game and it has to decide according to these rules. The powers conferred have the sanction of law behind it and are not exercisable by reason of any discretion vested in the members of the tribunal. The adjudication of the dispute has to be in accordance with evidence legally adduced and the parties have a right to be heard and being represented by a legal practitioner. Right to examine and cross-examine witnesses has been given to the parties and finally they can address the tribunal when evidence is closed. The whole procedure adopted by the Act and the rules is modelled on the Code of the Civil Procedure. In my opinion, therefore, the Industrial Tribunal has all the necessary attributes of a court of justice. It has no other function except that of adjudicating on a dispute. It is no doubt true that by reasons of the nature of the dispute that they have to adjudicate, the law gives them wider powers than are possessed by ordinary courts of law, but powers of such a nature do not affect the question that they are exercising judicial powers.... They may rightly be described as quasi-judicial bodies because they are out of the hierarchy of the ordinary judicial system but that circumstance cannot affect the question of their being within the ambit of Article 136....

For the reasons given above I am of the opinion that the word "tribunal" in Article 136 has to be construed liberally and not in any narrow sense and an industrial tribunal inasmuch as it discharges functions of a judicial nature in accordance with law comes within the ambit of the article and from its determination an application for special leave is competent.

Mukherjea J. [minority opinion]: In settling the disputes between the employer and the workmen, the function of the tribunal is not confined to administration of

justice in accordance with law. It can confer rights and privileges on either party, which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organization on the other and the industrial tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function....

We now come to the other question as to whether an appeal could be taken to this court against an award of an Industrial Tribunal by special leave under Article 136 of the Constitution...

The Article is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals by granting of special leave against any kind of judgment, decree or order made by any court or tribunal in any cause or matter and the powers could be exercised in spite of and overriding the specific provisions for appeal contained in the previous articles. The controversy so far as the present case is concerned mainly centres round the interpretation to be put upon two words, namely "determination" and "tribunal" used in the article. Does the word "tribunal" mean a judicial tribunal only and is the expression "determination" restricted to what is known as "judicial determination"?

... The word "determination" means and signifies the ending of a controversy or litigation by the decision of a Judge or Arbitrator. It cannot be said that it is restricted exclusively to proceedings in Court. Likewise, the dictionary meaning of the word "tribunal" is "court of justice" or "seat of a Judge". By "Judge" we mean some authority by which contested matters are decided between rival parties. Here again, it is not possible to say that the expression is applicable only to a regular court of law. If the tribunal is a full-fledged judicial tribunal, it is not disputed that its decisions would be proper subject matter of appeal under Article 136 of the Constitution. The question is whether this article includes within its scope the determinations of quasi-judicial tribunals as well.

Our view is that ordinarily we should not put any restricted interpretation upon the plain words of an article in the Constitution and thereby limit our powers of granting special leave for appeals, which the Constitution for best of reasons did not choose to fetter or circumscribe in any way. At the same time we must admit that some sort of restricted interpretation may be unavoidable in view of the context in which particular words appear; and certain restrictions may be implicit in the very purpose for which Article 136 has been framed. Article 136 empowers us in our

discretion to hear appeals from pronouncements of all inferior courts and tribunals. With regard to law courts no difficulty arises. As regards tribunals, which are not courts in the proper sense of the expression it may not be proper, in our opinion, to lay down a hard and fast rule that no appeals could, on any account, be allowed against determinations of such tribunals. There are numerous varieties of these adjudicating bodies, whose structures vary greatly in character and composition and so do the powers and functions, which they exercise. The best thing to do would be to examine each type of case as it arises and if we find that with regard to determinations emanating from certain tribunals it is not possible for us to exercise fully and effectively the powers of an appellate court, such determinations must be held to lie outside the purview of Article 136 of the Constitution.

This disability in the matter of exercising our powers as an appellate court might arise from the fact that the rules and principles by which we ordinarily judge the soundness or otherwise of judicial decisions are not capable of being applied to the determinations of certain administrative tribunals. It might also arise from the fact that the law under which the tribunal functions prevents us from making any effective order which would be binding and operative of its own force without the intervention of some other power or authority; or there may be some kind of contingency attached to it.

In our opinion, these difficulties do confront us in the entertaining or hearing of an appeal against the decision of an industrial tribunal.

The result is that the preliminary objection succeeds and the appeal fails and is dismissed with costs.

S.G. CHEMICALS & DYES TRADING EMPLOYEES UNION v. S.G. CHEMICALS & DYES TRADING LTD.

Supreme Court, 1986 Lab. IC 863

[For facts of the case see Part VII section II. Excerpts from the judgment of the court on the scope of intervention under Article 136 of the Constitution delivered by Madon J. follow:]

The union has directly come to this Court in appeal against the said order of the Industrial Court without first approaching the High Court under Art. 226 or 227 of the Constitution for the purpose of challenging the said order. The powers of this Court under Art. 136 are very wide but as Cl. (1) of that Article itself states, the grant of special leave to appeal is in the discretion of the Court. Art. 136 is, therefore, not designed to permit direct access to this Court where other equally efficacious remedy is available and where the question is not of public importance. Today when the dockets of this Court are over crowded, nay almost choked, with the flood or rather the avalanche of work pouring into the Court threatening to sweep away the present system of administration of justice itself, the Court should be extremely

vigilant in exercising its discretion under Art. 136. The reason stated at the Bar for not first approaching the High Court to get the same relief was that in view of the judgment of the learned single judge of the High Court in *Maharashtra General Kamgar Union* v. *Glass Containers Pvt. Ltd.*, (1983 Lab. I.C. 326) if a writ petition were filed in the High Court, it would certainly have been dismissed, forcing the employees through the Union to come to this Court in appeal against the order of the High court. When we consider that here are eighty four workmen who have been thrown out of employment and can ill-afford the luxury of fighting from Court to Court and that some of the questions arising in the case are of considerable importance both to the employers and the employees, the reason given for directly coming to this Court must be held to be valid and this must be considered to be a fit case for this Court to exercise its discretion and grant Special Leave to Appeal.

Question

When can the Supreme Court entertain the petition under article 136 of the Constitution directly from the order of Industrial Court without first approaching the high court under article 226 or 227 of the Constitution?

MANEKA GANDHI v. UNION OF INDIA
AIR 1978 SC 597

[The petitioner's passport was impounded in "public interest" under section 10 of the Passport Act. The Government of India declined "in the interest of general public" to furnish the reasons for its decision. Thereupon the petitioner filed a writ petition under article 32 of the Constitution challenging the validity of section 10 (3) (c) of the Passport Act, on the ground that it was violative of article 19 (a) and (g) since it permitted restrictions to be imposed on the rights guaranteed by those provisions even though the restrictions were such as could not be imposed under article 19 (2) or (6). She also challenged the validity of the above section on the ground that it was violative of article 21 as it did not prescribe "procedure" within the meaning of that article and even if it is presumed that procedure had been prescribed, it was arbitrary and unreasonable. Excerpts from the judgment of the court follow :]

M.H. Beg CJ. : Articles dealing with different fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial justice (social, economic and political). Freedom (not only of thought, expression, belief, faith and worship, but also of association, movement vocation or occupation as well as of acquisition and possession of reasonable property) of equality (of status and of opportunity, which imply absence of unreasonable or

unfair discrimination between individuals, groups, and classes), and of fraternity (assuring dignity of the individual and the unity of the nation), which our Constitution visualises. Isolation of various aspects of human freedom, for purposes of their protection, is neither realistic nor beneficial but would defeat the very objects of such protection.

We have to remember that the fundamental rights protected by Part III of the Constitution, out of which Articles 14, 19 and 21 are the most frequently invoked, form tests of the validity of executive as well as legislative actions when these actions are subjected to judicial scrutiny. We cannot disable Article 14 or 19 from so functioning and hold those executive and legislative actions to which they could apply as unquestionable even when there is no emergency to shield actions of doubtful legality....

In judging the validity of either legislative or executive state action for conflict with any of the fundamental rights of individuals, whether they be of citizens or non-citizens, the question as to where the rights are to be exercised is not always material or even relevant. If the persons concerned, on whom the law or purported action under it is to operate, are outside the territorial jurisdiction of our country, the action taken may be ineffective. But, the validity of the law must be determined on considerations other than this. The tests of validity of restrictions impose upon the rights covered by Article 19 (1) will be found in clauses (2) to (6) of Art. 19. There is nothing there to suggest that restrictions on rights the exercise of which may involve going out of the country or some activities abroad are excluded from the purview of tests contemplated by Article 19 (2) to (6). I agree with my learned brother Bhagwati, for reasons detailed by him, that the total effect and not the mere form of a restriction will determine which fundamental right is really involved in a particular case and whether a restriction upon its exercise is reasonably permissible on the facts and circumstances of that case. . . .

In order to apply the tests contained in Articles 14 and 19 of the Constitution, we have to consider the objects for which the exercise of inherent rights recognised by Article 21 of the Constitution are restricted as well as the procedure by which these restrictions are sought to be imposed. Both substantive and procedural laws and actions taken under them will have to pass tests imposed by Articles 14 and 19 whenever facts justifying the invocation of either of these Articles may be disclosed. For example, an international singer or dancer may well be able to complain of an unjustifiable restriction on professional activity by a denial of a Passport. In such a case, violations of both Art. 21 and 19 (1) (g) may both be put forward making it necessary for the authorities concerned to justify the restriction imposed, by showing satisfaction of tests of validity contemplated by each of these two articles.

Y.V. Chandrachud J.: The interplay of diverse articles of the Constitution guaranteeing various freedoms has gone through vicissitudes which have been elaborately traced by Brother Bhagwati. The test of directness of the impugned law as

contrasted with its consequences was thought in *A.K. Gopalan* (AIR 1950 SC 27) and *Ram Singh*, 1951 SCR 451 : (AIR 1951 SC 270) to be the true approach for determining whether a fundamental right was infringed. A significant application of that test may be perceived in *Naresh S. Mirajkar*, (1966) 3 SCR 744 : (AIR 1967 SC 1) where an order passed by the Bombay High Court prohibiting the publication of a witness's evidence in a defamation case was upheld by this court on the ground that it was passed with the object of affording protection to the witness in order to obtain true evidence and its impact on the right of free speech and expression guaranteed by Article 19 (1) (a) was incidental. N.H. Bhagwati J. in *Express Newspapers*, 1959 SCR 12 : (AIR 1958 SC 578) struck a modified note by evolving the test of proximate effect and operation of the statute. That test saw its fruition in *Sakal Papers*, (1962) 3 SCR 842 : (AIR 1962 SC 305) where the court giving precedence to the direct and immediate effect of the order over its form and object struck down the Daily Newspaper (Price and Page) Order, 1960 on the ground that it violated Art. 19 (1) (a) of the Constitution. The culmination of this thought process came in the *Bank Nationalisation case* (AIR 1970 SC 564) where it was held by the majority, speaking through Shah J., that the extent of protection against impairment of a fundamental right is determined by the direct operation of an action upon the individual's rights and not by the object of the legislature or by the form of the action. In *Bennett Coleman*, (1973) 2 SCR 757 : (AIR 1973 SC 106) the court, by a majority, reiterated the same position by saying that the direct operation of the Act upon the rights forms the real test. It struck down the newsprint policy, restricting the number of pages of newspapers without the option to reduce the circulation, as offending against the provisions of Art. 19(1) (a). "The action may have a direct effect on a fundamental right although its direct subject matter maybe different" observed the court, citing an effective instance of a law dealing with the Defence of India or with defamation and yet having a direct effect on the freedom of speech and expression. The measure of directness, as held by brother Bhagwati, is the 'inevitable' consequence of the impugned statute.

Kailasam J.: Whether the pith and substance doctrine is relevant in considering the question of infringement of fundamental rights, the court observed at page 780 of the *Bank Nationalisation case* "Mr. Palkhivala said that the tests of pith and substance of the subject matter and of direct and of incidental effect of the legislation are relevant to question of legislative competence but they are irrelevant to the question of infringement of fundamental rights. In our view this is a sound and correct approach to interpretation of legislative measures and State action in relation to fundamental rights." It is thus clear, that the test of pith and substance of the subject-matter and of direct and incidental effect of legislation is relevant in considering the question of infringement of fundamental right.

Bhagwati J. (on behalf of himself, Untwalia and Murtaza Fazal Ali, JJ.) : We may at this stage consider the interrelation between Art. 21 on the one hand and Articles 14 and 19 on the other. . .

[I]f a law depriving a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, exhypothesi it must also be liable to be tested with reference to Article 14....

Now, the question immediately arises as to what is the requirement of Article 14 ... what is the content and reach of the great equalising principle enunciated in this article ?...

Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied....

It is true that the right of free speech and expression enshrined in Article 19 (1) (a) can be enforced only if it is sought to be violated by any action of the State and since State action cannot have any extra territorial operation, except perhaps incidentally in case of Parliamentary legislation, it is only violation within the territory of India that can be complained of by an aggrieved person. But that does not mean that the right of free speech and expression is exercisable only in India and not outside. State action taken within the territory of India can prevent or restrict exercise of freedom of speech and expression outside India, What Art. 19 (1) (a) does is to declare freedom of speech and expression as a fundamental right and to protect it against State action. The State cannot by any legislative or executive action interfere with the exercise of this right, except in so far as permissible under Art. 19 (2). The State action would necessarily be taken in India but it may impair or restrict the exercise of this right elsewhere....

Is the right to go abroad covered by Article 19 (1) (a) or (g) ?....

[E]ven if a right is not specifically named in Art. 19 (1), it may still be a fundamental right covered by some clause of that Article, if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right. It is not enough that a right claimed by the petitioner flows or emanates from a named fundamental right or that its existence is necessary in order to make the exercise of the named fundamental right meaningful and effective. Every activity which facilitates the exercise of a named fundamental right is not necessarily comprehended in that fundamental right nor can it be regarded as such merely because it may not be possible otherwise to effectively exercise that fundamental right. The contrary construction would lead to incongruous results and the entire scheme of Art. 19 (1) which confer different rights and sanctions different

restrictions according to different standards depending upon the nature of the right will be upset. What is necessary to be seen is, and that is the test which must be applied, whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right. If this be the correct test, as we apprehend it is, the right to go abroad cannot in all circumstances be regarded as included in freedom of speech and expression....

We cannot, therefore, accept the theory that a peripheral or concomitant right which facilitates the exercise of a named fundamental right or gives it meaning and substance or makes it exercise effective, is itself a guaranteed right included within the named fundamental right. This much is clear as a matter of plain construction, but apart from that there is a decision of this Court which clearly and in so many terms supports this conclusion. That is the decision in *All India Bank Employees' Association* v. *National Industrial Tribunal*, (1962) 3 SCR 269 : (AIR 1962 SC 171). The legislation which was challenged in that case was S. 34A of the Banking Companies Act and it was assailed as violative of Art. 19 (1) (c). The effect of S. 34A was that no tribunal could compel the production and inspection of any books of account or other documents or require a bank to furnish or disclose any statement or information if the Banking Company claimed such documents or statement or information to be of a confidential nature relating to secret reserves or to provision for bad and doubtful debts. If a dispute was pending and a question was raised whether any amount from the reserves or other provisions should be taken into account by a tribunal, the tribunal could refer the matter to the Reserve Bank of India whose certificate as to the amount, which could be taken into account, was made final and conclusive. Now, it was conceded that S. 34A did not prevent the workmen from forming unions or place any impediments in their doing so, but it was contended that the right to form association protected under Art. 19 (1) (c) carried with it a guarantee that the association shall effectively achieve the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order or morality set out in Article 19 (4). In other words, the argument was that the freedom to form unions carried with it the concomitant right that such unions should be able to fulfill the object for which they were formed. This argument was negatived by a unanimous Bench of this Court. The Court said that unions were not restricted to workmen, that employers' unions may be formed in order to earn profit and that a guarantee for the effective functioning of the unions would lead to the conclusion that restrictions on their right to earn profit could be put only in the interests of public order or morality. Such a construction would run basically counter to the scheme of Article 19 and to the provisions of Art. 19 (1) (c) and (6). The restrictions which could be imposed on the right to form an association were limited to restrictions in the interest of public order and morality. The restrictions which could be imposed on the right to carry on any trade, business, profession or calling were reasonable restrictions in the public interest

and if the guarantee for the effective functioning of an association was a part of the right, then restrictions could not be imposed in the public interest on the business of an association. Again, an association of workmen may claim the right of collective bargaining and the right to strike, yet the right to strike could not by implication be treated as part of the right to form association, for, if it were so treated, it would not be possible to put restrictions on that right in the public interest as is done by the Industrial Disputes Act, which restrictions would be permissible under Art. 19 (6), but not under Art. 19 (4). The Court, therefore, held that the right to form unions guaranteed by Art. 19 (1) (c) does not carry with it a concomitant right that the unions so formed should be able to achieve the purpose for which they are brought into existence, so that any interference with such achievement by law would be unconstitutional unless the same could be justified under Article 19 (4).

The right to go abroad cannot, therefore, be regarded as included in freedom of speech and expression guaranteed under Art. 19 (1) (a) on the theory of peripheral or concomitant right. This theory has been firmly rejected in the *All India Bank Employees' Association's case...* and we cannot countenance any attempt to revive it, as that would completely upset the scheme of Art. 19(1) and to quote the words of Rajagopala Ayyanger. J., speaking on behalf of the Court in *All India Bank Employees' Association's case* "by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result." So also, for the same reasons, the right to go abroad cannot be treated as part of the right to carry on trade, business, profession or calling guaranteed under Art. 19 (1) (g). The right to go abroad is clearly not a guaranteed right under any clause of Art. 19 (1) and S. 10 (3) (c) which authorises imposition of restrictions on the right to go abroad by impounding of passport cannot be held to be void as offending Art. 19 (1) (a) or (g), as its direct and inevitable impact is on the right to go abroad and not on the right of free speech and expression or the right to carry on trade, business, profession or calling....

PEOPLE'S UNION FOR DEMOCRATIC RIGHTS v. UNION OF INDIA

Supreme Court, (1982) 2 LLJ 454

[Excerpts from the judgment of P.N. Bhagwati J. follow :]

This is a writ petition brought by way of public interest litigation in order to ensure observance of the provisions of various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. The matter was brought to the attention of the Court by the 1st petitioner which is an organization formed for the purpose of protecting democratic rights by means of a letter addressed to one of us (Bhagwati, J.).... Since the letter addressed by 1st petitioner was based on the report made by three social scientists after personal investigation and study, it was treated as a writ petition on the judicial side and notice was issued upon it *inter alia* to the Union of India, Delhi Development

Authority and Delhi Administration which were arrayed as respondents to the writ petition. These respondents filed their respective affidavits in reply to the allegations contained in the writ petition and an affidavit was filed on behalf of the petitioner in rejoinder to the affidavits in reply and the writ petition was argued before us on the basis of these pleadings....

We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essential of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation but it is intended to promote and vindicate public interest which demands that violations of Constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law, which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the *status quo* under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil ? The former can approach the Courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the Government under the label of Fundamental Right, the Courts are praised for their boldness and courage and their independence and fearlessness are applauded and acclaimed. But, if the Fundamental Rights of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so called champions of human rights frown upon it as waste of time of the highest Court in the land, which according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large number of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; utter grinding poverty has broken their back and snapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sec-

tions of humanity going to enforce ?....

The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. There is indeed close relationship between civil and political rights on the one hand and economic, social and cultural rights on the other and this relationship is so obvious that the International Human Rights Conference in Teheran called by the General Assembly in 1968 declared in a final proclamation:

"Since human rights and fundamental freedom are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible".

Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the Legislature and the Executive, but mere initiation of social and economic rescue programmes by the Executive and the Legislature would not be enough and is only through multidimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the Court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome, it as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority....

So far as the Employment of Children Act, 1938, is concerned the case of the Union of India, the Delhi Administration and the Delhi Development Authority was that no complaint in regard to the violation of the provisions of the Act was at any time received by them and they disputed that there was any violation of these provisions by the contractors. It was also contended on behalf of these Authorities that the Employment of Children Act, 1938 was not applicable in case of employment in the construction work of these projects, since construction industry is not a process specified in the Schedule and is, therefore, not within the provisions of sub-s. (3) of S. 3 of that Act. Now unfortunately this contention urged on behalf of the respondents is well founded, because construction industry does not find a place in the Schedule to the Employment of Children Act, 1938 and the prohibition enacted in S. 3 sub-s. (3) of that Act against the employment of a child who has not

completed his fourteenth year cannot apply to employment in construction industry. This is a sad and deplorable omission which we think, must be immediately set right by every State Government by amending the Schedule so as to include construction industry in it in exercise of the power conferred under S. 3A of the Employment of Children Act, 1938. We hope and trust that every State Government will take the necessary steps in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. That would be in consonance with Convention No. 59 adopted by the International Labour Organisation and ratified by India. But apart altogether from the requirement of Convention No. 59, we have Article 24 of the Constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate *proprio vigore* and construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work. There can, therefore, be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Employment of Children Act, 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country. ...So far as the complaint in regard to non-observance of the provisions of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was concerned, the defence of the Union of India, the Delhi Administration and the Delhi Development Authority that though this Act had come into force in the Union Territory of Delhi with effect from 2nd October, 1980, the power to enforce the provisions of the Act was delegated to the Administrator of the Union Territory of Delhi only on 14th July, 1981 and thereafter also the provisions of the Act could not be enforced because the Rules to be made under the Act had not been finalised until 4th June, 1982. It is difficult to understand as to why in the case of beneficent legislation like the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 it should have taken more than 18 months for the Government of India to delegate the power to enforce the provisions of the Act to the Administrator of the Union Territory of Delhi and another almost 12 months to make the Rules under the Act. It was well known that a large number of migrant workmen coming from different States were employed in the construction work of various Asiad projects and if the provisions of a social welfare legislation like the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 were applied and the benefit of such provisions made available to these migrant workmen, it would have gone a long way towards ameliorating their conditions of work and ensuring them a decent living with basic human dignity. We very much wished that the provisions of this Act had been made

applicable earlier to the migrant workmen employed in the construction work of these projects though we must confess that we do not see why the enforcement of the provisions of the Act should have been held up until the making of the Rules. It is no doubt true that there are certain provisions in the Act which cannot be enforced unless there are rules made under the Act but equally there are other provisions which do not need any prescription by the Rules for their enforcement and these latter provisions could certainly have been enforced by the Administrator of the Union Territory of Delhi in so far as migrant workmen employed in these projects were concerned. There can be no doubt that in any event from and after 4th June, 1982 the provisions of this beneficent legislation have become enforceable and the migrant workmen employed in the construction work of these projects are entitled to the rights and benefits conferred upon them under those provisions. We need not point out that so far as the rights and benefits conferred upon migrant workmen under the provisions of Ss. 13 to 16 of the Act are concerned, the responsibility for ensuring such rights and benefits rests not only on the contractors but also on the Union of India, the Delhi Administration or the Delhi Development Authority who is the principal employer in relation to the construction work entrusted by it to the contractors. We must confess that we have serious doubts whether the provisions of this Act are being implemented in relation to the migrant workmen employed in the construction work of these projects and we have, therefore, by our order dated 11th May, 1982 appointed three ombudsmen for the purpose of making periodic inspection and reporting to us whether the provisions of this Act are being implemented at least from 4th June, 1982....

The first preliminary objection raises the question of *locus standi* of the petitioners to maintain the writ petition. It is true that the complaint of the petitioners in the writ petition is in regard to the violations of the various labour laws designed for the welfare of workmen and, therefore, from a strictly traditional point of view, it would be only the workmen whose legal rights are violated who would be entitled to approach the Court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon system of jurisprudence have been broken and a new dimension has been given to the doctrine of locus standi which has revolutionised the whole concept of access to justice in a way not known before to the Western system of jurisprudence. This Court has taken the view that, having regard to the peculiar socio-economic conditions prevailing in the country where there it considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only & person wronged can sue for judicial redress were to be blindly adhered to and followed, and it is, therefore, necessary to evolve a new strategy by relaying this traditional rule of standing in

order that justice may become easily available to the lowly and the lost. It has been held by this Court in its recent judgment in the *Judges Appointment and Transfer Case*, (AIR 1982 SC 149) in a major breakthrough which in the years to come is likely to impart new significance and relevance to the judicial system and to transform it into an instrument of socio-economic change, that where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial redress, any member of the public acting *bona fide* and not out of any extraneous motivation may move the Court for judicial redress of the legal injury of wrong suffered by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the Court. Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the Court and the Court is moved for this purpose by a member of a labile by addressing a letter drawing the attention of the Court to such legal injury or legal wrong, Court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it. That is what has happened in the present case. Here the workmen whose rights are said to have been violated and to 'Whom a life Of basic human dignity has been denied are poor, ignorant, illiterate humans who, by reason of their poverty and social and economic disability, are unable to approach the Courts for judicial redress and hence the petitioners have, under the liberalised rule of standing, *locus standi* to maintain the present writ petition espousing the cause of the workmen. It is not the case of the respondents that the petitioners are acting *mala fide* or out of extraneous motives and in fact the respondents cannot so allege, since the first petitioner is admittedly an organisation dedicated to the protection and enforcement of Fundamental Rights and making Directive Principles of State Policy enforceable and justiciable. There can be no doubt that it is out of a sense of public service that the present litigation has been brought by the petitioners and it is clearly maintainable ....

So far as the Contract Labour (Regulation and Abolition) Act, 1970 is concerned, it is clear that under Section 20, if any, amenity required to be provided under Ss. 16, 17, 18 or 19 for the benefit of the workmen employed in an establishment is not provided by the contractor, the obligation to provide such amenity rests on the principal employer and, therefore, if in the construction work of the Asiad projects, the contractors do not carry out the obligations imposed upon them by any of these sections, Union of India, the Delhi Administration and the Delhi Development Authority as principal employers would be liable and these obligations would be enforceable against them. The same position obtains 'in regard to the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. In the case of this Act also, Ss. 17 and 18 make the principal employer liable to make payment of the wages to the migrant workmen employed by the contractor as also to pay the allowances provided under Ss. 14 and 15 and to

provide the facilities specified in S. 16 to such migrant workmen, in case the contractor fails to do so and these obligations are also, therefore, clearly enforceable against the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers. So far as Article 24 of the Constitution is concerned, it embodies a fundamental right which is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment and since, as pointed out above, construction work is a hazardous employment, no child below the age of 14 years can be employed in construction work and therefore, not only are the contractors under a constitutional mandate not to employ any child below the age of 14 years but it is also the duty of the Union of India, the Delhi Administration and the Delhi Development Authority to ensure that this constitutional obligation is obeyed by the contractors to whom they have entrusted the construction work of the various Asiad projects. The Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors. So also with regard to the observance of the provisions of the Equal Remuneration Act, 1976, the Union of India, the Delhi Administration and the Delhi Development Authority cannot avoid their obligation to ensure that these provisions are complied with by the contractors. It is the principle of equality embodied in Article 14 of the Constitution which finds expression in the provisions of the Equal Remuneration Act, 1976 and if the Union of India, the Delhi Administration or the Delhi Development Authority at any time finds that the provisions of the Equal Remuneration Act, 1976 are not observed and the principles of equality before the law enshrined in Art. 14 is violated by its own contractors, it cannot ignore such violation and sit quiet by adopting a non-interfering attitude and taking shelter under the executive that the violation is being committed by the contractors and not by it. If any particular contractor is committing a breach of the provisions of the Equal Remuneration Act, 1976 and thus denying equality before the law to the workmen, the Union of India, the Delhi Administration or the Delhi Development Authority as the case may be would be under an obligation to ensure that the contractor observes the provisions of the Equal Remuneration Act, 1976 and does not breach the equality clause enacted in Art. 14. The Union of India, the Delhi Administration and the Delhi Development Authority must also ensure that the minimum wage is paid to the workmen as provided under the Minimum Wages Act, 1948. The contractors are, of course, liable to pay the minimum wage to the workmen employed by them but the Union of India, the Delhi Administration and the Delhi Development Authority who have entrusted the construction work to the contractors would equally be responsible to ensure that the minimum wage is paid to the workmen by their contractors. This obligation which even otherwise rests on the Union of India, the Delhi Administration and the Delhi Development Authority is additionally reinforced by Section 17 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of

Service) Act, 1979 in so far as migrant workmen are concerned. It is obvious, therefore, that the Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of these labour laws by the contractors and if these labour laws are not complied with by the contractors, the workmen would clearly have a cause of action against the Union of India, the Delhi Administration and the Delhi Development Authority.

That takes us to a consideration of the other limb of the second preliminary objection. The argument of the respondents under this head of preliminary objection was that a writ petition under Art. 32 cannot be maintained unless it complaints of a breach of some fundamental right or the other and since what were alleged in the present writ petition were merely violations of the labour laws enacted for the benefit of the workmen and not breaches of any fundamental rights, the present writ petition was not maintainable and was liable to be dismissed. Now it is true that the present writ petition cannot be maintained by the petitioners unless they can show some violation of a fundamental right, for it is only for enforcement of a fundamental right that a writ petition can be maintained in this Court under Article 32. So far we agree with the contention of the respondents but there our agreement ends. We cannot accept the plea of the respondents that the present writ petition does not complain of any breach of a fundamental right. The complaint of violation of Art. 24 based on the averment that children below the age of 14 years are employed in the construction work of the Asiad projects is clearly a complaint of violation of a fundamental right. So also when the provisions allege non-observance of the provisions of the Equal Remuneration Act 1976 it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Art. 14 and it can hardly be disputed that such a complaint can legitimately form the subject matter of a petition under Article 32. Then there is the complaint of non-observance of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and this is also in our opinion a complaint relating to violation of Art. 21. This Article has acquired a new dimension as a result of the decision of this Court in *Maneka Gandhi* v. *Union of India* (AIR 1978 SC 597) and it has received its most expansive interpretation in *Francis Coralie Mullin* v. *The Administrator, Union Territory of Delhi* (AIR 1981 SC 746) where it has been held by this Court that the right of life guaranteed under this Article is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes within its scope and ambit the right to live with basic human dignity and the State cannot deprive any one of these precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just. Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure

basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen. That leaves for consideration and complaint in regard to non- payment of minimum wages to the workmen under the Minimum Wages Act, 1948. We are of the view that this complaint is also one relating to •breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Article 23 which is violated by non-payment of minimum wage to the workmen.

...Article 23... is clearly designed to protect the individual not only against the State but also against other private citizens. Art. 23 is not limited in its application against the State but it prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by anyone else. The sweep of Art. 23 is wide and unlimited and it strikes at "traffic in human beings and begar and other similar forms of forced labour" wherever they are found....

The prohibition against "traffic in human beings and begar and other similar forms of forced labour" is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice.

The question then is as to what is the true scope and meaning of the expression "traffic in human beings and begar and other similar forms of forced labour" in Article 23 ? What are the forms of 'forced labour' prohibited by that Article and what kind of labour provided by a person can be regarded as 'forced labour' so as to fall within this prohibition ?

When the Constitution makers enacted Article 23 they had before them Article 4 of the Universal Declaration of Human Rights but they deliberately departed from its language and employed words which would make the reach and content of Article 23 much wider than that of Article 4 of the Universal Declaration of Human Rights. They banned traffic in human beings which is an expression of much larger amplitude than "slave trade" and they also interdicted "begar and other similar forms of forced labour". The question is what is the scope and ambit of the expression 'begar and other similar forms of forced labour' ? Is this expression wide enough to include every conceivable form of forced labour and what is the true scope and meaning of the words "forced labour ?" The word 'begar' in this Article is not a word of common use in English language. It is a word of Indian origin which like many other words has found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word 'begar' but there can be no doubt that it is a form of forced labour under which a person is compelled to work without receiving any remuneration. Molesworth describes 'begar' as "Labour or service exacted by a government or person in power without giving remuneration

for it." Wilson's glossary of Judicial and Revenue Terms gives the following meaning of the word 'begar' : "a forced labourer, one pressed to carry burthens, for individuals or the public. Under the old system, when pressed for public service, no pay was given. The bagari, though still liable to be pressed for public objects, now receives pay. Forced labour for private service is prohibited." "Begar" may, therefore, be loosely described as labour or service which a person is forced to give without receiving any remuneration for it. That was the meaning of the word 'begar' accepted by a Division Bench of the Bombay High Court in *S. Vasudevan* v. *S. D. Mittal*, AIR 1962 Bom. 53. 'Begar' is thus clearly a form of forced labour. Now it is not merely 'begar' which is Constitutionally prohibited by Art. 23 but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values. The practice of forced labour is condemned in almost every international instrument dealing with human rights. It is interesting to find that as far back as 1930 long before the Universal Declaration of Human Rights came into being, International Labour Organisation adopted Convention No. 29 laying down that every member of the International Labour Organisation which ratifies this convention shall "suppress the use of forced or compulsory labour in all its forms" and this prohibition was elaborated in Convention No. 105 adopted by the International Labour Organisation in 1957. The words "forced or compulsory labour" in Convention No. 29 had of course a limited meaning but that was so on account of the restricted definition of these words given in Article 2 of the Convention. Article 4 of the European Convention of Human Rights and Article 8 of the International Covenant on Civil and Political Rights also prohibit forced or compulsory labour. Art. 23 is in the same strain as it enacts a prohibition against forced labour in whatever form it may be found. The learned counsel appearing on behalf of the respondent laid some emphasis on the word 'similar' and contended that it is not every form of forced labour which is prohibited by Art. 23 but only such form of forced labour as is similar to 'begar' and since 'begar' means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Article 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words 'other similar forms of forced labour'. This contention seeks to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23 and is in our opinion not well founded. It does not accord with the principle enunciated by this Court in *Maneka Gandhi* v. *Union of India*... that when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content. It is difficult to imagine that the constitution makers should have intended to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. Could there

be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all, it should be regarded as a pernicious practice sufficient to attract the condemnation of Art. 23, but if some remuneration is paid for it, then it should be outside the inhibition of that Article ? If this were the true interpretation, Art. 23 would be reduced to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Article 23. We do not think it would be right to place on the language of Art, 23 an interpretation which would emasculate its beneficent provision and defeat the very purpose of enacting them. We are clear of the view that Article 23 is intended to abolish every form of forced labour. The words "other similar forms of forced labour" are used in Art. 23 not with a view to importing the particular characteristic of 'begar' that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the Constitution makers used the words "other similar forms of forced labour". If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour, they would straightaway come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "other similar forms of forced labour." These words would be rendered futile and meaningless and it is a well recognised rule of interpretation that the Court should avoid a construction which has the effect of rendering any words used by the Legislature superfluous or redundant. The object of adding these words was clearly to expand the reach and content of Art. 23 by including, in addition to 'begar' other forms of forced labour within the prohibition of that Article. Every form of forced labour 'begar' or otherwise is within the inhibition of Art. 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion. Take for example a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years. If a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Art. 23. That is why specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer without breaching the injunction of Art. 23. This was precisely the view taken by the Supreme

Court of *United States in Bailey* v. *Alabama*, (1910) 219 U.S. 219 : 55 L. *Ed.* 191 while dealing with a similar provision in the Thirteenth Amendment. There, a legislation enacted by the Alabama State providing that when a person with intent to injure or defraud his employer enters into a contract in writing for the purpose of any service and obtains money or other property from the employer and without refunding the money or the property refuses or fails to perform such service, he will be punished with a fine. The constitutional validity of this legislation was challenged on the ground that it violated the Thirteenth Amendment which *inter alia* provides : "Neither slavery not involuntary servitude... shall exist within the United States or any place subject to their jurisdiction"....

It is therefore clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced, (by compulsion of law or otherwise) to continue to perform such service, as that would be forced labour within the inhibition of Art. 23. This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service *vide Pollock* v. *Williams*, (1943) 322 U.S. 4 : 88 Law *Ed.* 1095. The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him. There should be no serfdom or involuntary servitude in a free democratic India, which respects the dignity of the individual and the worth of the human person. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article 23 therefore says that no one shall be forced to provide labour or service against his will, even though it be under a contract of service.

Now, the next question that arises for consideration is whether there is any breach of Art. 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt

of remuneration which is less than the minimum wage, he is acting under the force of some compulsion, which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'. There is no reason why the word 'forced' should be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternative to person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be provid-

ing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Art. 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Art. 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Art. 23 is remedied. It is, therefore, clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental rights of the workmen under Art. 23.

Before leaving this subject we may point out with all the emphasis at our command that whenever any fundamental right enacted in Arts. 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. Of course, the person whose fundamental right is violated can always approach the Court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Union of India, the Delhi Administration and the Delhi Development Authority must therefore be held to be under an obligation to ensure observance of these various labour laws by the contractors and if the provisions of any of these labour laws are violated by the contractors, the petitioners vindicating the cause of the workmen are entitled to enforce this obligation against the Union of India, the Delhi Administration and the Delhi Development Authority by filing the present writ petition. The preliminary objections urged on behalf of the respondents must accordingly be rejected.

Having disposed of these preliminary objections, we may turn to consider whether there was any violation of the provisions of the Minimum Wages Act, 1948, Art. 24 of the Constitution, the Equal Remuneration Act, 1976, the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 by the contractors. The Union of India in its affidavit in reply admitted that there were certain violations committed by the contractors but hastened to add that for these violations prosecutions were initiated against the errant contractors and no violation of any of the labour laws was allowed to go unpunished. The Union of India also conceded in its affidavit in reply that Re. 1 per worker per day was deducted by the jamadars from the wage payable to the workers with the result that the workers did not get the minimum wage of Rs. 9.25 per day, but stated that proceedings had been

taken for the purpose of recovering the amount of the short fall in the minimum wage from the contractors. No particulars were however given to such proceedings adopted by the Union of India or the Delhi Administration, or the Delhi Development Authority. It was for this reason that we directed by our order dated 11th May, 1982 that whatever is the minimum wages for the time being or if the wage payable is higher than such wage shall be paid by the contractors to the workmen directly without the intervention of the jamadars and that the jamadars shall not be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise. We would also direct in addition that if the Union of India or Delhi Administration or the Delhi Development Authority finds—and for this purpose it may hold such inquiry as is possible in the circumstances—that any of the workmen has not receiver the minimum wage payable to him, it shall take the necessary legal action against the contractors whether by way of prosecution or by way of recovery of the amount of the shortfall. We would also suggest that hereafter whenever any contracts are given by the Government or any other governmental authority including a public sector corporation, it should be ensured by introducing a suitable provision in the contracts that wage shall be paid by the contractors to the workmen directly without the intervention of any *jamadars* or *thekadars* and that the contractors shall ensure that no amount by way of commission or otherwise is deducted or recovered by the Jamadars from the wage of the workmen. So far as observance of the other labour laws by the contractors is concerned, the Union of India, the Delhi Administration and the Delhi Development Authority disputed the claim of the petitioners that the provisions of these labour laws were not being implemented by the contractors save in a few instances where prosecutions had been launched against the contractors. Since it would not be possible for this Court to take evidence for the purpose of deciding this factual dispute between the parties and we also wanted to ensure that in any event the provision of these various laws enacted for the benefit of the workmen were strictly observed and implemented by the contractors, we by our order dated 11th May, 1982 appointed three ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of ascertaining whether the provisions of these labour laws were being carried out and the workers were receiving the benefits and amenities provided for them under these beneficent statutes or whether there were any violations of these provisions being committed by the contractors so that on the basis of the reports of the three ombudsmen, this Court could give further direction in the matter if found necessary. We may add that whenever any construction work is being carried out either departmentally or through contractors the Government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed and they should not wait for any complaint to be received from the workmen in regard to non-observance of any such provisions before proceeding to take action against the erring officers or contractors but they should institute an effective system of peri-

odic inspections coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and the workmen are not denied the rights and benefits to which they are entitled under such provisions and if any such violations are found, immediate action should be taken against defaulting officers or contractors. That is the least which a government or a governmental authority or a public sector corporation is expected to do in a social welfare state ....

Questions

1. Do you think that the Supreme Court's interpretation of "forced labour" under article 23 of the Constitution would help in enforcement of the Minimum Wages Act, 1948?
2. Do you feel that the emergence of public interest litigation would help the poor workers?
3. Do you agree with the Supreme Court that "whenever any fundamental right enacted in articles 17, 23 or 24 of the Constitution" is violated, it is the constitutional obligation of the state to take the necessary steps for the purpose of interdicting such violation and ensuring observance of fundamental right by the private individual who is transgressing the same ?

CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED v. BROJO NATH GANGULY

Supreme Court, 1986 Lab. IC 1312

[The appellant corporation was a government company incorporated under the Companies Act. All shares of the corporation were held by the Central Government and the Government of West Bengal and Assam but it was under the complete control and management of the Central Government.

The Rivers Steam Navigation Co. Ltd., which was carrying on the same business as the corporation was doing, entered into a scheme of arrangement with the corporation for dissolution of the latter and taking over of its business liabilities by the former. The scheme, *inter alia*, stipulated that the corporation shall take as many of the existing staff or labour as were possible and that those who could not be taken over shall be paid by the transferor company all moneys due to them under the law and all legitimate and legal compensations payable to them either under the Industrial Disputes Act or otherwise legally admissible and that such moneys shall be provided by the Government of India to the transferor company who would pay these dues. The Calcutta High Court approved the scheme. Thereafter the services of all respondents were taken over by the corporation. However, by confidential letter the respondent Ganguly was asked to reply within 24 hours to the allegations of negligence made against him. On receipt of his representation a notice under rule 9(i) was served on him terminating his services with immediate effect by paying three

months pay. Similarly a charge-sheet was served upon the respondent Sengupta intimating that a disciplinary inquiry was proposed against him under the rules and calling upon him to file his written statement of defence. Sengupta denied the charges made against him and asked for inspection of documents and copies of statements of witnesses mentioned in the said charge sheet. But a notice was served on him under rule 9(i) terminating his services with immediate effect by paying three months salary. The appointment letters issued to the respondents were in stereotype forms under which the corporation could without any previous notice terminate their services, if the corporation was satisfied that the employee was unfit medically or if he was guilty of any insubordination, intemperance or other misconduct, or of any breach of any rules pertaining to this service or conduct or nonperformance of his duties. The letters of appointment further stipulated that they would have been subject to the rules and regulations of corporation. rule 9(i) of the corporations Service, Discipline and Appeal Rules of 1979 had provided that the services of permanent employee could be terminated on three months' pay plus DA or salary *in lieu* of the notice. Both Ganguly and Sengupta filed writ petitions before high court. A division bench at the court allowed the same. Thereupon the corporation filed appeals before the Supreme Court. The main question for determination therein were (i) whether the appellant – corporation was an instrumentality of the State so as to be covered by articles 12 & 36 of the Constitution and (ii) whether the term in a contract of employment entered into with the Corporation was void under section 23 of the Contract Act and violative of article 14 of the Constitution and as such whether rule 19(i) which formed part of the contract of employment between the Corporation and its employees to whom the said rules applied, was void ? Excerpts from the judgment of the court delivered by Madon J. follow:]

Rule 9(i) confers upon the Corporation the power to terminate the service of a permanent employee by giving him three months notice in writing or *in lieu* thereof to pay him the equivalent of three months' basic pay and dearness allowance. A similar regulation framed by the West Bengal State Electricity Board was described by this Court in *W.B. State Electricity Board* v. *Desh Bandhu Ghosh*, (1985) 3 SCC 116 as:

> ...a naked hire and fire rule, the time for banishing which altogether from employer- employee relationship is fast approaching. Its only parallel is to be found in Henry VIII clause so familiar to administrative lawyers.

As all lawyers may not be familiar with administrative law, we may as well explain that "the Henry VIII clause" is a provision occasionally found in legislations conferring delegated legislative power, giving the delegate the power to amend the delegating Act in order to bring that Act into full operation or otherwise by order to remove any difficulty, and a times giving power to modify the provisions of other Acts also. The Committee on Ministers' Powers in its report submitted in 1932 (Cmd. 4060) pointed out that such a provision had been nicknamed "the Henry VIII

clause" because "that king is regarded popularly as the impersonation of executive autocracy". The Committee's Report (at page 61) criticised these clauses as a temptation to slipshod work in the preparation of bills and recommended that such provisions should be used only where they were justified before Parliament on compelling grounds. Legislation enacted by Parliament in the United Kingdom after 1932 does not show that this recommendation had any particular effect.

No apter description of Rule 9(i) can be given than to call it "the Henry VIII clause". It confers absolute and arbitrary power upon the Corporation. It does not even state who on behalf of the corporation is to exercise that power. It was submitted on behalf of the appellants that it would be the Board of Directors. The impugned letters of termination, however, do not refer to any resolution or decision of the Board and even if they did, it would be irrelevant to the validity of Rule 9(i). There are no guidelines whatever laid down to indicate in what circumstances the power given by Rule 9(i) is to be exercised by the Corporation. No opportunity whatever of a hearing is at all to be afforded to the permanent employee whose service is being terminated in the exercise of this power....

[T]he said Rules provide for four different modes in which the services of a permanent employee can be terminated earlier than his attaining the age of superannuation, namely, Rule 9(i), Rule 9(ii), sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and Rule 37. Under Rule 9(ii) the termination of service is to be on the ground of "Services no longer required in the interest of the company". Sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 provides for dismissal on the ground of misconduct. Rule 37 provides for termination of service at any time without any notice if the employee is found guilty of any of the acts mentioned in that rule. Rule 9(i) is the only rule, which does not state in what circumstances the power conferred by the rule is to be exercised. Thus, even where the Corporation could proceed under Rule 36 and dismiss an employee on the ground of misconduct after holding a regular disciplinary inquiry, it is free to resort instead to Rule 9(i) in order to avoid the hassle of an inquiry. Rule 9(i) thus confers an absolute, arbitrary and unguided power upon the Corporation. It violates one of the two great rules of natural justice - the *audi alteram partem* rule. It is not only in cases to which Article 14 applies that the rules of natural justice come into play. As pointed out in *Union of India* v. *Tulsiram Patel* (1985) 3 SCC 398: 1985 SCC (L&S) 672 (at SCC page 463, para 72): "The principles of natural justice are not the creation of Article 14. Article 14 is not their begetter but their constitutional guardian". That case has traced in some detail the origin and development of the concept of principles of natural justice and of the *audi alteram partem* rule (at pages 463-480). They apply in diverse situations and not only to cases of State action. As pointed out by O. Chinnappa Reddy, J. in *Swadeshi Cotton Mills* v. *Union of India* (1981) 1 SCC 664 they are implicit, in every decision-making function, whether judicial or quasi-judicial or administrative. Undoubtedly in certain circumstances the principles of natural justice can be modified and in exceptional cases, can even be excluded as pointed

out in *Tulsiram Patel* case. Rule 9(i), however, is not covered by any of the situations, which would justify the total exclusion of the *audi alteram partem* rule.

The power conferred by Rule 9(i) is not only arbitrary but is also discriminatory for it enables the Corporation to discriminate between employee and employee. It can pick up one employee and apply to him clause (i) of Rule 9. It can pick up another employee and apply to him clause (ii) of Rule 9. It can pick up yet another employee and apply to him sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and to yet another employee it can apply Rule 37. All this the Corporation can do when the same circumstances exist as would justify the Corporation in holding under Rule 38 a regular disciplinary inquiry into the alleged misconduct of the employee. Both the contesting respondents had, in fact, been asked to submit their explanation to the charges made against them. Sengupta had been informed that a disciplinary inquiry was proposed to be held in his case. The charges made against both the respondents were such that a disciplinary inquiry could easily have been held. It was, however, not held but instead resort was had to Rule 9(i).

The Corporation is a large organization. It has offices in various parts of West Bengal, Bihar and Assam, as shown by the said Rules, and possibly in other states also. The said rules form part of the contract of employment between the Corporation and its employees who are not workmen. These employees had no powerful workmen's union to support them. They had no voice in the framing of said Rules. They had no choice but to accept the said Rules as part of their contract of employment. There is gross disparity between the Corporation and its employees, whether they are workmen of officers. The Corporation can afford to dispense with the services of an officer. It will find hundreds of others to take his place but an officer cannot afford to lose his job because if he does so, there are not hundreds of jobs waiting for him. A clause such as clause (i) of Rule 9 is against right and reason. It is wholly unconsciousnable. It has been entered into between parties between whom there is gross inequality of bargaining power. Rule 9(i) is a term of the contract between the Corporation and all its officers. It affects a large number of persons and it squarely falls within the principle formulated by us above. Several statutory authorities have a clause similar to Rule 9(i) in their contracts of employment. As appears from the decided cases, the *West Bengal State Electricity Board* and *Air India International* have it. Several government companies apart from the Corporation (which is the first appellant before us) must be having it. There are 970 government companies with paid up capital of Rs. 16414.9 crores as stated in the written arguments submitted on behalf of the Union of the India. The government and its agencies and instrumentalities constitute the large employer in the country. A clause such as Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good. Such a clause, therefore, is opposed to public policy and being opposed to public policy, it is void under Section 23 of the Indian Contract Act.

It was, however, submitted on behalf of the appellants that this was a contract entered into by the Corporation like any other contract entered into by it in the course of its trading activities and the court, therefore, ought not to interfere with it. It is not possible for us to equate employees with goods which can be bought and sold. It is equally not possible for us to equate a contract of employment with a mercantile transaction between two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee.

. . .

As the Corporation is "the State" within the meaning of Article 12, was amenable to the writ jurisdiction of the High Court under Article 226. It is now well established that an instrumentality or agency of the State being the State " under Article 12 of the Constitution is subject to the constitutional limitations, and its actions are State actions and must be judged in the light of the Fundamental Rights guaranteed by part III of the Constitution....

As pointed out above, Rule 9(1) is both arbitrary and unreasonable and it also wholly ignores and sets aside the *audi alteram partem* rule it, therefore, violates Art. 14 of the Constitution.

We would like to observe here that as the definition of "the State" in Article 12 is for the purposes of both Part III and Part IV of the Constitution, State actions, including actions of the instrumentalities and agencies of the State, must not only be in conformity with the Fundamental Rights guaranteed by Part III but must also be in accordance with the Directive Principles of State Policy prescribed by Part IV. Clause (a) of Article 39 provides that the State shall, in particular, direct, its policy towards "securing that the citizens, men and women, equally have the right to adequate means of livelihood". Article 41 requires the State, within the limits of its economic capacity and development, to "make effective provision for securing the right to work". An adequate means of livelihood cannot be secured to the citizens by taking away without any reason the means of livelihood. The mode of making "effective provision for securing the right to work" cannot be by giving employment to a person and then without any reason throwing him out of employment. The action of an instrumentality or agency of the State, if it frames a service rule such as clause (i) of Rule 9 or a rule analogous thereto would, therefore, not only be violative of Article 14 but would also be contrary to the Directive Principles of State Policy contained in clause (a) of Article 39 and in Article 41. In the result, both these appeals fail and are dismissed....

DELHI DEVELOPMENT HORTICULURE EMPLOYEES' UNION v. DELHI ADMINISTRATION
(1992) 4 SCC 99

[The central government formulated various schemes to provide wage employment or income for those who were below poverty line, namely, agricultural and land

labourer during lean period, and poor and needy population in rural areas. Under these programmes work in rural areas such as social forestry, village road *etc.* were taken at various sites in rural areas. The work was done by providing daily wage employment to rural workmen (including the petitioners). Under the social forestry programme which involved knowledge of plantation and agricultural practices, some unemployed agricultural graduates/diploma holder who had approached the District Rural Development Agency (DDRA) through various officials and non-officials and were ready to work on daily wage employment were given employment. The educated workers like the petitioners were called Supervisors/ Work Assistant etc, and were employed to guide unskilled workers in actual plantation work and were paid higher daily wages compared to those paid to unskilled workers.

In 1988-89 the central government decided to merge various schemes into a rural employment programme called *Jawahar Rozgar Yojna*. Under this scheme the assistance received from the central government as well as the state government / union territories was required to be given to the village panchayats to increase the coverage of the programme and to ensure fuller participation of the people in its implementation. The choice of work and the determination of work force was also to be done by the panchayats taking into consideration the funds allotted to them in view of over all guidelines issued by the central government. In view of transfer of responsibilities to the village panchayats, the DDRA an autonomous body registered under the Societies Registration Act, as a society to implement the policies of the central government and to spend funds made available to it by the central government ceased to be implementing machinery with effect from July 31, 1989.

The petitioner-workmen who were employed on daily wages filed the petitions for (i) their absorption as regular employees in the Development Department of the Delhi Administration, (ii) injunction prohibiting the termination of their services and (iii) the difference in wages paid to them and those paid to the regular employees. The petitions were resisted on behalf of the respondents contending that there was no scope for the absorption of the petitioners as they were employed on daily wages with a clear understanding that the scheme under which they were employed had no provision for regularization of any workmen. Excerpts from the judgment of the court delivered by Sawant J. follow:]

There is no doubt that broadly interpreted and as necessary logical corollary, right to life would include the right to livelihood and, therefore, right to work. It is for this reason that this Court in *Olga Tellis* v. *Bombay Municipal Corporation,* (1985) 3 SCC 45 while considering the consequences of eviction of the pavement dwellers had pointed out that in that case the eviction not merely resulted in deprivation of shelter but also deprivation of livelihood inasmuch as the pavement dwellers were employed in the vicinity of their dwellings. The court had, therefore, emphasised that the problem of eviction of the pavement dwellers had to be viewed also in that context. This was however, in the context of Article 21, which seeks to protect persons against the deprivation of their life except according to procedure

established by law. This country has so far not found it feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any less fundamental to life. Advisedly, therefore, it has been placed in the Chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same "within the limits of its economic capacity and development". Thus even while giving the direction to the State to ensure the right to work, the Constitution makers thought it prudent not to do so without qualifying it.

Viewed in the context of the facts of the present case it is apparent that the schemes under which the petitioners were given employment have been evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. The schemes were further meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. The object was not to provide the right to work as such even to the rural poor – much less to the unemployed in general. As has been pointed out by Union of India in their additional affidavit, in 1987-88, 33 percent of the total rural population was below the poverty line. This meant about 35 million families. To eliminate poverty and to generate full employment 2500-3000 million man-days of work in a year, was necessary. As against that, the Jawahar Rozgar Yojna could provide only 870 million man-days of employment on intermittent basis in neighbourhood projects. Within the available resources of Rs.2600 crores in all, 3.10 million people alone could be provided with permanent employment, if they were to be provided work for 23 days in a year on minimum wages. However, under the scheme meant for providing work only 80-90 days work could be provided to 9.30 million people.

The above figures show that if the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault could, therefore be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularization is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them, with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the

existing schemes and forbid them from introducing the new ones for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc.

Apart from the fact that the petitioners cannot be directed to be regularized for the reasons given above, we may take note of the pernicious consequences to which the direction for regularization of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent and relevant rules, and is continued for 240 or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential to be continued for 240 or more days they have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardized on both counts.

In the circumstances, it is not possible to accede to the request of the petitioners that the respondents be directed to regularize them. The most that can be done for them is to direct the respondent-Delhi Administration to keep them on a panel and if they are registered with the Employment Exchange and are qualified to be appointed on the relevant posts, give them a preference in employment whenever there occurs a vacancy in the regular posts, which direction we give hereby.

With the above recommendation, we dismiss the petition with no order as to costs.

VISHAKA v. STATE OF RAJASTHAN
(1997) 6 SCC 241

[Certain social activists and NGOs filed a writ petition for enforcement of the fundamental right of working women under articles 14, 19 and 21 of the Constitution. The immediate cause for filing the petition was to focus attention towards unsafe and unhealthy work environment and eliminate sexual harassment at the workplace through judicial intervention. Excerpts from the judgment of the court delivered by Ms. Sujata V. Manohar J. follow]

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfill this felt and urgent social need.

Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19 (1) (g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of *mandamus* in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

The notice of the petition was given to the State of Rajasthan and the Union of India. The learned Solicitor General appeared for the Union of India and rendered valuable assistance in the true spirit of a Law Officer to help us find a proper solution to this social problem of considerable magnitude. In addition to Ms. Meenakshi Arora and Ms. Naina Kapur who assisted the Court with full commitment, Shri Fali S. Nariman appeared as *Amicus Curiae* and rendered great assis-

tance. We place on record our great appreciation for every counsel who appeared in the case and rendered the needed assistance to the Court which had enabled us to deal with this unusual matter in the manner considered appropriate for a cause of this nature.

Apart from Article 32 of the Constitution of India, we may refer to some other provisions which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Articles 14, 19(1) (g) and 21, which have relevance are :

Article 15

"15. *Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth—*

(1) The State shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them.

(2) XXX XXX XXX XXX.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) XXX XXX XXX XXX."

Article 42

"42. *Provision for just and humane conditions of work and maternity relief—*

The State shall make provision of securing just and humane conditions of work and for maternity relief."

Article 51A

"51. *Fundamental duties — It shall be the duty of every citizen of India, —*

(a) to abide by the Constitution and respect its ideals and institutions, ...

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women: ...."

Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are :

Article 51

"51. *Promotion of international peace and security.* — The State shall endeavour to—

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and XXX XXX XXX XXX."

Article 253

"253. *Legislation for giving effect to international agreements* — Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Seventh Schedule

List I – Union List :

. . .

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

....

In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51 (c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil.

Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirement as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with

the learned Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.

The progress made at each hearing culminated in the formulation of guidelines to which the union of India gave its consent through the learned Solicitor General, indicating that there should be the guidelines and norms declared by this Court to govern the behaviour of the employers and all others at the work places to curb this social evil.

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are :

Objectives of the Judiciary

10. The objectives and functions of the judiciary include the following :

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State".

Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are :

Article 11

"1. State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular :

(a) The right to work as an inalienable right of all human beings :

....

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

....

Article 24

"States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention."

The general recommendations of CEDAW in this context in respect of Article 11 are :

VIOLENCE AND EQUALITY IN EMPLOYMENT

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem: it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment and on measures to protect women from sexual harassment and other forms of violence or coercion in the work place."

The Government of India has ratified the above Resolution in June 25, 1993 with some reservations which are not material in the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made an official commitment, *inter alia*, to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women's rights to act as a public defender of women's human rights; to institutionalise a national level mechanism to monitor the implementation of the Platform of Action. We have, therefore, no hesitation in placing reliance on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic laws. The High Court of Australia in

Minister for Immigration and Ethnic Affairs v. *Teoh*, 128 ALR 353, has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

In *Nilabati Behera* v. *State of Orissa*, 1992 (2) SCC 746, a provision in the ICCPR was referred to support the view taken that 'an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender quality in all spheres of human activity.

In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation in enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

The Guidelines and Norms prescribed herein are as under:

Having regard to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993.

Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is a necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women :

1. Duty of the Employer or Other Responsible Persons in Work Places and Other Institutions: It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as :

(a) physical contact and advances;

(b) demand or request for sexual favours;

(c) sexually coloured remarks;

(d) showing pornography;

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps: All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing order under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee women should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings: Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option of seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action: Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee: The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor of other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report of the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Worker's Initiative: Employees should be allowed to raise issues of sexual harassment at worker's meeting and on other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third Party Harassment: Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

15. Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding

and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

Questions

1. What is harassment?
2. What are the roles of employers, workers/unions and others in dealing with and preventing sexual harassment at workplace.
3. How should the harassers and harassed be handled?
4. What are the obligations of employers in cases of third-party harassment of employees by customers and outsiders in the company premises.
5. What, if any, are the lessons from the experience so far?

AVAS VIKAS SANSTHAN & ANR. v. AVAS VIKAS SANSTHAN ENGINEERS ASSN.& ORS.
JT 2006(4) SC 118

[Avas Vikas Sansthan (AVS), a registered society was established under the scheme formulated by the Housing and Urban Development Corporation, New Delhi. It started functioning in the year 1989, but in the year 1997 it began to incur heavy losses and could not pay its employees their salaries after 01.12.1998. The Rajasthan Government, therefore, decided that, in view of financial and administrative conditions of the AVS, it should be dissolved. It accordingly directed the Rajasthan Housing Board to take immediate steps to liquidate the AVS. The government also directed that the employees of the AVS would be adjusted on priority on the vacant posts of Municipal Boards, Municipal Councils, Jaipur Development Authority and other local bodies. By a resolution the AVS was dissolved.

The respondents (employees), feeling that their services might be terminated, filed a writ petition in the high court. On 31.03.1999 AVS terminated the services of all its 46 daily wage employees. During the pendency of the writ petition the state government issues an order which contained directions regarding the manner in which the employees of the AVS would be given first appointment in the local self-government institutions in Rajasthan without benefit of past service. An option was also given to the employees to retire under Voluntary Retirement Scheme, if they so desired. The single judge of the high court allowed the writ petition and held that employees will be entitled to salary for the period worked by them. It also directed the Rajasthan Housing Board to create new cell and quashed the policy of the state governments to give alternate employment. However, the employees were given option to continue in the said employment if they so choose. Feeling aggrieved, the Rajasthan Housing Board, the AVS and the State Government preferred appeals before the division bench of the high court. The division bench

granted pay protection, counting of service for the purposes of pension and other retirement benefits of 5th pay commission. For daily wagers the court directed that they be treated as regular appointees as they were selected but not appointed on regular basis till the date of dissolution. For certain employees including Brijesh Kumar Goel and R.K. Saini who were working in the Project in Maharashtra the court ordered that they were also entitled to alternative employment in local bodies. Against the decision of the division bench of the high court, the appellants filed appeals before the Supreme Court, Excerpts from the judgment of the court delivered by Dr. A.R. Lakshmanan J. follow:]

In our view, after the liquidation of the AVS due to any reason unless such liquidation was *mala fide,* there exists no right on the employees of such liquidated society for reemployment. In the present case, the Rajasthan Government did formulate a scheme to absorb the employees of the society into various other organizations with various terms and conditions to which the respondent employees agreed. There is no allegation in the writ petition that the employees were coerced/ forced/unduly influenced to submit the undertaking. Therefore at a later stage it is unfair to take claims of service conditions other than the ones that are stipulated and accepted earlier.

In the case of *Rajendra* v. *State of Rajasthan*, JT 1999 (1) SC 278 and *S.M. Nilajkar* v. *Telecom District Manager* JT 2003 (3) SC 436 where a project has been shut down due to want of funds the employer cannot by a writ of *mandamus* be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the present matter and therefore the finding of the High Court is not fair to common conscience and also that the same will act as a disincentive to the State to float such schemes in future thereby reducing the employment opportunities of many.

Power to Abolish Civil Posts

It is settled law that the power to abolish any civil post is inherent in every sovereign government and such abolition will not entail any right on the person holding the abolished post the right to re-employment or to hold the same post. In the present case, the State Government was benevolent enough to float a scheme to absorb such employees whose posts were abolished. Therefore, in our opinion, the arguments advanced by counsel for the respondents with regard to unfairness meted out to the employees of Avas Vikas Sansthan hold no water.

With regard to 604 employees of the AVS, it was argued that State to Rajasthan had no legal obligation to offer alternative employment to the erstwhile employees of the AVS. But the State of Rajsthan in all fairness did frame a scheme and offered employment in other local bodies of the government. Thus, the terms and conditions of such alternative employment cannot be challenged. We are of the opinion,

that the decision of the High Court granting relief of reemployment with pay protection, seniority and pension is erroneous. We, therefore, direct the State of Rajsthan to strictly adhere to and implement its decision to offer employment in other local bodies in letter and spirit.

We further make it clear that all the erstwhile employees, if not already employed, should be employed in the local bodies as the scheme formulated by the Government of Rajasthan in a war footing.

Pay Protection

On the question of pay protection claimed by the respondents, it is seen from the Cabinet decision of 18.05.1999 that "no pay protection should be granted to the employees.". The same was conveyed by the Rajsthan Housing Board vide letter dated 01.06.1999. This decision was taken after considering the views of the Finance Department. So the undertaking by the employees when they were absorbed into other local bodies had the same stipulation. This being so, such claim for pay protection, at this late stage, cannot be made. Thus, considering the categorical condition that the employees will not be given any pay protection, and moreover due to the absence of any legal right for pay protection to the employees of the AVS, such claims, in our opinion, cannot be sought for.

With regard to the claim of the respondents for counting services rendered in the AVS, the Cabinet decision of 18.05.1999 specifically states that "the benefit of past service is not to be counted for any purpose". The same was conveyed by the Rajasthan Housing Board letter dated 01.06.1999. Therefore the undertaking by the employees when they were absorbed into other local bodies had the same stipulation; therefore at this late stage such claim for counting services rendered in the AVS for the pension and other retrial benefits, in our opinion, cannot be made.

Since the employees of the AVS are not treated as government servants, they are not entitled to claim the benefit of Government Order dated 25.01.1995, which is specifically applicable only to government employees and the benefit of the 5th Pay Commission Report also stands inapplicable as this was not a claim that was sought by the respondents at any stage in any court that had entertained this matter. Also the Rajsthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 will not apply as such to these employees of the AVS as they clearly do not fall within the definition of Surplus, Personnel as defined in the Rajsthan Civil Services (Absorption of Surplus Personnel) Rules, 1969.

As regards the question of whether Rajasthan Housing Board can be considered 'State' under Article 12 of the Constitution, no serious argument were made by either counsel for the parties and, therefore, we are not expressing any opinion on the same and decide the other issues on the basis of the arguments advanced.

Rights of Daily Wagers

With regard to the appointment of 46 daily wage employees after the dissolution of the society we hold that in the facts and circumstances of this case there is no right on the part of any employee to be reemployed. Also daily wage employees cannot, by any stretch of imagination, be put on par with regular employees under any law prevalent as of date. The finding of the Division Bench that they can be treated on par with regular employees and be given various reliefs is wrong and erroneous under law. Therefore, we are not granting any relief to the daily wage employees, as their claim is not justified under law. However, the Government of Rajasthan may sympathetically consider absorption of these employees in the vacancy available if any in future by giving them preference to other new applicants in any of their local bodies etc. subject to the following conditions:

1. The employees will be entitled to salary/wages from the date of their re-employment and shall not claim for any past period;
2. The employees will not be entitled to pay protection, benefit of GO dated 25.01.1992 5th Pay Commission and the service rendered by the employees will no be considered for pension and/or other retiral benefits;
3. The appointment of degree holder/diploma holder engineers shall be on the post of junior clerk on the minimum scale of pay;
4. The appointment of employees of Administrative Department would be on the post of junior clerk on the minimum scale of pay;
5. The appointment would be subject to suitability and physical fitness;
6. The alternative employment would be granted subject to availability of vacancy preferably within a period of 3 months.

If they are absorbed in future the same will be treated as a fresh employment and employees/appointees will be governed by the rules and regulations of the absorbing Department if they are found suitable.

Power to Abolish Posts as Measure of Economy

It is well settled that the power to abolish a post which may result in the holder thereof ceasing to be a Government servant has got to be recognized. The measure of economy and the need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or abolish the post. In such an event, a Department which was abolished or abandoned wholly or partially for want of funds, the court cannot, by a writ of mandamus, direct the employer to continue employing such employees as have been dislodged. In the instant case, the State of Rajsthan has framed a scheme and offered alternative employment in the other local bodies as a Welfare State on humanitarian grounds. As already noticed, the employees of the AVS have

accepted alternative employment on terms and conditions of the local bodies and having filed a solemn statement by way of affidavit that they will not claim continuity of service by protection of seniority etc. nor will they challenge the terms of such employment and shall also withdraw the writ petition filed by them. They cannot now go around and say that the judgment of the Division Bench should be given effect to. In our view, they are estopped from claiming the benefits and challenging the terms and conditions of the fresh employment. The employees have no right to resile from the affidavits filed before the High Court. We have searched in vain in order to see as to whether there is any material to show that the settlement was intended to frustrate the order passed by the High Court. At no point of time, the employees raised any dispute as regards the fairness of the settlement. Having obtained the benefit, it was not open to them to turn down without justifiable reasons to contend that the settlement was not fair and they should be given pay protection, counting of service for retiral benefits and placing the employees on par in the receiving Department. The cabinet decision of not granting pay protection was taken after taking into consideration the views of the Finance Department as it has huge financial burden on the local bodies offering re-employment after relaxing their own recruitment rules. In our view , the aforesaid categorical condition that the employees would not be entitled to pay protection and in the absence of any legal right of pay protection and fresh employment consequent upon on fresh appointment on humanitarian grounds, the decision of the High Court to grant protection of pay is unsustainable and liable to be interfered with.

Dr. Rajeev Dhawan, learned senior counsel for the respondents, cited many decisions. Those cases, in our view, is distinguishable on facts and on law. In those cases, the High Court has directed protection of pay on the facts and circumstances as can be seen from a perusal of the same.

The cabinet decision dated 18.05.1999 specifically decided that their period of earlier service shall not be valid for any purpose. This was specifically conveyed by the State Government to the Rajasthan Housing Board vide letter dated 01.06.1999 and also the State Government dated 26.02.2000 to the various local bodies. It is stated that one of the terms of re-employment would be that earlier service tenure shall not be considered for any purpose. Furthermore, under the provisions of the AVS Employees Services Regulation 1993, the employees of the AVS were entitled to provident fund. Rule 14 provide as under:-

"An employees of Sansthan shall be required to subscribe to the Contributory Provident Fund in accordance with such rules as may be prescribed by the board of management".

The employees of the AVS were having the benefit of contributing provident fund and were not entitled to any other pensionary/retiral benefits. The employees have withdrawn provident fund including the employer's contribution after termination of services rendered by the employees with AVS cannot be counted for the

purpose of pension and other retiral benefits since such benefits were not available to them even in their parent organization and it was a specific condition of fresh employment that their past services with AVS will not be considered for any purpose.

Even in *A.I. Railway Parcel & Goods Porters Union* v. *Union of India & Ors.* [JT 2003 9 SC 269; 2003 11 SCC 590] one of us was a member (Dr.AR. Lakshmanan, J). while giving various directions in the matter of regularisation of contract labour, this Court did not direct that the services rendered by the contract labourers with the contractor would be counted for the purpose of grant of retiral benefits by the principal employer. The recommendations of the 5th Pay Commission is applicable only to government servants and as such the employees of AVS who are not government employees are not entitled to 5th Pay Commission even in the writ petition filed by the organisation there was no prayer for grant of benefit of 5th pay Commission. Thus, the High Court has erred in directing that the benefit of recommendations of 5th Pay Commission shall be given to the employees of the AVS on notional basis. We make it clear that the employees would be governed by the terms and conditions of the local bodies where they have been re-employed.

At the time of hearing, a submission under the heading doubts of financial bona fides was made. It is submitted that the said plea is without any pleading in the writ petition. There is no pleading either on facts or in the ground in the writ petition that the averments contained in the note dated 0.9.03.1999 and 18.05 1999 to the effect that the AVS has no capital bases or reserve capital and has huge financial outstanding is incorrect. It is also not in dispute that the employees of the AVS could not be paid salaries of December, 1998 that amounted to about more than Rs. 2 crores nor the writ petitioners/respondent employees have argued either before the single judge or before the Division Bench of the High Court that the liquidation of the AVS was *mala fide* and on extraneous consideration. So also there is no averment in the writ petition as regards the constitution of the AVS or the work of the AVS being transferred to the AVS(?). As a matter of fact, the AVS was incorporated under the Companies Act in the year 1996 and the AVS has majority share holding in AVS in the absence of any other pleading and contention raised before the High Court such submission on facts cannot at all be countenanced before this Court in the present proceedings. Likewise, the submission made by learned counsel appearing for the employees that the State has gone back on its decision and they have coerced the employees to agree to certain condition cannot at all be countenanced.

Fairness in Action

In our opinion, the State of Rajasthan has acted fairly and benevolently though the State has no constitutional and legal obligation to offer alternative employment to the employees of the AVS upon abolition of posts. Consequent to the liquidation of the AVS itself, it had framed a scheme to adjust the employees in other local bodies

by relaxing the rules of such bodies and terms and conditions were fixed without financial economic compulsions of the State. The present case is one of liquidation of post in the said organisation. There is also no pleading that the conditions contained in the undertaking are contrary to Section 23 of the Contract Act or violative of Article 14 of the Constitution or inconsistent with the directive principles of State policy. The *Central Inland Water Transport Corporation Ltd.* v. *Brajo Nath Ganguly* [1986 2 SCR 278] and *Delhi Transport Corpn.* v. *DTC Mazdoor Congress,* JT [1990 3 SC 725] (*supra*) relied on by these employees, in our view, have no application of the present case and is distinguishable on facts and law. Those cases relate to a term in the employments that even services of permanent employee can be terminated on 3 month notice without assigning any reason and such condition was specifically assailed therein. However the present case relates to providing alternative employment to the employees of an organisation that is liquidated and posts have been abolished. In such circumstances, this Court has held in a number of cases that the employees have no right to seek re-employment in any other organisation. So also, there has been no challenge in any of the case decided by the High Court to the terms and conditions of undertaking that they were unfair, arbitrary and are contrary to public policy and as such violative of Section 23 of the Contract Act or Article 14 of the Constitution of India or any directive principles of State policy.

The question of legitimate expectation has also not been raised at any stage and as such cannot be agitated before us in this Court.

The reliance on the provisions of Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 is wholly misconceived in as much as the said rule apply only to "surplus personnel" who were "appointed to various services or posts in connection with the affairs of the State" in terms of Rule 2 of the said Rules. Surplus personnel have been defined in Rule 3(1) as follows:

"Surplus Personnel" or "Surplus Employee" means the Government servant to whom the Rajasthan Services Rules, 1951 apply and who are declared surplus by the government or by the appointing authority, under directions of the government, on their being rendered surplus to the requirements of a particular department of the government due to the reduction of posts or abolition of offices therein as measures of economy or on administrative grounds but in whose case the government decides not to terminate their services but to retain them in service by absorption on other posts."

A bare perusal of the aforesaid Rule clearly demonstrates that the rules are applicable only to the Government servants to whom Rajasthan Services Rules, 1951 apply. The employees of Avas Vikas Sansthan are not Government servants nor Rajasthan Service Rules, 1951 were applicable to them and as such the provisions of Rajsthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 are not applicable in the present case.

For the foregoing reasons, the impugned judgments of the High Court are set aside and we hold that all the civil appeals filed by the Rajasthan Housing Board, the AVS and the State of Rajasthan are allowed. The Civil Appeals filed by the employees stand dismissed. No costs.

Questions

1. Are the employees of Avas Vikas Sansthan (AVS) entitled to re-employment on liquidation of the AVS?
2. Do daily wagers have any right to be re-employed on dissolution of society?
3. Can the government abolish posts as a measure of economy?

SECRETARY, STATE OF KARNATAKA AND OTHERS
v. UMADEVI AND OTHERS
(2006) 4 SCALE 197

[The appellant association filed a writ petition before the high court under article 226 of the Constitution challenging the order of the government directing cancellation of appointments of all casual workers/daily rated workers made after 01.07.1984. They further sought a direction for the regularization of all the daily wagers engaged by the Government of Karnataka and its local bodies. A single judge of the high court granted permission to the petitioners before him, to approach their employers for absorption and regularization of their services and also for payment of their salaries on par with the regular workers, by making appropriate representations within the time fixed therein. The court also directed the employers to consider the cases of the claimants for absorption and regularization in accordance with the observations made by the Supreme Court in similar cases. Against this order the State of Karnataka filed Letters Patent appeals before the division bench of the high court. The court held that the daily wage employees, employed or engaged either in government departments or other statutory bodies after 01.07.1984, were not entitled to the benefit of the scheme as held by the Supreme Court in *Dharwad District Public Works Department* v. *State of Karnataka,* (1990) 1 SCR 544. The High Court considered various orders and directions issued by the government interdicting such engagements or employment and the manner of entry of the various employees. Feeling aggrieved by the dismissal of their claim, the members of the associations filed an appeal before the Supreme Court. Excerpts from the judgment of five-judge bench of the Supreme Court delivered by P.K. Balasubramanyan J. follow:]

Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities

on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, the National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in an year, on paying wages as fixed under that Act. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.

But, sometimes this process is not adhered to and the Constitutional scheme of public employment is bypassed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the Constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregu-

larities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to Constitutional limitations and cannot be exercised arbitrarily (*See* Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That Article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedure which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed.

One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore,

consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption.

While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain — not at arms length — since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed

or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be

relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur* v. *The Governing Body of the Nalanda College* [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* (supra), *R.N. Nanjundappa (supra)*, and *B.N. Nagarajan (supra)*, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have

been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

In view of our conclusion on the questions referred to, no relief can be granted. These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief. These appeals have, therefore, to be dismissed.

KAPILA HINGORANI v. STATE OF BIHAR
Supreme Court, (2003) 6 SCC 1

[A public spirited advocate filed a writ petition before the Supreme Court on the basis of the newspaper report published in Hindustan Times stating that hundreds of employees of various state-owned corporations, public undertakings or other statutory bodies in Bihar had died due to starvation or committed suicide owing to acute financial crisis resulting from non-payment of remuneration for a long time. The report also alleged that apart from the plight of the employees of the public sector undertakings or the statutory authorities, even the teaching and non-teaching staff of aided and unaided schools, madarsas and colleges have been facing a similar fate. The report further went on to say that the leader of the opposition in the Bihar Assembly had alleged that over 1000 employees died "due to lack of salary for a period ranging from four months to 94 months". In its counter-affidavit, the State of Bihar did not deny the factual statement made in the said writ petition. Its stand, however, was that salaries were being paid by the statutory authorities. Excerpts from the order of the court follow:]

While dealing with the right of the workmen, again this Court in *People's Union for Democratic Rights* v. *Union of India*, AIR 1982 SC 1473 and in *State of Gujarat* v. *Hon'ble High Court of Gujarat*, (2003) 7 SCC 392: 1998 SCC (Cri) 1640 held that constitutional provisions must be so interpreted so as to advance its socio-economic objectives. In no uncertain terms, this Court held that exaction of labour and services against payment of less than the minimum wages amounts to forced labour within the meaning of Article 23 of the Constitution of India.

Explaining the rights of a citizen under Article 21 of the Constitution of India, this Court in *S.M.D. Kiran Pasha* v. *Govt. of A.P.*, (1990) 1 SCC 328 : 1990 SCC (Cri) 110 observed that Article 226 of the Constitution of India would be maintainable also when a right is threatened as contradistinguished from the right when infringed. This Court held: (SCC p. 342, para 21)

"21. In the language of Kelsen the right of an individual is either a mere reflex right — the reflex of a legal obligation existing towards this individual; or a private right in the technical sense — the legal power bestowed upon an individual to bring about by legal action the enforcement of the fulfilment of an obligation existing towards him, that is, the legal power. From the above analysis it is clear that in the instant obligation of the rest of the society, including the State, and it is the appellant's legal power bestowed upon him to bring about by a legal action the enforcement of the fulfilment of that obligation existing towards him. Denial of the legal action would, therefore, amount to denial of his right of enforcement of his right to liberty."

It is also well settled that interpretation of the Constitution of India or statutes would change from time to time. Being a living organ, it is ongoing and with the passage of time, law must change. New rights may have to be found out within the constitutional scheme. Horizons of constitutional law are expanding. The necessity to take resource to such interpretative changes has recently found favour with a Division Bench of this Court in *State of Maharashtra* v. *Dr. Praful B. Desai*, (2003) 4 SCC 601 : JT (2003) 3 SC 382.

The right to development in the developing countries is itself a human right. The same has been made a part of WTO and GATT. In *The World Trade Organisation, Law, Practice, and Policy* (Oxford) by Matsushita Schoenbaum and Mauroidis at p. 389, it is stated:

"The United Nations has proclaimed the existence of a human right to development. This right refers not only to economic growth but also to human welfare, including health, education, employment, social security, and a wide range of other human needs. This human right to development is vaguely defined as a so-called third-generation human right that cannot be implemented in the same way as civil and political human rights. *Rather, it is the obligation of States and intergovernmental organizations to work within the scope of their authority to combat poverty and misery in disadvantaged countries."*

(emphasis supplied)

The matter may be considered from another angle. While the State excepts the industrial houses and multinational companies to take such measures which would provide a decent life to the persons living in the society in general and to their employees in particular, in that premise is it too much to ask the State to practise what it preaches? This gives rise to another question. Can the State be so insensitive to the plight of its own citizens in general and the employees of the public sector undertakings in particular?

The court in a situation of this nature is obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of human rights of the citizens of India at the hands of the State of Bihar and the government companies and corporations fully owned or controlled by it. A right to carry on business is subject to compliance with constitutional obligations as also limitations provided for in the Constitution.

Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises. This Court has been highlighting this aspect in the matters concerning fundamental rights and maintenance of ecology. [See *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1986 Supp SCC 517 : AIR 1987 SC 359, *Municipal Council, Ratlam* v. *Vardichand*, (1980) 4 SCC 162 : 1980 SCC (Cri) 933 and *B.L. Wadehra (Dr)* v. *Union of India*, (1986) 2 SCC 594 : AIR 1996 SC 2969.] In *All India Imam Organization* v. *Union of India*, (1993) 3 SCC 584 this Court held: (SCC p. 589, para 6).

"6. ... Much was argued on behalf of the Union and the wakf boards that their financial position was not such that they can meet the obligations of paying the imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the boards of different States would not be able to bear. We do not find any correlation between the two. *Financial difficulties of the institution cannot be above fundamental right of citizen.* If the boards have been entrusted with the responsibility of supervising and administering the wakf then it is their duty to harness resources to pay those persons who perform the most important duty, namely, of leading community prayer in a mosque the very purpose for which it is created."

(emphasis supplied)

In *State of H.P.* v. *H.P. State Recognised & Aided Schools Managing Committees*, (1995) 4 SCC 507 : 1995 SCC (L&S) 1049 it was opined: (SCC pp. 514-15, para 16).

"16. The constitutional mandate to the State, as upheld by this Court in *Unni Krishnan case* — to provide free education to the children up to the age of fourteen — cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity."

However, before we issue any direction, we may state that by no stretch of imagination, the liability of the State of Bihar can be shifted to the Union of India.

Only because the Union of India allegedly is repository of funds raised by it through Central excise and other levies and impost, the same by itself would not mean that it is indirectly or vicariously liable for the failings on the part of the State public sector undertakings. Either precedentially or jurisprudentially the Union of India cannot be held liable and no such direction can be issued as has been submitted by Mr Shanti Bhushan.

The investments made by the State in the public sector undertakings in pursuit of social justice is from public account. It is in this behalf accountable to the public through the legislature. If the State or the State agencies have failed to perform their duties, it cannot under the wrap of financial stringency seek to shift its liability to the Union of India or to the State of Jharkhand.

The matter might have been different, had such financial assistance been required by the State due to a natural calamity or cause beyond its control.

The State must thank itself for having placed itself in such a state of affairs. If at an appropriate stage, having regard to its right of deep and pervasive control over the public sector undertakings it had properly supervised the functioning of the government companies and taken necessary steps to refer the sick companies to BIFR in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. the position might have been different. It even failed to take any positive action even after coming to know about the starvation deaths and immense human sufferings.

The States of India are welfare States. They having regard to the constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the directive principles of the State policy and Part IV-A laying down the fundamental duties are bound to preserve the practice to maintain the human dignity.

We are of the opinion that the State, thus, has made itself liable to mitigate the sufferings of the employees of the public sector undertakings or the government companies.

While passing an interim order, however, it is our duty to take into consideration the immediate hardship which may be faced by the State of Bihar having regard to the alleged financial stringency.

We, however, hasten to add that we do not intend to lay down a law, as at present advised, that the State is directly or vicariously liable to pay salaries/ remunerations of the employees of the public sector undertakings or the government companies in all situations. We, as explained hereinbefore, only say that the State cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary to the employees of public sector undertakings for such a long time. We are not issuing any direction as against the State of Jharkhand as no step had admittedly been taken by the Central Government in

terms of Section 65 of the State Reorganisation Act and furthermore as only four public sector undertakings have been transferred to the State of Jharkhand in respect whereof the petitioner does not make any grievance.

In the peculiar facts and circumstances of this case, in our opinion, interest of justice shall be met, if the following interim directions are issued for the present:

1. The High Court may strive to dispose of all liquidation proceedings in respect of the government companies owned and controlled by the State of Bihar as expeditiously as possible. For the said purpose and/or purposes ancillary to or incidental therewith, it may pass an interim order and/or orders by way of sale and/or disposal of the properties belonging to such public sector undertakings and/or government companies or to take such measure or measures as it may deem fit and proper.

2. For the aforementioned purposes a committee not consisting of more than three members chaired by a retired High Court Judge or a sitting District Judge may be appointed who may scrutinize the assets and liabilities of the companies and submit a report to the High Court as expeditiously as possible preferably within three months from the date of constitution of the Committee. The terms and conditions for appointment of the said Committee may be determined by the High Court. All expenses in this behalf shall be borne by the State of Bihar.

3. The High Court shall be entitled to issue requisite direction/directions to the said Committee from time to time as and when it deems fit and proper.

4. The State for the present shall deposit a sum of Rs 50 crores before the High Court for disbursement of salaries to the employees of the Corporations. The amount of Rs 50 crores be deposited in two installments. Half of the amount shall be payable within one month and the balance amount within a month thereafter. The High Court shall see to it that the sum so deposited and/or otherwise received from any source including by way of sale of assets of the government companies/public sector undertakings be paid proportionately to the employee concerned wherefrom the parties may file their claims before it.

5. The High Court, however, in its discretion may direct disbursement of some funds to the needy employees, on ad hoc basis so as to enable them to sustain themselves for the time being.

6. The rights of the workmen shall be considered in terms of Section 529-A of the Companies Act.

7. The Central Government is hereby directed to take a decision as regards division of assets and liabilities of the government companies/public sector undertakings in terms of the provisions of the State Reorganisation Act, 2000.

8. The State of Jharkhand is hereby impleaded as a respondent. Let notice be issued to the newly added respondent.

This order shall be subject to any order that may be passed subsequently or finally.

Supreme Court of India
State Of Punjab And Ors vs Jagjit Singh And Ors on 26 October, 2016
Author: ...J.
Bench: Jagdish Singh Khehar, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 213 OF 2013

State of Punjab & Ors. Appellants

Versus

Jagjit Singh & Ors. Respondents

WITH

CIVIL APPEAL NO. 10356 OF 2016 (Arising out of SLP (CIVIL).31676 CC NO. 15616 OF 2011)	CIVIL APPEAL NO. 236 OF 2013
CIVIL APPEAL NO.10357 OF 2016 (Arising out of SLP (CIVIL) 31677 CC NO. 16434 OF 2011)	CIVIL APPEAL NO. 245 OF 2013
CIVIL APPEAL NO.10358 OF 2016 (Arising out of SLP (CIVIL) NO. 37162 OF 2012)	CIVIL APPEAL NO. 246 OF 2013
CIVIL APPEAL NO. 10360 OF 2016 (Arising out of SLP (CIVIL) NO. 37164 OF 2012)	CIVIL APPEAL NO. 247 OF 2013
CIVIL APPEAL NO.10361 OF 2016 (Arising out of SLP (CIVIL) NO. 37165 OF 2012)	CIVIL APPEAL NO. 248 OF 2013
CIVIL APPEAL NO. 211 OF 2013	CIVIL APPEAL NO. 249 OF 2013
CIVIL APPEAL NO. 212 OF 2013	CIVIL APPEAL NO. 257 OF 2013
CIVIL APPEAL NO. 214 OF 2013	CIVIL APPEAL NO. 260 OF 2013
CIVIL APPEAL NO. 217 OF 2013	CIVIL APPEAL NO. 262 OF 2013
CIVIL APPEAL NO. 218 OF 2013	CIVIL APPEAL NO. 966 OF 2013
CIVIL APPEAL NO. 219 OF 2013	CIVIL APPEAL NO. 2231 OF 2013
CIVIL APPEAL NO. 220 OF 2013	CIVIL APPEAL NO. 2299 OF 2013
CIVIL APPEAL NO. 221 OF 2013	CIVIL APPEAL NO. 2300 OF 2013
CIVIL APPEAL NO. 222 OF 2013	CIVIL APPEAL NO. 2301 OF 2013
CIVIL APPEAL NO. 223 OF 2013	CIVIL APPEAL NO. 2702 OF 2013
CIVIL APPEAL NO. 224 OF 2013	CIVIL APPEAL NO. 7150 OF 2013
CIVIL APPEAL NO. 225 OF 2013	CIVIL APPEAL NO. 8248 OF 2013
CIVIL APPEAL NO. 226 OF 2013	CIVIL APPEAL NO. 8979 OF 2013
CIVIL APPEAL NO. 227 OF 2013	CIVIL APPEAL NO. 9295 OF 2013
CIVIL APPEAL NO. 228 OF 2013	CIVIL APPEAL NO. 10362 OF 2016 (Arising out of SLP (CIVIL) NO. 9464 OF 2013)
CIVIL APPEAL NO. 229 OF 2013	CIVIL APPEAL NO. 10363 OF 2016 (Arising out of SLP (CIVIL) NO. 11966 OF 2013)
CIVIL APPEAL NO. 230 OF 2013	CIVIL APPEAL NO. 10364 OF 2016 (Arising out of SLP (CIVIL) NO.

	17707 OF 2013)
CIVIL APPEAL NO. 231 OF 2013	CIVIL APPEAL NO. 10365 OF 2016
	(Arising out of SLP (CIVIL) NO.
	24410 OF 2013)
CIVIL APPEAL NO. 232 OF 2013	CIVIL APPEAL NO. 871 OF 2014
CIVIL APPEAL NO. 233 OF 2013	CIVIL APPEAL NO. 10366 OF 2016
	(Arising out of SLP (CIVIL) NO. 4340
	OF 2014)
CIVIL APPEAL NO. 234 OF 2013	CIVIL APPEAL NO. 10527 OF 2014
CIVIL APPEAL NO. 235 OF 2013	

J U D G M E N T

Jagdish Singh Khehar, J.

1. Delay in filing and refiling Special Leave Petition (Civil). CC no. 15616 of 2011, and Special Leave Petition (Civil). CC no. 16434 of 2011 is condoned. Leave is granted in all special leave petitions.

2. A division bench of the Punjab and Haryana High Court, in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009), set aside, in an intra-court appeal, the judgment rendered by a learned single Judge of the High Court, in Rajinder Singh & Ors. v. State of Punjab & Ors. (CWP no. 1536 of 1988, decided on 5.2.2003). In the above judgment, the learned single Judge had directed the State to pay to the writ petitioners (who were daily-wagers working as Pump Operators, Fitters, Helpers, Drivers, Plumbers, Chowkidars etc.), minimum of the pay-scale, revised from time to time, with permissible allowances, as were being paid to similarly placed regular employees; arrears payable, were limited to a period of three years, prior to the date of filing of the writ petition. In sum and substance, the above mentioned division bench held, that temporary employees were not entitled to the minimum of the pay-scale, as was being paid to similarly placed regular employees.

3. Another division bench of the same High Court, in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010), dismissed an intra-Court appeal preferred by the State of Punjab, arising out of the judgment rendered by a learned single Judge in Rajinder Kumar v. State of Punjab & Ors. (CWP no. 14050 of 1999, decided on 20.11.2002), and affirmed the decision of the single Judge, in connected appeals preferred by employees. The letters patent bench held, that the writ petitioners (working as daily-wage Pump Operators, Fitters, Helpers, Drivers, Plumbers, Chowkidars, Ledger Clerks, Ledger Keepers, Petrol Men, Surveyors, Fitter Coolies, Sewermen, and the like), were entitled to minimum of the pay- scale, alongwith permissible allowances (as revised from time to time), which were being given to similarly placed regular employees. Arrears payable to the concerned employees were limited to three years prior to the filing of the writ petition. In sum and substance, the division bench in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009) affirmed the position adopted by the learned single Judge in Rajinder Singh & Ors. v. State of Punjab & Ors. (CWP no. 1536 of 1988). It is apparent, that the instant division bench, concluded conversely as against the judgment rendered in State of Punjab & Ors. v. Rajinder Singh (LPA no. 337 of 2003), by the earlier division bench.

4. It would be relevant to mention, that the earlier judgment rendered, in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003) was not noticed by the later division bench in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009). Noticing a conflict of views expressed in the judgments rendered by two division benches in the above matters, a learned single Judge of the High Court, referred the matter for adjudication to a larger bench, on 11.5.2011. It is, therefore, that a full bench of the High Court, took up the issue, for resolving the dispute emerging out of the differences of opinion expressed in the above two judgments, in Avtar Singh v. State of Punjab & Ors. (CWP no. 14796 of 2003), alongwith connected writ petitions. The full bench rendered its judgment on 11.11.2011. The present bunch of cases, which we have taken up for collective disposal, comprise of a challenge to the judgment rendered by the division bench of the High Court in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009); a challenge to the judgment, referred to above, in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010); as also, a challenge to the judgment rendered by the full bench of the High Court in Avtar Singh v. State of Punjab & Ors. (CWP no. 14796 of 2003, decided on 11.11.2011). This bunch of cases, also involves challenges to judgments rendered by the High Court, by relying on the judgments referred to above.

5. The issue which arises for our consideration is, whether temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay-scale, alongwith dearness allowance (as revised from time to time) on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts. The full bench of the High Court, while adjudicating upon the above controversy had concluded, that such like temporary employees were not entitled to the minimum of the regular pay-scale, merely for reason, that the activities carried on by daily-wagers and the regular employees were similar. However, it carved out two exceptions, and extended the minimum of the regular pay to such employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder:-

> (1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.
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> (2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.

6. The issue which has arisen for consideration in the present set of appeals, necessitates a birds eye view on the legal position declared by this Court, on the underlying ingredients, which govern the principle of equal pay for equal work. It is also necessary for resolving the controversy, to determine the manner in which this Court has extended the benefit of minimum of the regular pay-scale alongwith dearness allowance, as revised from time to time, to temporary employees (engaged on daily-wage basis, as ad-hoc appointees, as employees engaged on casual basis, as contract appointees, and the like). For the aforesaid purpose, we shall, examine the above issue, in two stages. We shall first examine situations where the principle of equal pay for equal work has been extended to employees engaged on regular basis. And thereafter, how the same has been applied with reference to different categories of temporary employees.

7. Randhir Singh v. Union of India[1], decided by a three-Judge bench: The petitioner in the instant case, was holding the post of Driver- Constable in the Delhi Police Force, under the Delhi Administration. The scale of pay of Driver-Constables, in case of non-matriculates was Rs.210- 270, and in case of matriculates was Rs.225-308. The scale of pay of Drivers in the Railway Protection Force, at that juncture was Rs.260-400. The pay-scale of Drivers in the non-secretariat offices in Delhi was, Rs.260-350. And that, of Drivers employed in secretariat offices in Delhi, was Rs.260-400. The pay-scale of Drivers of heavy vehicles in the Fire Brigade Department, and in the Department of Lighthouse was Rs.330-480. The prayer of the petitioner was, that he should be placed in the scale of pay, as was extended to Drivers in other governmental organizations in Delhi. The instant prayer was based on the submission, that he was discharging the same duties as other Drivers. His contention was, that the duties of Drivers engaged by the Delhi Police Force, were more onerous than Drivers in other departments. He based his claim on the logic, that there was no reason/justification, to assign different pay-scales to Drivers, engaged in different departments of the Delhi Administration.

(ii) This Court on examining the above controversy, arrived at the conclusion, that merely the fact that the concerned employees were engaged in different departments of the Government, was not by itself sufficient to justify different pay-scales. It was acknowledged, that though persons holding the same rank/designation in different departments of the Government, may be discharging different duties. Yet it was held, that if their powers, duties and responsibilities were identical, there was no justification for extending different scales of pay to them, merely because they were engaged in different departments. Accordingly it was declared, that where all relevant considerations were the same, persons holding identical posts ought not to be treated differently, in the matter of pay. If the officers in the same rank perform dissimilar functions and exercise different powers, duties and responsibilities, such officers could not complain, that they had been placed in a dissimilar pay-scale (even though the nomenclature and designation of the posts, was the same). It was concluded, that the principle of equal pay for equal work, which meant equal pay for everyone irrespective of sex, was deducible from the Preamble and Articles 14, 16 and 39(d) of the Constitution. The principle of

equal pay for equal work, was held to be applicable to cases of unequal scales of pay, based on no classification or irrational classification, though both sets of employees (- engaged on temporary and regular basis, respectively) performed identical duties and responsibilities.

(iii) The Court arrived at the conclusion, that there could not be the slightest doubt that Driver-Constables engaged in the Delhi Police Force, performed the same functions and duties, as other Drivers in the services of the Delhi Administration and the Central Government. Even though he belonged to a different department, the petitioner was held as entitled to the pay-scale of Rs.260-400.

8. D.S. Nakara v. Union of India[2], decided by a five-Judge Constitution Bench: It is not necessary for us to narrate the factual controversy adjudicated upon in this case. In fact, the main issue which arose for consideration pertained to pension, and not to wages. Be that as it may, it is of utmost importance to highlight the following observations recorded in the above judgment:-

> 32. Having succinctly focused our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38 (1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice - social, economic and political shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Art. 39 (d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in Randhir Singh v. Union of India & Ors., (1982) 1 SCC 618. Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under: (SCC p.619, para 1) "Now, thanks to the rising social and political consciousness and the expectations aroused as a consequence and the forward looking posture of this Court, the under-privileged also are clamouring for the rights and are seeking the intervention of the court with touching faith and confidence in the court. The Judges of the court have a duty to redeem their Constitutional oath and do justice no less to the pavement dweller than to the guest of the five-star hotel."
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> Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Art. 39 (e) requires the State to secure

> that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Art.

41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Art. 43 (3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities. It is however impossible to overlook, that the Constitution Bench noticed the Randhir Singh case1, and while affirming the principle of equal pay for equal work, extended it to pensionary entitlements also.

9. Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India[3], decided by a two-Judge bench: The petitioners in the above case, were Personal Assistants and Stenographers attached to heads of departments in the Customs and Central Excise Department, of the Ministry of Finance. They were placed in the pay-scale of Rs.550-900. The petitioners claimed, that the basic qualifications, the method, manner and source of recruitment, and their grades of promotion were the same as some of their counterparts (Personal Assistants and Stenographers) attached to Joint Secretaries/Secretaries and other officers in the Central Secretariat. The above counterparts, it was alleged, were placed in the pay-scale of Rs.650-1040. The petitioners contention was, that their duties and responsibilities were similar to the duties and responsibilities discharged by some of their counterparts. Premised on the instant foundation, it was their contention, that the differentiation in their pay-scales, was violative of Articles 14 and 16 of the Constitution of India. The petitioners claimed equal pay for equal work.

(ii) The assertions made by the petitioners were repudiated by the Union of India. Whilst acknowledging, that the duties and work performed by the petitioners were/was identical to that performed by their counterparts attached to Joint Secretaries/Secretaries and other officers in the secretariat, yet it was pointed out, that their counterparts working in the secretariat, constituted a class, which was distinguishable from them. It was asserted, that the above counterparts discharged duties of higher responsibility, as Joint Secretaries and Directors in the Central Secretariat performed functions and duties of greater responsibility, as compared to heads of departments, with whom the petitioners were attached. It was contended, that the principle of equal pay for equal work depended on the nature of the work done, and not on the mere volume and kind of work. The respondents also asserted, that people discharging duties and responsibilities which were qualitatively different, when examined on the touchstone of reliability and responsibility, could not be placed in the same pay-scale.

(iii) While adjudicating upon the controversy, this Court arrived at the conclusion, that the differentiation of the pay-scale was not sought to be justified on the basis of the functional work discharged by the petitioners and their counterparts in the secretariat, but on the dissimilarity of their responsibility, confidentiality and the relationship with the public etc. It was accordingly concluded, that the same amount of physical work, could entail different quality of work, some more sensitive, some requiring more tact, some less. It was therefore held, that the principle of equal pay

for equal work could not be translated into a mathematical formula. Interference in a claim as the one projected by the petitioners at the hands of a Court, would not be possible unless it could be demonstrated, that either the differentiation in the pay-scale was irrational, or based on no basis, or arrived at mala fide, either in law or on fact. In the light of the stance adopted by the respondents, it was held that it was not possible to say, that the differentiation of pay in the present controversy, was not based on a rational nexus. In the above view of the matter, the prayer made by the petitioners was declined.

10. State of U.P. v. J.P. Chaurasia[4], decided by a two-Judge bench: Prior to 1965, Bench Secretaries in the High Court of Allahabad, were placed in a pay-scale higher than that allowed to Section Officers. Bench Secretaries were placed in the pay-scale of Rs.160-320 as against the pay-scale of Rs.100-300 extended to Section Officers. A Rationalization Committee, recommended the pay-scale of Rs.150-350 for Bench Secretaries and Rs.200-400 for Section Officers. While examining the recommendation, the State Government placed Bench Secretaries in the pay-scale of Rs.200- 400, and Section Officers in the pay-scale of Rs.515-715. Dissatisfied with the apparent down-grading, Bench Secretaries demanded, that they should be placed at par with Section Officers, even though their principal prayer was for being placed in a higher pay-scale. The matter was examined by the Pay Commission, which also submitted its report. The Pay Commission refused to accept, that Bench Secretaries and Section Officers could be equated, for the purpose of pay-scales. The Pay Commission was of the view, that the nature of work of Section Officers was not only different, but also, more onerous than that of Bench Secretaries. It also expressed the view, that Section Officers had to bear more responsibilities in their sections, and were required to exercise control over their subordinates. Additionally, they were required to prepare lengthy original notes, in complicated matters. The Pay Commission therefore recommended, the pay- scale of Rs.400-750 for Bench Secretaries and Rs.500-1000 for Section Officers. Thereupon, the Anomalies Committee, while rejecting the claim of Bench Secretaries for being placed on par with Section Officers, suggested that 10 posts of Bench Secretaries should be upgraded and placed in the pay- scale of Rs.500-1000 (the same as, Section Officers). Those Bench Secretaries, who were placed in the pay-scale of Rs.500-1000 were designated as Bench Secretaries Grade-I, and those placed in the pay-scale of Rs.400-750, were designated as Bench Secretaries Grade-II.

(ii) This Court while adjudicating upon the controversy, examined the matter from two different angles. Firstly, whether Bench Secretaries in the High Court of Allahabad, were entitled to the pay-scale admissible to Section Officers? Secondly, whether the creation of two grades with different pay-scales in the cadre of Bench Secretaries despite the fact that they were discharging the same duties and responsibilities, was violative of the principle of equal pay for equal work?

(iii) While answering the first question this Court felt, that the issue required evaluation of duties and responsibilities of the respective posts, with which equation was sought. And it was concluded, that on the subject of equation of posts, the matter ought to be left for determination to the executive, as the same would have to be examined by expert bodies. It was however held, that whenever it was felt, that expert bodies had not evaluated the duties and responsibilities in consonance with law, the matter would be open to judicial review. In the present case, while acknowledging that at one time Bench Secretaries were paid more emoluments than Section

Officers, it was held, that since successive Pay Commissions and even Pay Rationalization Committees had found, that Section Officers performed more onerous duties, bearing greater responsibility as compared to Bench Secretaries, it was not possible for this Court to go against the said opinion. As such, this Court rejected the prayer of the Bench Secretaries as of right, to be assigned a pay-scale equivalent to or higher than that of Section Officers.

(iv) With reference to the second question, namely, whether there could be two scales of pay in the same cadre, of persons performing the same or similar work or duties, this Court expressed the view, that all Bench Secretaries in the High Court of Allahabad performed the same duties, but Bench Secretaries Grade-I were entitled to a higher pay-scale than Bench Secretaries Grade-II, on account of their selection as Bench Secretaries Grade-I, out of Bench Secretaries Grade-II, by a Selection Committee appointed under the rules, framed by the High Court. The above selection, was based on merit with due regard to seniority. And only such Bench Secretaries Grade-II who had acquired sufficient experience, and also displayed a higher level of merit, could be appointed as Bench Secretaries Grade-I. It was therefore held, that the rules provided for a proper classification, for the grant of higher emoluments to Bench Secretaries Grade-I, as against Bench Secretaries Grade-II.

(v) In the above view of the matter, the claim raised by the Bench Secretaries for equal pay, as was extended to Section Officers, was declined by this Court.

11. Mewa Ram Kanojia v. All India Institute of Medical Sciences[5], decided by a two-Judge bench: The petitioner in this case, was appointed against the post of Hearing Therapist, at the AIIMS, with effect from 3.8.1972. At that juncture, he was placed in the pay-scale of Rs.210-

425. Based on the recommendations made by the Third Pay Commission (which were adopted by the AIIMS), the pay-scale for the post of Hearing Therapist was revised to Rs.425-700, with effect from 1.1.1973. The petitioner accordingly came to be paid emoluments in the aforesaid revised pay-scale. The petitioner asserted, that the post of Hearing Therapist was required to discharge duties and responsibilities which were similar to those of the posts of Speech Pathologist and Audiologist. The said posts were in the pay-scale of Rs.650-1200. Since the claim of the petitioner for the aforesaid higher pay-scale (made under the principle of equal pay for equal work) was not acceded to by the department, he made a representation to the Third Pay Commission, which also negatived his claim for parity, as also, for a higher pay-scale. It is therefore that he sought judicial intervention. His main grievance was, that Hearing Therapist performed similar duties and functions as the posts of Senior Speech Pathologist, Senior Physiotherapist, Senior Occupational Therapist, Audiologist, and Speech Pathologist, and further, the qualifications prescribed for the above said posts were almost similar. Since those holding the above mentioned comparable posts were also working in the AIIMS, it was asserted, that the action of the employer was discriminatory towards the petitioner.

(ii) Whilst controverting the claim of the petitioner it was pointed out, that the post of Hearing Therapist was not comparable with the posts referred to by the petitioner. It was contended, that neither the qualifications nor the duties and functions of the posts referred to by the petitioner, were

similar to that of Hearing Therapist. In the absence of equality between the post of Hearing Therapist, and the other posts referred to by the petitioner, it was asserted, that the claim of the petitioner was not acceptable under the principle of equal pay for equal work.

(iii) During the course of hearing, the petitioner confined his claim for parity only with the post of Audiologist. It was urged, that educational qualifications, as well as, duties and functions of the posts of Hearing Therapist and Audiologist were similar (if not the same). It was contended, that a Hearing Therapist was required to treat the deaf and other patients suffering from hearing defects. A Hearing Therapist is required to help in the rehabilitation of persons with hearing impairments. It was also pointed out, that an Audiologists work was to coordinate the separate professional skills, which contribute to the study, treatment and rehabilitation of persons with impaired hearing. As such it was submitted, that a person holding the post of an Audiologist, was a specialist in the non-medical evaluation, habilitation and rehabilitation, of those who have language and speech disorders. On the aforesaid premise, the petitioner claimed parity with the pay-scale of Audiologists.

(iv) This Court held, that there was a qualitative difference between the two posts, on the basis of educational qualifications, and therefore, the principle of equal pay for equal work, could not be invoked or applied. It was further held, that the Third Pay Commission had considered the claim of Hearing Therapists, but did not accede to the grievances made by them. Since the Pay Commission was in better position to judge the volume of work, qualitative difference and the reliability and responsibility required of the two posts, this Court declined to accept the prayer made by the petitioner, under the principle of equal pay for equal work.

12. Grih Kalyan Kendra Workers Union v. Union of India[6], decided by a two-Judge bench: The workers union in the above case, had approached this Court, in the first instance in 1984, by filing writ petition no. 13924 of 1984. In the above petition, the relief claimed was for payment of wages under the principle of equal pay for equal work. The petitioners sought parity with employees of the New Delhi Municipal Committee, and employees of other departments of the Delhi Administration, and the Union of India. They approached this Court again by filing civil writ petition no. 869 of 1988, which was disposed of by the judgment cited above.

(ii) The petitioners were employees of Grih Kalyan Kendras. They desired the Union of India to pay them wages in the regular pay-scale, on par with other employees performing similar work under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India. It would be relevant to mention, that the petitioner- Workers Union was representing employees working in various centres of the Grih Kalyan Kendras, on ad-hoc basis. Some of them were being paid a fixed salary, described as a honorarium, while others were working on piece-rate wages at the production centres, without there being any provision for any scale of pay or other benefits like gratuity, pension, provident fund etc.

(iii) In the first instance, this Court endeavoured to deal with the question, whether the employers of these workers were denying them wages as were being paid to other similarly placed employees, doing the same or similar work. The question came to be examined for the reason, that unless the petitioners could demonstrate that the employees of the Grih Kalyan Kendras, were being

discriminated against on the subject of pay and other emoluments, with other similarly placed employees, the principle of equal pay for equal work would not be applicable. During the course of the first adjudication in writ petition no. 13924 of 1984, this Court requested a former Chief Justice of India, to make recommendations after taking into consideration, firstly, whether other similarly situated employees (engaged in similar comparable posts, putting in comparable hours of work, in a comparable employment) were being paid higher pay, and if so, what should be the entitlement of the agitating employees, so as not to violate the principle of equal pay for equal work, and secondly, if there was no other similar comparable employment, whether the remuneration of the agitating employees, deserved to be revised on the ground, that their remuneration was unconscionable or unfair, and if so, to what extent. In the report filed by the former Chief Justice of India, it was concluded, that there was no employment comparable to the employment held by those engaged by the Grih Kalyan Kendras, and therefore, they could not seek parity with other employees working either with the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India.

(iv) Based on the aforesaid factual conclusion, this Court held that the concept of equal pay for equal work implies and requires, equal treatment for those who are similarly situated. It was held, that a comparison could not be drawn between unequals. Since the workers who had approached the Court in the present case, had failed to establish that they were situated similarly as others, it was held, that they could not be extended benefits which were being given to those, with whom they claimed parity. In this behalf this Court also opined, that the question as to whether persons were situated equally, had to be determined by the application of broad and reasonable tests, and not by way of a mathematical formula of exactitude. And therefore, since there were no other employees comparable to the employees working in the Grih Kalyan Kendras, this Court declined to entertain the prayer made by the petitioners.

13. Union of India v. Pradip Kumar Dey[7], decided by a two-Judge bench: It was the case of the respondent, that he was holding the post of Naik (Radio Operator), in which capacity he was discharging similar duties as those performed in the Directorate of Coordination Police Wireless, and other central government agencies. It was also the claim of the respondent, that the duties performed by him as Naik (Radio Operator) were more hazardous than those performed by personnel with similar qualifications and experience in State services, and other organizations. Even though a learned single Judge dismissed the writ petition, an intra- Court appeal preferred by the respondent, was allowed.

(ii) The Union of India raised three contentions, in its appeal to this Court. Firstly, that the pay-scale claimed by the respondent, was that of the post of Assistant Sub-Inspector of Police. It was pointed out, that the respondent was holding an inferior post - of Naik (Radio Operator). It was highlighted, that the post of Assistant Sub-Inspector of Police, was a promotional post, for the post held by the respondent. Secondly, it was asserted on behalf of the Union of India, that the respondent had not placed any material before the Court, on which the High Court could have arrived at the conclusion, that the essential qualifications of the post against which the respondent claimed parity, as also, the method of recruitment thereto, were the same as that of the post held by the respondent. Thirdly, the post of Naik (Radio Operator) held by the respondent was extended the benefit of special pay of Rs.80/- per month, and that, there was nothing on the record of the case to show, that Radio

Operators in the Central Water Commission or the Directorate of Police Wireless, were enjoying similar benefits.

(iii) This Court while accepting the contentions advanced at the hands of the Union of India held, that the pay-scale claimed by the respondent was that for the post of Assistant Sub-Inspector, which admittedly was a promotional post for Naik (Radio Operator), i.e., the post held by the respondent. And as such, the claim made by the respondent, of parity with a post superior in hierarchy (to the post held by him), was not sustainable. Furthermore, this Court arrived at the conclusion, that there was no material on the record of the case to demonstrate, that the essential qualifications and the method of recruitment for, as also, the duties and responsibilities of the post held by him, were similar to those of the post, against which the respondent was claiming parity.

14. State Bank of India v. M.R. Ganesh Babu[8], decided by a three-Judge bench: Entry into the management cadre in banking establishments, is Junior Management Grade Scale-1. The said cadre comprises of Probationary Officers, Trainee Officers and other officers who possess technical skills (specialized officers), such as Assistant Law Officers, Security Officers, Assistant Engineers, Technical Officers, Medical Officers, Rural Development Officers, and other technical posts. All the posts in the Junior Management Grade Scale-1 cadre, were divisible into two categories generalist officers, and specialist officers. Under the prevalent rules the 1979 Order, the benefit of a higher starting pay, was extended only to Probationary Officers and Trainee Officers (i.e. to generalist officers), while Rural Development Officers and other specialist officers like Assistant Law Officers, Security Officers, Assistant Engineers etc., were not entitled to a higher starting pay. Rural Development Officers, agitated their claim for similar benefits, as were extended to Probationary Officers and Trainee Officers (i.e. to the generalist officers). The question of viability of the claim raised by Rural Development Officers, was referred to the Bhatnagar Committee. The Bhatnagar Committee made its recommendation, in favour of Rural Development Officers, finding that they were required to shoulder, by and large, the same duties and responsibilities, as Probationary Officers and Trainee Officers, so far as agricultural advances were concerned. The Committee accordingly recommended, that it was a fit case for removal of the anomaly in their salary fitment. It recommended that, Rural Development Officers be allowed the same fitment of salary at the time of appointment, as was extended to Probationary Officers and Trainee Officers (i.e. to the generalist officers). The recommendation made by the Bhatnagar Committee was accepted, and accordingly, Rural Development Officers were extended the same fitment of salary, as generalist officers.

(ii) Since the benefit of additional increment was denied to other specialist officers, they also made a grievance and claimed the benefit of additional increments, as had been extended to Rural Development Officers. Since the State Bank of India did not accede to their request, they approached the Karnataka High Court. The specialist officers claimed, that in all respects, they performed similar duties and responsibilities, as Rural Development Officers, and therefore, they were entitled to the benefit of additional increments, at the time of their appointment, as had been extended to Rural Development Officers. A learned single Judge of the High Court, on being impressed by the fact, that some of the Rural Development Officers, who had not opted for absorption in the generalist cadre (but had continued under the specialist cadre), were also extended the benefit of higher starting pay, accepted the claim of the specialist officers. Appeals

preferred against the judgment rendered by the learned single Judge, were dismissed by a division bench of the High Court.

(iii) This Court while examining the challenges, narrated the parameters on which the benefit of equal pay for equal work can be made applicable, as under:-

> 16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystalised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide reasonably and rationally, was not open to interference by the court. Based on the aforesaid parameters, this Court considered the acceptability of the claim of the specialist officers, for parity with the generalist officers. This Court recorded its conclusion, as under:-
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> 19. We have carefully perused the order of the Bank and find that several reasons have been given for non-acceptance of the respondents' claim. It has been highlighted that the Probationary Officers/Trainee Officers are being recruited from market/promoted from clerical staff by the Bank by means of all-India written test and interview to get the best talent from the market and within, with a view to man the Bank's top management in due course. Leaned counsel for the respondents submitted that the same is also true of specialist officers. However, it is contended on behalf of the appellant Bank that the generalist officers are exposed to various assignments including mandatory rural assignments. Unlike them, the services of Assistant Law Officers are utilized as in-house advisors on legal matters in administrative offices. The duties and responsibilities of Probationary Officers/Trainee Officers are more onerous while the specialist officers are not exposed to operational work/risk. It is, therefore, quite clear that there exists a valid distinction in the matter of work and nature of operations between the specialist

officers and the general category officers. The general category officers are directly linked to the banking operations whereas the specialist officers are not so linked and they perform the specified nature of work. RDOs were given similar fitment as the generalist officers since it was found that they were required to shoulder, by and large, the same duties and responsibilities as Probationary Officers and Trainee Officers in so far as conducting Bank's agricultural advances work was concerned. This was done on the basis of the recommendations of the Bhatnagar Committee and keeping in view the fact that the decision has been taken that there would be no future recruitment of RDOs and the existing RDOs were proposed to be absorbed in general banking cadre. The recruitment of RDOs has been discontinued since 1985. Taking into account the nature of duties and responsibilities shouldered by the respondents the Bank has concluded that the duties and responsibilities of the respondents are not comparable to the duties and responsibilities of the RDOs, the Probationary Officers or the Trainee Officers.

20. Learned counsel for the respondents submitted that specialist officers are also recruited from the open market and are confirmed after successfully completing the probation of 2 years. Before the Order of 1979 came into force, they were similarly being granted benefit of additional increments at the time of appointment in the same manner as the generalist officers. However, after the order of 1979 they have been deprived of this benefit. Subsequently that benefit was extended to RDOs but not to the respondents and others like them. We have earlier noticed that the RDOs were given the benefit of advance increments on the basis of the report of an Expert Committee which justified their classification with the generalist officers, having regard to the nature of duties and responsibilities shouldered by them. However, on consideration of the case of the respondents, the Bank as reached a different conclusion. The Bank has found that their duties and responsibilities are not the same as those of Probationary Officers/Trainee Officers/RDOs. It is no doubt true that the specialist officers render useful service and their valuable advice in the specialised fields is of great assistance to the Bank in its banking operations. The officers who belong to the generalist cadre, namely the officers who actually conduct the banking operations and who take decisions in regard to all banking works are advised by the specialist officers. There can be no doubt that the service rendered by the specialist officers is also valuable, but that is not to say that the degree of responsibility and reliability is the same as those of the Probationary Officers, the Trainee Officers, and the RDOs, who directly carry on the banking operations and are required to take crucial decisions based on the advice tendered by the specialist officers. The Bank has considered the nature of duties and responsibilities of the various categories of officers and has reached bona fide decision that while generalist officers take all crucial decisions in banking operations with which they are directly linked, and are exposed to operational work and risk since the decisions that they take has significant effect on the functioning of the bank and quality of its performance, the specialist officers are not exposed to such risks nor are they required to take decisions as vital as those to be taken by the generalist officers. They

> at best render advice in their specialized field. The degree of reliability and responsibility is not the same. It cannot be said that the value judgment of the Bank in this regard is either unreasonable, arbitrary or irrational. Having regard to the settled principles and the parameters of judicial interference, we are of the considered view that the decision taken by the Bank cannot be faulted on the ground of its being either unreasonable, arbitrary or discriminatory and therefore judicial interference is inappropriate. On account of the reasons recorded above, specialist officers could not substantiate their claim of parity. They were held not entitled to benefit of the principle of equal pay for equal work

15. State of Haryana v. Haryana Civil Secretariat Personal Staff Association[9], decided by a two-Judge bench: The respondent Association in the above case, filed a writ petition before the Punjab and Haryana High Court, seeking a direction to the appellant herein, to grant Personal Assistants in the Civil Secretariat, Haryana, the pay-scale of Rs.2000-3500 + Rs.150 as special pay, which had been given to Personal Assistants working in the Central Secretariat. The aforesaid prayer was made in the background of the fact, that the State of Haryana had accepted the recommendations of the Fourth Central Pay Commission, with regard to revision of pay-scales, with effect from 1.1.1986. The case of Personal Assistants before the High Court was, that prior to 1986, Personal Assistants working in the Civil Secretariat, Haryana, were enjoying a higher scale of pay, than was extended to Personal Assistants working in the Central Secretariat. On the receipt of Fourth Central Pay Commission report, the Central Government revised the pay-scale of Personal Assistants to Rs.2000-3500 with effect from 1.1.1986. It was pointed out, that even though the Government of Haryana had accepted the recommendation of the Fourth Central Pay Commission, and had also implemented the same, in respect of certain categories of employees, it did not accept the same in the case of Personal Assistants. The pay-scale of Personal Assistants in the Civil Secretariat, Haryana, was revised to Rs.1640-2900 + 150 as special pay.

(ii) It was also the contention of Personal Assistants, that in respect of certain categories of employees of different departments of the State of Haryana, like Education, Police, Transport, Health and Engineering and Technical staff, the State Government had fully adopted the recommendations of the Fourth Central Pay Commission, by granting them the pay-scale of Rs.2000-3500. The claim of the Personal Assistants was also premised on the fact, that Personal Assistants working in the Civil Secretariat, Haryana, discharged duties which were comparable with that of Personal Assistants in the Central Secretariat. And so also, their responsibilities.

(iii) The High Court allowed the claim of the Association. It held, that Personal Assistants working in the Civil Secretariat, Haryana, were entitled to the pay-scale of Rs.2000-3500, with effect from 1.1.1986. The State of Haryana approached this Court. This Court, while recording its consideration, expressed the view, that the High Court had ignored certain settled principles of law, while determining the claim of Personal Assistants, by applying the principle of parity. This Court felt, that the High Court was persuaded to accept the claim of Personal Assistants, only because of the designation of their post. This, it was held, was a misconceived application of the principle. In its analysis, it was recorded, that the High Court had assumed, that the assertions made at the behest of the Personal Assistants, that they were discharging similar duties and responsibilities as Personal

Assistants in the Central Secretariat, had remained unrebutted. That, this Court found, was factually incorrect. The State of Haryana, in its counter affidavit before the High Court, had adopted the specific stance, that there was no comparison between the Personal Assistants working in the Civil Secretariat, Haryana, and Personal Assistants working in the Central Secretariat. It was highlighted, that the qualifications prescribed for Personal Assistants in the Central Secretariat, were different from those prescribed for Personal Assistants in Civil Secretariat, Haryana. The High Court was also found to have erred in its determination, by not making any comparison of the nature of duties and responsibilities, or about the qualifications prescribed for recruitment. This Court accordingly set aside the order passed by the High Court, allowing parity.

(iv) In order to delineate the parameters, on the basis of which the principle of equal pay for equal work can be made applicable, this Court observed as under:-

> 10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the government to implement the same. As noted earlier, in the present case the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of the employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre.

16. Orissa University of Agriculture & Technology v. Manoj K. Mohanty[10], decided by a two-Judge bench: The respondent in the above case, was appointed as a Typist in 1990, on a consolidated salary of Rs.530/- per month, against a vacancy of the post of Junior Assistant. It was his averment, that even though in the appointment order, he was shown to have been appointed against the post of Typist, he had actually been working as a Junior Assistant, in the Examination Section of the institute. In order to demonstrate the aforesaid factual position, the respondent placed reliance on two certificates dated 4.12.1993 and 25.3.1996, issued to him by the Dean of the institute, affirming his stance. Despite the passage of five years since his induction into service, he was paid the same consolidated salary (referred to above), and was also not being regularized. It was also pointed out, that another individual junior to him was regularized against the post of Junior Assistant. The respondent then approached the Orissa High Court by way of a writ petition, seeking appointment on regular basis. The High Court disposed of the said writ petition, by directing, that the respondent be not disengaged from service. The High Court further directed, that the respondent be paid salary in the regular scale of pay admissible to Junior Assistants, with effect from September, 1997. A review petition filed against the High Courts order dated 11.9.1997, was dismissed. Dissatisfied with the above orders, the Orissa University of Agriculture & Technology approached this Court. While dealing with the question of equal pay for equal work, this Court, noticed the factual position as under:-

> 10. The High Court before directing to give regular pay-scale to the respondent w.e.f. September, 1997 on the principle of equal pay for equal work did not examine the pleadings and facts of the case in order to appreciate whether the respondent satisfied the relevant requirements such as the nature of work done by him as compared to the nature of work done by the regularly appointed Junior Assistants, the qualifications, responsibilities etc. When the services of the respondent had not been regularized, his appointment was on temporary basis on consolidated pay and he had not undergone the process for regular recruitment, direction to give regular pay-scale could not be given that too without examining the relevant factors to apply the principle of equal pay for equal work. It is clear from the averments made in the writ petition extracted above, nothing is stated as regards the nature of work, responsibilities attached to the respondent without comparing them with the regularly recruited Junior Assistants. It cannot be disputed that there were neither necessary averments in the writ petition nor any material was placed before the High Court so as to consider the application of principle of equal pay for equal work. Based on the fact, that the respondent had not placed sufficient material on the record of the case, to demonstrate the applicability of the principle of equal pay for equal work, this Court set aside the order passed by the High Court, directing that the respondent be paid wages in the regular scale of pay, with effect from September, 1997.

17. Government of W.B. v. Tarun K. Roy[11], decided by a three-Judge bench: There were two technical posts, namely, Operator-cum-Mechanic and Sub-Assistant Engineer, in the Irrigation Department, of the Government of West Bengal. In 1970, the State Government revised pay-scales. During the aforesaid revision, the pay-scale of the post of Operator-cum-Mechanic, which was initially Rs.180-350, was revised to Rs.230-425, with effect from 1.4.1970. The pay-scale of the post

of Sub-Assistant Engineer was simultaneously revised to Rs.350-600, with a higher initial start of Rs.330, with effect from the same date. Some persons in the category of Operator-cum-Mechanic, possessing the qualification of diploma in engineering, claimed entitlement to the nomenclature of Sub-Assistant Engineer, as also, the scale of pay prescribed for the post of Sub- Assistant Engineer. The Government of West Bengal, during the course of hearing of the matter before this Court, adopted the position, that diploma holder engineers working as Operator-cum-Mechanics in the Irrigation Department, were not entitled to be designated as Sub-Assistant Engineers. The said plea was negatived by this Court in State of West Bengal v. Debdas Kumar, 1991 Supp. (1) SCC 138.

(ii) Another group of Operator-cum-Mechanics, who did not possess diploma in engineering, and were graduates in science, or were holding school final examination certificate, claimed parity with Operator-cum-Mechanics, possessing the qualification of diploma in engineering. This Court, while rejecting their claim, observed as under:-

> 30. The respondents are merely graduates in Science. They do not have the requisite technical qualification. Only because they are graduates, they cannot, in our opinion, claim equality with the holders of diploma in Engineering. If any relief is granted by this Court to the respondents on the aforementioned ground, the same will be in contravention of the statutory rules. It is trite that this Court even in exercise of its jurisdiction under Article 142 of the Constitution of India would not ordinarily grant such a relief which would be in violation of a statutory provision.

18. S.C. Chandra v. State of Jharkhand[12], decided by a two-Judge bench: In the above matter, a number of civil appeals were disposed of, through a common order. The appellants had approached the High Court with the prayer, that directions be issued to the respondents, to fix their pay- scale at par with the pay-scale of government secondary school teachers, or at par with Grade I and II Clerks of the respondent company (Bharat Coking Coal Ltd. BCCL). The appellants also prayed, that facilities such as provident fund, gratuity, pension and other retiral benefits, should also be made available to them. In addition to the above prayers, the appellants also sought a direction, that the management of the school, be taken over by the State Government. Dissatisfied with the orders passed by the High Court, the employees of the school approached this Court. This Court disposed of the matter by recording the following conclusion:-

> 21. Learned counsel for the appellants have relied on Article 39(d) of the Constitution. Article 39(d) does not mean that all the teachers working in the school should be equated with the clerks in BCCL or the Government of Jharkhand for application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in State of Haryana v. Charanjit Singh, (2006) 9 SCC 321, wherein Their Lordships have put the entire controversy to rest and held that the principle, equal pay for equal work must satisfy the test that the incumbents are performing equal and identical work as discharged

> by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in State of Haryana v. Charanjit Singh, (2006) 9 SCC 321, all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL. A perusal of the determination rendered by this Court reveals, that for claiming parity under the principle of equal pay for equal work, there should be total identity between the post held by the claimants, and the reference post, with whom parity is claimed.

19. Official Liquidator v. Dayanand[13], decided by a three-Judge bench: Directions were issued by the Calcutta and Delhi High Courts to the appellant, in the above matter, to absorb persons employed by the Official Liquidators (attached to those High Courts) under Rule 308 of the Companies (Court) Rules, 1959, against sanctioned posts, in the Department of Company Affairs. By virtue of the above directions, the respondents who were employed/engaged by Official Liquidators, were paid salaries and allowances from the Companys funds. The question that arose for consideration before this Court was, whether the respondents were entitled to sanctioned Government posts, in the office of the Official Liquidator(s). While disposing of the above issue, this Court held as under:-

> 100. As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor were they paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the Offices of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the Offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company- paid staff in the regular pay scale from the Consolidate Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits on a par with regular employees by applying the principle of equal pay for equal work.

20. State of West Bengal v. West Bengal Minimum Wages Inspectors Association[14], decided by a two-Judge bench: The respondent Association represented the cadre of Inspector (Agricultural Minimum Wages), before the High Court of Calcutta. The claim made before the High Court was, that the said cadre was entitled to parity in pay-scales, with the posts of Inspector (Cooperative

Societies), Extension Officer (Panchayats) and Revenue Officer. The aforesaid claim of parity was based on the sole consideration, that the posts of Inspector (Agricultural Minimum Wages) on the one hand, and the posts of Inspector (Cooperative Societies), Extension Officer (Panchayats) and Revenue Officer on the other, were in the same pay-scale, prior to the revision of pay-scales, i.e., Pay-Scale 9 (Rs.300-600). After the pay revision in 1981, while the Inspector (Agricultural Minimum Wages) cadre, was retained in Pay-Scale 9 (Rs.300-600), the other three cadres Inspector (Cooperative Societies), Extension Officer (Panchayats) and Revenue Officer, were placed in Pay-Scale 11 (Rs.425-1050). It was based on the above factual assertion, that the respondents claimed placement in Pay-Scale 11 (- Rs.425- 1050). The claim of the respondents, was not based on the assertion, that Inspectors (Agricultural Minimum Wages) were discharging duties and responsibilities, which were similar/identical to those of Inspectors (Cooperative Societies), Extension Officers (Panchayats) and Revenue Officers. It is this aspect, which weighed with this Court while determining the claim of the respondents for parity. In the above adjudication, this Court recorded the following observations:-

> 20. The burden to prove disparity is on the employees claiming parity vide State of U.P. v. Ministerial Karamchari Sangh, (1998) 1 SCC 422; Associate Banks Officers Association v. SBI, (1998) 1 SCC 428; State of Haryana v. Haryana Civil Secretariat Personal Staff Association, (2002) 6 SCC 72; State of Haryana v. Tilak Raj, (2003) 6 SCC 123; S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 and U.P. SEB v. Aziz Ahmad, (2009) 2 SCC 606.
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> 21. What is significant in this case is that parity is claimed by Inspectors, AMW, by seeking extension of the pay scale applicable to Inspector (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) not on the basis that the holders of those posts were performing similar duties or functions as Inspectors, AMW. On the other hand, the relief was claimed on the ground that prior to ROPA Rules 1981, the posts in the said three reference categories, and Inspectors, AMW were all in the same pay scale (Pay Scale 9), and that under ROPA Rules 1981, those other three categories have been given a higher Pay Scale of No.11, while they Inspectors, AMW - were discriminated by continuing them in the Pay Scale 9.
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> 22. The claim in the writ petition was not based on the ground that subject post and reference category posts carried similar or identical duties and responsibilities but on the contention that as the subject post holders and the holders of reference category posts who were enjoying equal pay at an earlier point of time, should be continued to be given equal pay even after pay revision. In other words, the parity claimed was not on the basis of equal pay for equal work, but on the basis of previous equal pay.
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> 23. It is now well-settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those

categories of posts.

24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre- revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.

25. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale.

Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust. Based on the above consideration, this Court observed, that Inspectors (Agricultural Minimum Wages), had neither pleaded nor proved, that they were discharging duties and functions similar to the duties and functions of the Inspectors (Cooperative Societies), Extension Officers (Panchayats) and Revenue Officers, and therefore held, that their claim for pay parity, under the principle of equal pay for equal work, could not be accepted.

21. Union Territory Administration, Chandigarh v. Manju Mathur[15], decided by a two-Judge bench: In the above matter, the respondents were working as Senior Dieticians and Dieticians in the Directorate of Health Services of the Chandigarh Administration. They were posted in the General Hospital, Chandigarh, under the Union Territory Administration of Chandigarh. They were placed in the pay-scale of Rs.1500-2540 and Rs.1350- 2400, respectively. They moved the Chandigarh Administration, seeking the pay-scale extended to their counterparts, employed in the State of Punjab. The posts against which they were claiming equivalence, were those of Dietician (gazetted) and Dietician (non-gazetted) in the Directorate of Research and Medical Education, Punjab. The posts with which they were seeking equivalence, were sanctioned posts in the Rajindera Hospital (Patiala) and the Shri Guru Teg Bahadur Hospital (Amritsar). These posts were in the pay-scale of Rs.2200-4000 and Rs.1500-2640, respectively. After the State Government declined to accept their claim, they approached the High Court of Punjab and Haryana, which accepted their claim. Dissatisfied with the judgment rendered by the High Court, the Union Territory Administration of Chandigarh, approached this Court.

(ii) During the pendency of the proceedings before this Court, a direction was issued to the Union Territory Administration of Chandigarh, to appoint a High Level Equivalence Committee, to examine the nature of duties and responsibilities of the post of Senior Dietician working under the Union Territory Administration of Chandigarh, vis-a-vis, Dietician (gazetted) working under the

State of Punjab. And also to examine the nature of duties and responsibilities of the post of Dietician, working under the Union Territory Administration of Chandigarh, vis-a-vis, Dietician (non- gazetted) working under the State of Punjab, and submit a report. A report was accordingly submitted to this Court (which is extracted in the above judgment).

(iii) In its report, the High Level Equivalence Committee arrived at the conclusion, that the duties and responsibilities of the posts held by the respondents, and the corresponding reference posts with which they were claiming parity, were not comparable or equivalent. As such, this Court recorded the following observations:-

> 9. We have heard the learned Counsel for the parties. We find from the report of the High Level Equivalence Committee extracted above that the Directorate of Research and Medical Education, Punjab, is a teaching institution in which the Dietician has to perform multifarious duties such as teaching the probationary nurses in subjects of nutrition dietaries, control and management of the kitchen, etc., whereas, the main duties of the Dietician and Senior Dietician in the Government Multi-Specialty Hospital in the Union Territory Chandigarh are only to check the quality of food being provided to the patients and to manage the kitchen. Based on the above determination, the prayer for parity under the principle of equal pay for equal work was declined to the respondents, and accordingly the judgment of the High Court, was set aside.

22. Steel Authority of India Limited v. Dibyendu Bhattacharya[16], decided by a three-Judge bench: The respondent in the above case, was appointed against the post of Speech Therapist/Audiologist, in the Durgapur Steel Plant, in S-6 grade in Medical and Health Services. After serving for a few years, he addressed a representation to the appellant, claiming parity with one B.V. Prabhakar, employed at the Rourkela Steel Plant (a different unit of the same company). The said B.V. Prabhakar was holding the post of E-1 grade in the executive cadre, though designated as Speech Therapist/Audiologist. In his representation, the respondent did not claim parity in pay, but only claimed change of the cadre and upgradation of his post, and accordingly relaxation in eligibility, so as to be entitled to be placed in the pay-scale of posts in E-1 grade.

(ii) The appellant did not accept the claim raised by the respondent. He accordingly approached the High Court of Calcutta. A division bench of the High Court, accepted his claim for pay parity. It is in the aforesaid background, that the appellant approached this Court, to assail the judgment rendered by the High Court. The issue of pay parity was dealt with by this Court, by recording the following observations:-

> 30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities

> may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.

31. The onus to establish the discrimination by the employer lies on the person claiming the parity of pay. The Expert Committee has to decide such issues, as the fixation of pay scales etc. falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible for administration i.e. service conditions, etc., is found to be bonafide, reasonable, and on intelligible criteria which has a rational nexus of objective of differentiation, such differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just or prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesale/wholesome identity between the two posts they should not be treated as equivalent and the Court should avoid applying the principle of equal pay for equal work. Based on the above consideration, this Court recorded its analysis, on the merits of the controversy, as under:-

> 34. Shri B.V. Prabhakar, had been appointed in E-1 Grade, in the Rourkela unit, considering his past services in the Bokaro Steel Plant, another unit of the Company, for about two decades prior to the recruitment of the respondent. As every unit may make appointments taking into consideration the local needs and requirement, such parity claimed by the respondent cannot be held to be tenable. The reliefs sought by the respondent for upgradation of the post and waiving the eligibility criteria had rightly been refused by the appellants and by the learned Single Judge. In such a fact-situation, there was no justification for the Division Bench to allow the writ petition, granting the benefit from the date of initial appointment of the respondent. The respondent has not produced any tangible material to substantiate his claim, thus, he could not discharge the onus of proof to establish that he had made some justifiable claim. The respondent miserably failed to make out a case for pay parity to the post of E-1 Grade in executive cadre. The appeal, thus, deserves to be allowed. It is, therefore apparent, that this Court did not accept the prayer of pay parity, in the above cited case, based on the principle of equal pay for equal work.

23. Hukum Chand Gupta v. Director General, Indian Council of Agricultural Research[17], decided by a two-Judge bench: In the above matter, the appellant was originally appointed as a Laboratory Assistant in Group D, in the National Dairy Research Institute. He was promoted as a Lower Division Clerk, after he qualified a limited departmental competitive examination. He was further promoted as a Senior Clerk, again after qualifying a limited departmental competitive examination. At this stage, he was placed in the pay-scale of Rs.1200-2040. He was further promoted to the post of Superintendent in the pay-scale of Rs.1640-2900, yet again, after passing a departmental

examination. Eventually, he was promoted as an Assistant Administrative Officer, on the basis of seniority-cum-fitness. The Indian Council of Agricultural Research revised the pay-scales of Assistants, from Rs.1400-2600 to Rs.1640-2900, with effect from 1.1.1986. However, the pay- scale of the post of Superintendent was not revised.

(ii) The appellant submitted a representation seeking revision of his pay- scale on the ground, that in the headquarters of the Indian Council of Agricultural Research, the post of Superintendent is a promotional post, from the post of Assistant (which carried the pay-scale of Rs.1640-2900). He also claimed parity in pay-scale with one J.I.P. Madan. The claim of the appellant was not accepted by the authorities, whereupon, he first approached the Administrative Tribunal and eventually the High Court of Punjab and Haryana, which also did not accept his contention. It is, therefore, that he approached this Court.

(iii) While adjudicating upon the above controversy, this Court relied and endorsed the reasons recorded by the Administrative Tribunal in rejecting the claim of the appellant in the following manner:-

> 9. By a detailed order, the Tribunal rejected both the claims. It was observed that the post at headquarters cannot be compared with the post at institutional level as both are governed by different sets of service rules. The second prayer with regard to the higher pay scale given to Shri J.I.P. Madan was rejected on the ground that he had been given the benefit of second upgradation in pay since he had earned only one promotion throughout his professional career. Aggrieved by the aforesaid, the appellant filed a writ petition C.W.P. No. 9595 CAT of 2004 before the High Court. The writ petition has also been dismissed by judgment dated 8-7-2008. This judgment is impugned in the present appeal. This Court, recorded the following additional reasons, for not accepting the claim of the appellant, by observing as under:-
>
> 15. In our opinion, the explanation given by Mrs. Sunita Rao does not leave any room for doubt that the claim made by the appellant is wholly misconceived. There is no comparison between the appellant and Shri J.I.P. Madan. The appellant had duly earned promotion in his cadre from the lowest rank to the higher rank. Having joined in Group D, he retired on the post of AAO. On the other hand, Shri J.I.P. Madan had been working in the same pay scale till his promotion on the post of AAO. Therefore, he was held entitled to the second upgradation after 24 years of service. He had joined as an Assistant by Direct Recruitment and promoted on 24-8-1990 as a Superintendent. After the merger of the post of Assistant with the Superintendent, the earlier promotion of Shri Madan was nullified, as Assistant was no longer a feeder post for the promotion on the post of Superintendent.
>
> Thus, a financial upgradation, in view of ACP Scheme, was granted to him since he had no opportunity for the second promotion. This Court concluded the issue by holding as under:-

20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at headquarters and the employees working at the institutional level. It is a matter of record that the employees working at headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. In our opinion, the prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There can not be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a Writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the Writ Court would lack the necessary expertise undertake the complex exercise of equation of posts or the pay scales.

21. In expressing the aforesaid opinion, we are fortified by the observations made by this Court in State of Punjab vs. Surjit Singh, (2009) 9 SCC 514. In that case, upon review of a large number of judicial precedents relating to the principle of equal pay for equal work, this Court observed as follows: (SCC pp. 527-28, para 19) 19. 19. Undoubtedly, the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of equal pay for equal work has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation..

A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of equal pay for equal work requires consideration of various dimensions of a given job. The accuracy

> required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus, normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof.* (emphasis supplied) In our opinion, the aforesaid observations would be a complete answer to all the submissions made by the appellant. For the above reasons, this Court rejected the claim of the appellant, based on the principle of equal pay for equal work.

24. National Aluminum Company Limited v. Ananta Kishore Rout[18], decided by a two-Judge bench: The appellant in the above matter, i.e., National Aluminum Company Limited (hereinafter referred to as, NALCO) had established two schools. In the first instance, NALCO itself looked after the management of the said schools. In 1985, it entered into two separate but identical agreements with the Central Chinmoy Mission Trust, Bombay, whereby the management of the schools was entrusted to the above trust. In 1990, a similar agreement was entered into for the management of the above two schools, with the Saraswati Vidya Mandir Society (affiliated to Vidya Bharati Akhila Bharatiya Shiksha Sansthan). Accordingly, with effect from 1990, the said Society commenced to manage the affairs of the employees, of the above two schools. Two writ petitions were filed by the employees of the two schools before the High Court of Orissa at Cuttack, seeking a mandamus, that they be declared as employees of NALCO, and be treated as such, with the consequential prayer, that the employees of the two schools be accorded suitable pay-scales, as were admissible to the employees of NALCO. The High Court accepted the above prayers. It is, therefore, that NALCO approached this Court.

(ii) In adjudicating upon the above matter, this Court recorded its consideration as under:-

> 33. Insofar as their service conditions are concerned, as already conceded by even the respondents themselves, their salaries and other perks which they are getting are better than their counter parts in Government schools or aided/ unaided recognised schools in the State of Orissa. In a situation like this even if, for the sake of argument, it is presumed that NALCO is the employer of these employees, they would not be entitled to the pay scales which are given to other employees of NALCO as there cannot be any comparison between the two. The principle of equal pay for equal work is not attracted at all. Those employees directly employed by NALCO are discharging altogether different kinds of duties. Main activity of NALCO is the manufacture and production of alumina and aluminium for which it has its manufacturing units. The process and method of recruitment of those employees, their eligibility conditions for appointment, nature of job done by those employees etc. is entirely different from the employees of these schools. This aspect is squarely dealt with in the case of SC

> Chandra vs. State of Jharkhand, (2007) 8 SCC 279, where the plea for parity in employment was rejected thereby refusing to give parity in salary claim by school teachers with class working under Government of Jharkhand and BCCL. The discussion which ensued, while rejecting such a claim, is recapitulated hereunder in the majority opinion authored by A.K. Mathur, J.: (SCC p. 289, paras 20-21) 20. After going through the order of the Division Bench we are of opinion that the view taken by the Division Bench of the High Court is correct. Firstly, the school is not being managed by BCCL as from the facts it is more than clear that BCCL was only extending financial assistance from time to time. By that it cannot be saddled with the liability to pay these teachers of the school as being paid to the clerks working with BCCL or in the Government of Jharkhand. It is essentially a school managed by a body independent of the management of BCCL. Therefore, BCCL cannot be saddled with the responsibilities of granting the teachers the salaries equated to that of the clerks working in BCCL.

21. Learned counsel for the appellants have relied on Article 39(d) of the Constitution. Article 39(d) does not mean that all the teachers working in the school should be equated with the clerks in BCCL or the Government of Jharkhand for application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be educated with the clerks of the State Government or of BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in State of Haryana v. Charanjit Singh, (2006) 9 SCC 321, wherein Their Lordships have put the entire controversy to rest and held that the principle, 'equal pay for equal work' must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in Charanjit Singh all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL. Based on the above consideration, this Court recorded its conclusion as follows:-

> 35. We say at the cost of repetition that there is no parity in the nature of work, mode of appointment, experience, educational qualifications between the NALCO employees and the employees of the two schools. In fact, such a comparison can be made with their counter parts in the Government schools and/or aided or unaided schools. On that parameter, there cannot be any grievance of the staff which is getting better emoluments and enjoying far superior service conditions. It is, therefore apparent, that the principle of equal pay for equal work was held to be not applicable to the employees of the two schools, so as to enable them to claim parity, with the employees of NALCO.

25. We shall now attempt an analysis of the decisions rendered by this Court, wherein temporary employees (differently designated as work-charge, daily-wage, casual, ad-hoc, contractual, and the like) raised a claim for being extended wages, equal to those being drawn by regular employees, and the parameters determined by this Court, in furtherance of such a claim. Insofar as the present controversy is concerned, the same falls under the present category.

26. Dhirendra Chamoli v. State of U.P.[19], decided by a two-Judge bench: Two Class-IV employees of the Nehru Yuvak Kendra, Dehradun, engaged as casual workers on daily-wage basis, claimed that they were doing the same work as Class-IV employees appointed on regular basis. The reason for denying them the pay-scale extended to regular employees was, that there was no sanctioned post to accommodate the petitioners, and as such, the assertion on behalf of the respondent-employer was, that they could not be extended the benefits permissible to regular employees. Furthermore, their claim was sought to be repudiated on the ground, that the petitioners had taken up their employment with the Nehru Yuvak Kendra knowing fully well, that they would be paid emoluments of casual workers engaged on daily-wage basis, and therefore, they could not claim beyond what they had voluntarily accepted.

(ii) This Court held, that it was not open to the Government to exploit citizens, specially when India was a welfare state, committed to a socialist pattern of society. The argument raised by the Government was found to be violative of the mandate of equality, enshrined in Article 14 of the Constitution. This Court held that the mandate of Article 14 ensured, that there would be equality before law and equal protection of the law. It was inferred therefrom, that there must be equal pay for equal work. Having found, that employees engaged by different Nehru Yuvak Kendras in the country were performing similar duties as regular Class-IV employees in its employment, it was held, that they must get the same salary and conditions of service as regular Class-IV employees, and that, it made no difference whether they were appointed on sanctioned posts or not. So long as they were performing the same duties, they must receive the same salary.

27. Surinder Singh v. Engineer-in-Chief, CPWD[20], decided by a two-Judge bench: The petitioners in the instant case were employed by the Central Public Works Department on daily-wage basis. They demanded the same wage as was being paid to permanent employees, doing identical work. Herein, the respondent-employer again contested the claim, by raising the plea that petitioners could not be employed on regular and permanent basis for want of permanent posts. One of the objections raised to repudiate the claim of the petitioners was, that the doctrine of equal pay for equal work was a mere abstract doctrine and was not capable of being enforced in law.

(ii) The objection raised by the Government was rejected. It was held, that all organs of the State were committed to the directive principles of the State policy. It was pointed out, that Article 39 enshrined the principle of equal pay for equal work, and accordingly this Court concluded, that the principle of equal pay for equal work was not an abstract doctrine. It was held to be a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. Referring to the decision rendered by this Court in the D.S. Nakara case2, it was held, that the above proposition had been affirmed by a Constitution Bench of this Court. It was held, that the Central Government, the State Governments and likewise, all public sector undertakings, were expected to function like

model and enlightened employers and further, the argument that the above principle was merely an abstract doctrine, which could not be enforced through a Court of law, could not be raised either by the State or by State undertakings. The petitions were accordingly allowed, and the Nehru Yuvak Kendras were directed to pay all daily-rated employees, salaries and allowances as were paid to regular employees, from the date of their engagement.

28. Bhagwan Dass v. State of Haryana[21], decided by a two-Judge bench: The Education Department of the State of Haryana, was pursuing an adult education scheme, sponsored by the Government of India, under the National Adult Education Scheme. The object of the scheme was to provide functional literacy to illiterates, in the age group of 15 to 35, as also, to impart learning through special contract courses, to students in the age group of 6 to 15, comprising of dropouts from schools. The petitioners were appointed as Supervisors. They were paid remuneration at the rate of Rs.5,000/- per month, as fixed salary. Prior to 7.3.1984, they were paid fixed salary and allowance, at the rate of Rs.60/- per month. Thereafter, the fixed salary was enhanced to Rs.150/- per month. The reason for allowing them fixed salary was, that they were required to work, only on part-time basis. The case set up by the State Government was, that the petitioners were not full-time employees; their mode of recruitment was different from Supervisors engaged on regular basis; the nature of functions discharged by them, was not similar to those discharged by Supervisors engaged in the regular cadre; and their appointments were made for a period of six months, because the posts against which they were appointed, were sanctioned for one year at a time.

(ii) Having examined the controversy, this Court rejected all the above submissions advanced on behalf of the State Government. It was held, that the duties discharged by the petitioners even though for a shorter duration, were not any different from Supervisors, engaged in the regular cadre. Even though recruitment of Supervisors in the regular cadre was made by the Subordinate Selection Board by way of an open selection, whereas the petitioners were selected through a process of consideration which was limited to a cluster of a few villages, it was concluded that, that could not justify the denial to the petitioners, wages which were being paid to Supervisors, working in the regular cadre. It was held, that so long as the petitioners were doing work, which was similar to the work of Supervisors engaged in the regular cadre, they could not be denied parity in their wages. Accordingly it was held, that from the standpoint of the doctrine of equal pay for equal work, the petitioners could not be discriminated against, in regard to pay-scales. Having concluded that the petitioners possess the essential qualification for appointment to the post of Supervisor, and further the duties discharged by them were similar to those appointed on regular basis, it was held, that the petitioners could not be denied wages payable to regular employees. This Court also declined the plea canvassed on behalf of the Government, that they were engaged in a temporary scheme against posts which were sanctioned on year to year basis. On the instant aspect of the matter, it was held, that the same had no bearing to the principle of equal pay for equal work. It was held, that the only relevant consideration was, whether the nature of duties and functions discharged and the work done was similar. While concluding, this Court clarified that in the instant case, it was dealing with temporary employees engaged by the same employer, doing work of the same nature, as was being required of those engaged in the regular cadre, on a regular basis. It was held, that the petitioners, who were engaged on temporary basis as Supervisors, were entitled to be paid on the same basis, and in the same pay-scale, at which those employed in the regular cadre

discharging similar duties as Supervisors, were being paid.

29. Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India[22], decided by a two- Judge bench: The persons on whose behalf the Mazdoor Manch had approached this Court under Article 32 of the Constitution of India, were working as daily-rated casual labourers, in the Posts and Telegraphs Department. They included three broad categories of workers, namely, unskilled, semi-skilled and skilled. The unskilled labour consisted of Safai Workers, Helpers, Peons, and the like. The unskilled labour was engaged in digging, carrying loads and other similar types of work. The semi-skilled labour consisted of Carpenters, Wiremen, Draftsmen, A.C. Mechanics etc. They needed to have technical experience, but were not required to possess any degree or diploma qualification. The skilled labour consisted of labourers doing technical work. The skilled labourers were required to possess technical degree/diploma qualification.

(ii) All the three categories of employees, referred to above, were engaged as casual labourers. They were being paid very low wages. Their wages were far less than the salary and allowances paid to regular employees, of the Posts and Telegraphs Department, engaged for the same nature of work. The Director General, Posts and Telegraphs Department, by an order dated 15.5.1980 prescribed the following wages for casual labourers in the Department:-

> (i) Casual labour who has not completed 720 days of service in a period of three years at the rate of 240 days per annum with the Department as on April 1, 1980.
>
> No change. They will continue to be paid at the approved local rates.
>
> (ii) Casual labour who having been working with the Department from April 1, 1977 or earlier and have completed 720 days of service as on April 1, 1980.
>
> Daily wages equal to 75 per cent of 1/30th of the minimum of Group D Time Scale plus admissible DA.
>
> (iii) Casual labour who has been working in the Department from April 1, 1975 or earlier and has completed 1200 days of service as on April 1, 1980.
>
> Daily wages equal to 1/30th of the minimum of the Group D Time Scale plus 1/30th of the admissible DA.
>
> (iv) All the casual labourers will, however, continue to be employed on daily wages only.
>
> (v) These orders for enhanced rates for category (ii) and (iii) above will take effect from May 1, 1980.

(vi) A review will be carried out every year as on the first of April for making officials eligible for wages indicated in paras (ii) and

(iii) above.

(vii) The above arrangement of enhanced rates of daily wages will be without prejudice to absorption of casual mazdoors against regular vacancies as and when they occur. Four years later, by an order dated 26.7.1984, the rate of wages payable to casual labourers in Posts and Telegraphs Department, was revised as under:-

(i) Casual semi-skilled/skilled labour who has not completed 720 days of service over a period of three years or more with the department.

No change. They will continue to be paid at the approved local rates.

(ii) Casual semi-skilled/skilled labour who has completed 720 days of service over a period of three years or more.

Daily wage equal to 75 per cent of 1/30th of the minimum of the scale of semi-skilled (Rs.210-270) or skilled (Rs.260-350) as the case may be, plus admissible DA/ADA thereon.

(iii) Casual labour who has completed 1200 days of service over a period of 5 years or more.

Daily wage equal to 1/30th of the minimum of the pay scale of semi-skilled (Rs.210-270) skilled (Rs.260-350) as the case may be, plus DA/ADA admissible thereon.

(iv) All the casual semi-skilled/skilled labour will, however continue to be employed on daily wages only.

(v) These orders for enhanced rates for category (ii) and (iii) above will take effect from April 1, 1984.

(vi) A review for making further officials eligible for wages vide

(ii) and (iii) above will take effect as on first of April every year.

(vii) If the rates calculated vide (ii) and (iii) above happen to be less than the approved local rates, payment shall be made as per approved local rates for above categories of labour.

(viii) The above arrangements of enhanced rates of daily wages will be without prejudice to absorption of casual semi-skilled/skilled labour against regular vacancies as and when they occur..

(iii) Aggrieved by the discrimination made against them, through the aforementioned orders dated 15.5.1980 and 26.7.1984, the Mazdoor Manch submitted a statement of demands, inter alia, claiming the same salary and allowances and other benefits, as were being paid to regular and permanent employees of the Union of India, in the corresponding cadres. The aforesaid demands were departmentally rejected on 13.12.1985. It is, therefore, that the petitioners approached this Court for the redressal of their grievances.

(iv) Before this Court the Union of India contended, that the employees in question belonged to the category of casual labourers, and had not been regularly employed. As such, it was urged that they were not entitled to the same privileges, which were extended to regular employees.

(v) This Court while adjudicating upon the controversy, took into consideration the fact that, the employees in question were rendering the same kind of service which was being rendered by regular employees. The submission advanced before this Court, on behalf of the casual labourers, was under Article 38(2) of the Constitution, which provides that The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. It was also urged on behalf of the employees, that the State could not deny (at least) the minimum pay in the pay-scales of regularly employed workmen, even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees.

(vi) While adjudicating upon the controversy, this Court expressed the view, that the denial of wages claimed by the workers in question, amounted to exploitation of labour. It was held, that the Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It was pointed out, that a casual labourer who had agreed to work on such low wages, had done so, because he had no other choice. In the opinion of this Court, it was poverty, that had driven the workers to accept such low wages. In the above view of the matter, in the facts and circumstances of the case, this Court held that classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum wage payable to employees in the corresponding regular cadres, particularly in the lowest rung in the department, where the pay-scales were the least, was not tenable. This Court also held that the classification of labourers into three categories (depicted in the orders dated 15.5.1980 and 26.7.1984, extracted above) for the purpose of payment of wages at different rates, was not tenable. It was held, that such a classification was violative of Articles 14 and 16 of the Constitution, besides being opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966, which exhorts all State parties to ensure fair wages and equal wages for equal work. Accordingly, this Court directed the Union of India, and the other respondents, to pay wages to the workmen, who were engaged as casual labourers, belonging to different categories, at rates equivalent to the minimum pay, in the pay-scales of regularly employed workers, in the corresponding cadres, but without any increments. The workers were also held to be entitled to

corresponding dearness allowance and additional dearness allowance, if any, payable thereon. It was also directed, that whatever other benefits were being extended to casual labourers hitherto before, would be continued.

30. Harbans Lal v. State of Himachal Pradesh[23], decided by a two-Judge bench: The petitioners in this case were Carpenters (1st and 2nd grade), employed at the Wood Working Centre of the Himachal Pradesh State Handicraft Corporation. They were termed as daily-rated employees. Their claim in their petition was for emoluments in terms of wages paid to their counterparts in regular Government service, under the principle of equal pay for equal work. On the factual matrix, based on the averments made in the pleadings, this Court felt that the Corporation with which the petitioners were employed, had no regularly employed Carpenter. It is, therefore evident, that the claim of the petitioners was only with reference to Carpenters engaged in different Government services. In the instant factual backdrop, this Court expressed the view, that the claim made by the petitioners could not be accepted, because the discrimination complained of, must be within the same establishment, owned by the same management. It was emphasized, that a comparison under the principle of equal pay for equal work could not be made with counterparts in other establishments, having a different management, or even with establishments in different geographical locations, though owned by the same master. It was held, that unless it was shown, that there was discrimination amongst the same set of employees under the same master, in the same establishment, the principle of equal pay for equal work would not be applicable. It is, therefore, that the claim of the petitioners was rejected.

31. Grih Kalyan Kendra Workers Union v. Union of India6, decided by a two-Judge bench: The workers union had approached this Court, for the first time, in 1984, by filing writ petition no. 13924 of 1984. In the above petition, the relief claimed was for payment of wages under the principle of equal pay for equal work. The petitioners sought parity with employees of the New Delhi Municipal Committee, and also, with employees of other departments of the Delhi Administration, and the Union of India. They approached this Court again by filing civil writ petition no. 869 of 1988, which was disposed of by the above cited case.

(ii) The petitioners were employees of Grih Kalyan Kendras. They desired the Union of India, to pay them wages in the regular pay-scales, at par with other employees performing similar work, under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India. It would be relevant to mention, that the petitioner- Workers Union, was representing employees working on ad-hoc basis. Some of them were being paid a fixed salary (described as honorarium), while others were working on piece-rate wages at the production centres, without there being any provision for any scale of pay, or other benefits like gratuity, pension, provident fund etc.

(iii) This Court, in the first instance, endeavoured to deal with the question, whether employers of these workers, were denying them wages as were being paid to other similarly placed employees, doing the same or similar work. The question came to be examined on account of the fact, that unless the petitioners could demonstrate, that the employees of the Grih Kalyan Kendras were being discriminated against, on the subject of pay and other emoluments, with other similarly placed employees, the principle of equal pay for equal work would not be applicable. During the course of

the first adjudication, in writ petition no. 13924 of 1984, this Court requested a former Chief Justice of India to make recommendations after taking into consideration, firstly, whether other similarly situated employees (engaged in similar comparable works, putting in comparable hours of work, in a comparable employment) were being paid higher pay, and if so, what should be the entitlement of the agitating employees, in order to comply with the principle of equal pay for equal work; and secondly, if there is no other similar comparable employment, whether the remuneration of the agitating employees deserved to be revised, on the ground that their remuneration was unconscionable or unfair, and if so, to what extent. Pursuant to the above request, the former Chief Justice of India, concluded, that there was no employment comparable to the employment held by those engaged by the Grih Kalyan Kendras, and therefore, they could not seek parity with employees, working either under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India.

(iv) Based on the aforesaid factual conclusion, this Court held, that the concept of equality implies and requires equal treatment, for those who are situated equally. Comparison between unequals is not possible. Since the workers who had approached this Court had failed to establish, that they were situated similarly as others, they could not be extended benefits which were being given to those, with whom they claimed parity. And therefore, since there were no other employees comparable to the employees working in the Grih Kalyan Kendras, this Court declined to entertain the prayer made by the petitioners.

32. Ghaziabad Development Authority v. Vikram Chaudhary[24], decided by a two-Judge bench: The respondents in this case were engaged by the Ghaziabad Development Authority, on daily-wage basis. The instant judgment has been referred to only because it was cited by the learned counsel for the appellants. In the cited case, the claim raised by the respondents was not based on the principle of equal pay for equal work, yet it would be relevant to mention, that while disposing of the appeal preferred by the Ghaziabad Development Authority, this Court held that the respondents, who were engaged as temporary daily-wage employees, would not be entitled to pay at par with regular employees, but would be entitled to pay in the minimum wages prescribed under the statute, if any, or the prevailing wages as available in the locality. It would, therefore, be improper for us to treat this judgment as laying down any principle emerging from the concept of equal pay for equal work.

33. State of Haryana v. Jasmer Singh[25], decided by a two-Judge bench: The respondents were employed as Mali-cum-Chowkidars/Pump Operators on daily-wage basis, under the employment of the Government of Haryana. They had approached the High Court claiming the same salary as was being paid to the regularly employed persons, holding similar posts in the State of Haryana. The instant prayer was made by the respondents, under the principle of equal pay for equal work. The above prayer made by the respondents, was granted by the High Court. The High Court issued a direction to the State Government, to pay the respondents, the same salary and allowances as were being paid to regular employees holding similar posts, with effect from the dates on which the respondents were engaged by the State Government.

(ii) This Court held, that the respondents who were employed on daily-wage basis, could not be treated at par with persons employed on regular basis, against similar posts. It was concluded, that

daily-rated workers were not required to possess the qualifications required for regular workers, nor did they have to fulfill the postulated requirement of age, at the time of recruitment. Daily-rated workers, it was felt, were not selected in the same manner as regular employees, inasmuch as, their selection was not as rigorous as that of employees selected on regular basis. This Court expressed the view, that there were also other provisions relating to regular service, such as the liability of a member of the service to be transferred, and his being subjected to disciplinary jurisdiction. It was pointed out, that daily-rated employees were not subjected to either of the aforesaid contingencies/consequences. In view of the aforesaid consideration, this Court held that the respondents, who were employed on daily-wage basis, could not be equated with regular employees for purposes of their wages, nor were they entitled to obtain the minimum of the regular pay-scale extended to regular employees. This Court, however held, that if a minimum wage was prescribed for such workers, the respondents would be entitled to it, if it was higher than the emoluments which were being paid to them.

(iii) It would be relevant to mention that in the above decision this Court took notice of the fact, that the State of Haryana had taken policy decisions from time to time to regularize the services of the employees, similarly placed as the respondents, wherein daily-wage employees on completion of 3/5 years service, were entitled to regularization. On their being regularized, they were entitled to wages payable to regular employees.

34. State of Punjab v. Devinder Singh[26], decided by a two-Judge bench: The respondents were daily-wage Ledger-Keepers/Ledger Clerks engaged by the State of Punjab. They approached the Punjab & Haryana High Court, claiming salary and allowances, as were being paid to regular employees holding similar posts. The High Court held in their favour, and directed the State Government to pay to the respondents, salary and allowances, as were being paid to regular employees holding similar posts. The aforesaid decision was rendered because the High Court accepted their contention, that they were doing the same work as was taken from regular Ledger-Keepers/Ledger Clerks. Their prayer was accordingly accepted, under the principle of equal pay for equal work.

(ii) This Court was of the view that the principle of equal pay for equal work could enure to the benefit of the respondents to the limited extent, that they could have been paid the minimum of the pay-scale of Ledger- Keepers/Ledger Clerks, appointed on regular basis. This conclusion was drawn by applying the principle of equal pay for equal work. This Court, therefore, allowed the prayer made by the State Government to the aforesaid limited extent. The right claimed by the respondents, to be paid in the same time scale, as regularly employed Ledger-Keepers/Ledger Clerks were being paid, was declined.

35. State of Haryana v. Tilak Raj[27], decided by a two-Judge bench: Thirty five respondents were appointed at different points of time, as Helpers on daily-wages by the Haryana Roadways. They filed a writ petition before the Punjab and Haryana High Court, claiming regularization because they had rendered long years of service. They also claimed salary, as was payable to regular employees, engaged for the same nature of work, as was being performed by them. Even though, the High Court did not accept the prayer made by the respondents, either for regularization or for

payment of wages at par with regular employees, it directed the State of Haryana to pay to the respondents, the minimum pay in the scale of pay applicable to regular employees. The State of Haryana being aggrieved by the order passed by the High Court, approached this Court.

(ii) While disposing of the appeal preferred by the State of Haryana, this Court accepted the contention advanced on its behalf, that a scale of pay is attached to a definite post. This Court also accepted, that a daily- wager holds no post. In view of the above factual/legal position, this Court arrived at the conclusion, that the prayer made by the respondents before the High Court, that they be granted emoluments in the pay-scale of the regular employees, could not be acceded to. Since no material was placed before the High Court, comparing the nature of duties of either category, it was held, that it was not possible to hold that the principle of equal pay for equal work could be invoked by the respondents, to claim wages in the regular pay-scale.

(iii) Despite having found that the respondents were not eligible to claim wages in the regular scale of pay, on account of the fact that they were engaged on daily-wage basis, this Court directed the State of Haryana to pay to the respondents, the minimum wages as prescribed for such workers.

36. Secretary, State of Karnataka v. Umadevi[28], decided by a five-Judge Constitution Bench: Needless to mention, that the main proposition canvassed in the instant judgment, pertained to regularization of government servants, based on the employees having rendered long years of service, as temporary, contractual, casual, daily-wage or on ad-hoc basis. It is, however relevant to mention, that the Constitution Bench did examine the question of wages, which such employees were entitled to draw. In paragraph 8 of the judgment, a reference was made to civil appeal nos. 3595- 612 of 1999, wherein, the respondent-employees were temporarily engaged on daily-wages in the Commercial Taxes Department. As they had rendered service for more than 10 years, they claimed permanent employment in the department. They also claimed benefits as were extended to regular employees of their cadre, including wages (equal to their salary and allowances) with effect from the dates from which they were appointed. Even though the administrative tribunal had rejected their claim, by returning a finding, that they had not made out a case for payment of wages, equal to those engaged on regular basis, the High Court held that they were entitled to wages, equal to the salary of regular employees of their cadre, with effect from the date from which they were appointed. The direction issued by the High Court resulted in payment of higher wages retrospectively, for a period of 10 and more years. It would also be relevant to mention, that in passing the above direction, the High Court had relied on the decision rendered by a three-Judge bench of this Court in Dharwad District PWD Literate Daily-Wage Employees Association v. State of Karnataka[29]. The Constitution Bench, having noticed the contentions of the rival parties, on the subject of wages payable to daily-wagers, recorded its conclusions as under:-

> 55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be

> paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. Nos. 3595- 3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time.

That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them. We have extracted the aforesaid paragraph, so as not to make any inference on our own, but to project the determination rendered by the Constitution Bench, as was expressed by the Bench. We have no hesitation in concluding, that the Constitution Bench consciously distinguished the issue of pay parity, from the issue of absorption/regularization in service. It was held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary at the lowest grade of their cadre. The Constitution Bench expressed the view, that the concept of equality would not be applicable to the issue of absorption/regularization in service. And conversely, on the subject of pay parity, it was unambiguously held, that daily-wage earners should be paid wages equal to the salary at the lowest grade (without any allowances).

37. State of Haryana v. Charanjit Singh[30], decided by a three-Judge bench: A large number of civil appeals were collectively disposed of by a common order. In all these appeals, the respondents were daily-wagers, who were appointed as Ledger Clerks, Ledger Keepers, Pump Operators, Mali-cum-

Chowkidar, Fitters, Petrol Men, Surveyors, etc. All of them claimed the minimum wages payable under the pay-scale extended to regular Class-IV employees. The above relief was claimed with effect from the date of their initial appointment. It would be relevant to mention, that while the appeals disposed of by the common order were pending before this Court, all the respondents were regularized. From the date of their regularization, they were in any case, being paid salary in the scales applicable to regular Class-IV employees. The limited question which came up for adjudication before this Court in the matters was, whether the directions issued by the High Court to pay the minimum wage in the scale payable to Class-IV employees to the respondents, from the date of their filing the respective petition before the High Court, was required to be interfered with. While adjudicating upon the aforesaid issue, this Court made the following observations:-

> 19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of State of Haryana v. Jasmer Singh, (1996) 11 SCC 77, State of Haryana v. Tilak Raj, (2003) 6 SCC 123, Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188, Govt. of W.B. v. Tarun K. Roy, (2004) 1 SCC 347, lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ

> court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regards. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal.

Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof. If the High Court, is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors. Having made the above observations, the judgments rendered by the High Court were set aside, and the matters were remanded back to the High Court, to examine each case in order to determine whether the respondents were discharging the same duties and responsibilities, as the employees with whom they claimed parity. In sum and substance therefore, this Court acceded to the proposition that daily-wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage in the pay-scale payable to regular employees. It is only because the said factual determination had not been rendered by the High Court, the matter was remanded back, for a fresh adjudication on the above limited issue.

38. State of U.P. v. Putti Lal[31], decided by a three-Judge bench: The question which arose for adjudication was, whether the respondents who were daily-rated wage earners in the Forest Department, were entitled to regularization, and should be paid the minimum of the pay-scale as was payable to a regular worker, holding a corresponding post in the Government. On the above issue, this Court in the above judgment, recorded the following conclusion:-

> 5. In several cases this Court applying the principle of equal pay for equal work has held that a daily-wager, if he is discharging the similar duties as those in the regular employment of the Government, should at least be entitled to receive the minimum of the pay scale though he might not be entitled to any increment or any other allowance that is permissible to his counterpart in the Government.

In our opinion that would be the correct position and we, therefore, direct that these daily-wagers would be entitled to draw at the minimum of the pay scale being received by their counterparts in the Government and would not be entitled to any other allowances or increment so long as they continue as daily-wagers. The question of their regular absorption will obviously be dealt with in accordance with the statutory rules already referred to. It is therefore apparent, that in the instant judgment, the three-Judge bench extended the benefit of the principle of equal pay for equal work to persons engaged on daily-wage basis.

39. State of Punjab v. Surjit Singh[32], decided by a two-Judge bench: The respondents in the above mentioned matter, were appointed in different posts in the Public Health Department of the State of Punjab. All of them were admittedly appointed on daily-wage basis. Inter alia, because the respondent-employees had put in a number of years of service, they were held by the High Court to

be entitled to the benefit of the principle of equal pay for equal work. In the challenge raised before this Court, it was concluded as under:-

> 36. With utmost respect, the principle, as indicated hereinbefore, has undergone a sea change. We are bound by the decisions of larger Benches. This Court had been insisting on strict pleadings and proof of various factors as indicated heretobefore. Furthermore, the burden of proof even in that case had wrongly been placed on the State which in fact lay on the writ petitioners claiming similar benefits. The factual matrix obtaining in the said case particularly similar qualification, interchangeability of the positions within the regular employees and the casual employees and other relevant factors which have been noticed by us also had some role to play. Rather than determining whether or not the respondents were entitled to any benefit under the principle of equal pay for equal work, on account of their satisfying the conditions stipulated by this Court in different judgments including the one in State of Haryana v. Charanjit Singh30, this Court while disposing of the above matter, required the State to examine the cases of the respondents by appointing an expert committee, which would determine whether or not the parameters laid down in the judgments rendered by this Court, would entitle the respondent-employees to any benefit under the principle of equal pay for equal work. Herein again, the principle in question, was considered as applicable to temporary employees.

40. Uttar Pradesh Land Development Corporation v. Mohd. Khursheed Anwar[33], decided by a two-Judge bench: In the instant case, the respondents were employed on contract basis, on a consolidated monthly salary of Rs.2000/-. Prior to their appointment, they were interviewed by a selection committee alongwith other eligible candidates, and were found to be suitable for the job. Their contractual appointment was continued from time to time. Though they were employed on contract basis, the fact that two posts of Assistant Engineer and one post of Junior Engineer were vacant at the time of their engagement, was not disputed. The respondents were not given any specific designation. The Allahabad High Court, while accepting the claim filed by the respondents, held that they were entitled to wages in the regular pay-scale of Rs.2200-4000, prescribed for the post of Assistant Engineer.

(ii) This Court, while adjudicating upon the controversy arrived at the conclusion, that the High Court had granted relief to the respondents on the assumption that two vacant posts of Assistant Engineer were utilized for appointing the respondents. The above impression was found to be ex-facie fallacious, by this Court. This Court was of the view, that the orders of appointment issued to the respondents, did not lead to the inference, that they were appointed against the two vacant posts of Assistant Engineer. Despite the above, this Court held, that the decision of the appellant Corporation to effect economy by depriving the respondents even, the minimum of pay-scale, was totally arbitrary and unjustified. This Court expressed the view, that the very fact that the respondents were engaged on a consolidated salary of Rs.2000 per month, while the prescribed pay-scale of the post of Assistant Engineer in the other branches was Rs.2200-4000, and that of Junior Engineer was Rs.1600-2660, was sufficient to infer, that both the respondents were engaged to work against the posts of Assistant Engineer. The appellants were directed to pay emoluments to

the respondents, at the minimum of the pay-scale, prescribed for the post of Assistant Engineer (as revised from time to time), from the date of their appointment, till they continued in the employment of the Corporation.

41. Surendra Nath Pandey v. Uttar Pradesh Cooperative Bank Ltd.[34], decided by a two-Judge bench: The appellants in the above mentioned case, were appointed during 1978 to 1981 on daily-wage basis, by the U.P. Cooperative Bank Ltd. Upto 30.6.1981, they were paid daily-wages. From 1.7.1981, they were paid consolidated salary of Rs.368 per month, which was increased to Rs.575 per month with effect from 1.4.1982. From 1.7.1983, they were extended the benefit of minimum in the pay-scale applicable to regular employees, with allowances, but without yearly increments. Based on regulations framed for regularization of ad-hoc appointees in 1985, the appellants were regularized from different dates in 1985-86, whereafter, they were paid wages in the regular pay-scale, with all allowances. In 1990, they approached the Allahabad High Court, seeking benefit of regular pay-scale, allowances and other benefits, which were extended to regular employees, with effect from the date of their original appointment. Their claim was rejected by the High Court. While adjudicating upon the appeal preferred by the appellants, this Court held as under:-

> 9. We are of the view that the real issue is whether persons employed on stopgap or ad hoc basis were entitled to the benefit of pay scales with increments during the period of service on daily or stopgap or ad hoc basis. Unless the appellants are able to establish that either under the contract, or applicable rules, or settled principles of service jurisprudence, they are entitled to the benefit of pay scale with increments during the period of their stopgap/ad hoc service, it cannot be said that the appellants have the right to claim the benefit of pay scales with increments. The Consideration

42. All the judgments noticed in paragraphs 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of equal pay for equal work. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them, were against the same post for which a higher pay-scale was being allowed, in other Government departments. Or alternatively, their duties and responsibilities were the same, as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of equal pay for equal work was invoked and considered, it would be just and appropriate, to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of equal pay for equal work. Our consideration, has led us to the following deductions:-

(i) The onus of proof, of parity in the duties and responsibilities of the subject post with the reference post, under the principle of equal pay for equal work, lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see the Orissa University of Agriculture &

Technology case10, Union Territory Administration, Chandigarh v. Manju Mathur15, the Steel Authority of India Limited case16, and the National Aluminum Company Limited case18).

(ii) The mere fact that the subject post occupied by the claimant, is in a different department vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of equal pay for equal work. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see the Randhir Singh case1, and the D.S. Nakara case2).

(iii) The principle of equal pay for equal work, applies to cases of unequal scales of pay, based on no classification or irrational classification (see the Randhir Singh case1). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see the Federation of All India Customs and Central Excise Stenographers (Recognized) case3, the Mewa Ram Kanojia case5, the Grih Kalyan Kendra Workers Union case6 and the S.C. Chandra case12).

(iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of equal pay for equal work (see the Randhir Singh case1, State of Haryana v. Haryana Civil Secretariat Personal Staff Association9, and the Hukum Chand Gupta case17). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of equal pay for equal work, it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see the Federation of All India Customs and Central Excise Stenographers (Recognized) case3 and the State Bank of India case8). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of equal pay for equal work (see - State of U.P. v. J.P. Chaurasia4, and the Grih Kalyan Kendra Workers Union case6).

(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see the Orissa University of Agriculture & Technology case10).

(vii) Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - selection grade, in the same post. But this difference must emerge out of a legitimate foundation, such as merit, or seniority, or some other relevant criteria (see - State of U.P. v. J.P. Chaurasia4).

(viii) If the qualifications for recruitment to the subject post vis-a- vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see the Mewa Ram Kanojia case5, and Government of W.B. v. Tarun K. Roy11). In such a cause, the principle of equal pay for equal work, cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of equal pay for equal work, has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see - Union of India v. Pradip Kumar Dey7, and the Hukum Chand Gupta case17).

(x) A comparison between the subject post and the reference post, under the principle of equal pay for equal work, cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see the Harbans Lal case23). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - Official Liquidator v. Dayanand13).

(xi) Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of equal pay for equal work would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see the State Bank of India case8).

(xii) The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of equal pay for equal work would not be applicable (see - State of Haryana v. Haryana Civil Secretariat Personal Staff Association9).

(xiii) The parity in pay, under the principle of equal pay for equal work, cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay- scale. The principle of equal pay for equal work is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see - State of West Bengal v. West Bengal Minimum Wages Inspectors Association14).

(xiv) For parity in pay-scales, under the principle of equal pay for equal work, equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle

would not be applicable (see - Union Territory Administration, Chandigarh v. Manju Mathur15).

(xv) There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see the Hukum Chand Gupta case17), when the duties are qualitatively dissimilar.

(xvi) The principle of equal pay for equal work would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see the Hukum Chand Gupta case17).

(xvii) Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of equal pay for equal work, even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of equal pay for equal work would not apply (see the S.C. Chandra case12, and the National Aluminum Company Limited case18).

43. We shall now venture to summarize the conclusions recorded by this Court, with reference to a claim of pay parity, raised by temporary employees (differently designated as work-charge, daily-wage, casual, ad- hoc, contractual, and the like), in the following two paragraphs.

44. We shall first outline the conclusions drawn in cases where a claim for pay parity, raised at the hands of the concerned temporary employees, was accepted by this Court, by applying the principle of equal pay for equal work, with reference to regular employees:-

(i) In the Dhirendra Chamoli case19 this Court examined a claim for pay parity raised by temporary employees, for wages equal to those being disbursed to regular employees. The prayer was accepted. The action of not paying the same wage, despite the work being the same, was considered as violative of Article 14 of the Constitution. It was held, that the action amounted to exploitation in a welfare state committed to a socialist pattern of society.

(ii) In the Surinder Singh case20 this Court held, that the right of equal wages claimed by temporary employees emerged, inter alia, from Article 39 of the Constitution. The principle of equal pay for equal work was again applied, where the subject employee had been appointed on temporary basis, and the reference employee was borne on the permanent establishment. The temporary employee was held entitled to wages drawn by an employee on the regular establishment. In this judgment, this Court also took note of the fact, that the above proposition was affirmed by a Constitution Bench of this Court, in the D.S. Nakara case2.

(iii) In the Bhagwan Dass case21 this Court recorded, that in a claim for equal wages, the duration for which an employee would remain (- or had remained) engaged, would not make any difference. So also, the manner of selection and appointment would make no difference. And therefore, whether

the selection was made on the basis of open competition or was limited to a cluster of villages, was considered inconsequential, insofar as the applicability of the principle is concerned. And likewise, whether the appointment was for a fixed limited duration (six months, or one year), or for an unlimited duration, was also considered inconsequential, insofar as the applicability of the principle of equal pay for equal work is concerned. It was held, that the claim for equal wages would be sustainable, where an employee is required to discharge similar duties and responsibilities as regular employees, and the concerned employee possesses the qualifications prescribed for the post. In the above case, this Court rejected the contention advanced on behalf of the Government, that the plea of equal wages by the employees in question, was not sustainable because the concerned employees were engaged in a temporary scheme, and against posts which were sanctioned on a year to year basis.

(iv) In the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch case22 this Court held, that under principle flowing from Article 38(2) of the Constitution, Government could not deny a temporary employee, at least the minimum wage being paid to an employee in the corresponding regular cadre, alongwith dearness allowance and additional dearness allowance, as well as, all the other benefits which were being extended to casual workers. It was also held, that the classification of workers (as unskilled, semi-skilled and skilled), doing the same work, into different categories, for payment of wages at different rates, was not tenable. It was also held, that such an act of an employer, would amount to exploitation. And further that, the same would be arbitrary and discriminatory, and therefore, violative of Articles 14 and 16 of the Constitution.

(v) In State of Punjab v. Devinder Singh26 this Court held, that daily- wagers were entitled to be placed in the minimum of the pay-scale of regular employees, working against the same post. The above direction was issued after accepting, that the concerned employees, were doing the same work as regular incumbents holding the same post, by applying the principle of equal pay for equal work.

(vi) In the Secretary, State of Karnataka case28, a Constitution Bench of this Court, set aside the judgment of the High Court, and directed that daily-wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization. But, the concept was held as applicable, and was indeed applied, to the issue of pay parity if the work component was the same. The judgment rendered by the High Court, was modified by this Court, and the concerned daily-wage employees were directed to be paid wages, equal to the salary at the lowest grade of the concerned cadre.

(vii) In State of Haryana v. Charanjit Singh30, a three-Judge bench of this Court held, that the decisions rendered by this Court in State of Haryana v. Jasmer Singh25, State of Haryana v. Tilak Raj27, the Orissa University of Agriculture & Technology case10, and Government of W.B. v. Tarun K. Roy11, laid down the correct law. Thereupon, this Court declared, that if the concerned daily-wage employees could establish, that they were performing equal work of equal quality, and all other relevant factors were fulfilled, a direction by a Court to pay such employees equal wages (from

the date of filing the writ petition), would be justified.

(viii) In State of U.P. v. Putti Lal31, based on decisions in several cases (wherein the principle of equal pay for equal work had been invoked), it was held, that a daily-wager discharging similar duties, as those engaged on regular basis, would be entitled to draw his wages at the minimum of the pay-scale (drawn by his counterpart, appointed on regular basis), but would not be entitled to any other allowances or increments.

(ix) In the Uttar Pradesh Land Development Corporation case33 this Court noticed, that the respondents were employed on contract basis, on a consolidated salary. But, because they were actually appointed to perform the work of the post of Assistant Engineer, this Court directed the employer to pay the respondents wages, in the minimum of the pay-scales ascribed for the post of Assistant Engineer.

45. We shall now attempt an analysis of the judgments, wherein this Court declined to grant the benefit of equal pay for equal work to temporary employees, in a claim for pay parity with regular employees:-

(i) In the Harbans Lal case23, daily-rate employees were denied the claimed benefit, under the principle of equal pay for equal work, because they could not establish, that the duties and responsibilities of the post(s) held by them, were similar/equivalent to those of the reference posts, under the State Government.

(ii) In the Grih Kalyan Kendra Workers Union case6, ad-hoc employees engaged in the Kendras, were denied pay parity with regular employees working under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India, because of the finding returned in the report submitted by a former Chief Justice of India, that duties and responsibilities discharged by employees holding the reference posts, were not comparable with the posts held by members of the petitioner union.

(iii) In State of Haryana v. Tilak Raj27, this Court took a slightly different course, while determining a claim for pay parity, raised by daily- wagers (- the respondents). It was concluded, that daily-wagers held no post, and as such, could not be equated with regular employees who held regular posts. But herein also, no material was placed on record, to establish that the nature of duties performed by the daily-wagers, was comparable with those discharged by regular employees. Be that as it may, it was directed, that the State should prescribe minimum wages for such workers, and they should be paid accordingly.

(iv) In State of Punjab v. Surjit Singh32, this Court held, that for the applicability of the principle of equal pay for equal work, the respondents who were daily-wagers, had to establish through strict pleadings and proof, that they were discharging similar duties and responsibilities, as were assigned to regular employees. Since they had not done so, the matter was remanded back to the High Court, for a re- determination on the above position. It is therefore obvious, that this Court had accepted, that where duties, responsibilities and functions were shown to be similar, the principle of equal pay

for equal work would be applicable, even to temporary employees (otherwise the order of remand, would be meaningless, and an exercise in futility).

(vi) It is, therefore apparent, that in all matters where this Court did not extend the benefit of equal pay for equal work to temporary employees, it was because the employees could not establish, that they were rendering similar duties and responsibilities, as were being discharged by regular employees, holding corresponding posts.

46. We have consciously not referred to the judgment rendered by this Court in State of Haryana v. Jasmer Singh25 (by a two-Judge division bench), in the preceding two paragraphs. We are of the considered view, that the above judgment, needs to be examined and explained independently. Learned counsel representing the State government, had placed emphatic reliance on this judgment. Our analysis is recorded hereinafter:-

(i) In the above case, the respondents who were daily-wagers were claiming the same salary as was being paid to regular employees. A series of reasons were recorded, to deny them pay parity under the principle of equal pay for equal work. This Court expressed the view, that daily- wagers could not be treated at par with persons employed on regular basis, because they were not required to possess qualifications prescribed for appointment on regular basis. Daily-wagers, it was felt, were not selected in the same manner as regular employees, inasmuch as, a regular appointee had to compete in a process of open selection, and would be appointed, only if he fell within the zone of merit. It was also felt, that daily-wagers were not required to fulfill the prescribed requirement of age, at the time of their recruitment. And also because, regular employees were subject to disciplinary proceedings, whereas, daily-wagers were not. Daily-wagers, it was held, could also not be equated with regular employees, because regular employees were liable to be transferred anywhere within their cadre. This Court therefore held, that those employed on daily-wages, could not be equated with regular employees, and as such, were not entitled to pay parity, under the principle of equal pay for equal work.

(ii) First and foremost, it is necessary to emphasise, that in the course of its consideration in State of Haryana v. Jasmer Singh25, this Courts attention had not been invited to the judgment in the Bhagwan Dass case21, wherein on some of the factors noticed above, a contrary view was expressed. In the said case, this Court had held, that in a claim for equal wages, the manner of selection for appointment would not make any difference. It will be relevant to notice, that for the posts under reference in the Bhagwan Dass case21, the selection of those appointed on regular basis, had to be made through the Subordinate Selection Board, by way of open selection. Whereas, the selection of the petitioners as daily- wagers, was limited to candidates belonging to a cluster of villages, and was not through any specialized selection body/agency. Despite thereof, it was held, that the benefit under the principle of equal pay for equal work, could not be denied to the petitioners. The aforesaid conclusion was drawn on the ground, that as long as the petitioners were performing similar duties, as those engaged on regular basis (on corresponding posts) from the standpoint of the doctrine of equal pay for equal work, there could be no distinction on the subject of payment of wages.

(iii) Having noticed the conclusion drawn in State of Haryana v. Jasmer Singh25, it would be relevant to emphasise, that in the cited judgments (noticed in paragraph 26 onwards, upto paragraph 41), the employees concerned, could not have been granted the benefit of the principle of equal pay for equal work (in such of the cases, where it was so granted), because temporary employees (daily-wage employees, in the said case) are never ever selected through a process of open selection, by a specialized selection body/agency. We would therefore be obliged to follow the large number of cases where pay parity was granted, rather than, the instant singular judgment recording a divergent view.

(iv) Temporary employees (irrespective of their nomenclature) are also never governed by any rules of disciplinary action. As a matter of fact, a daily-wager is engaged only for a day, and his services can be dispensed with at the end of the day for which he is engaged. Rules of disciplinary action, are therefore to the advantage of regular employees, and the absence of their applicability, is to the disadvantage of temporary employees, even though the judgment in State of Haryana v. Jasmer Singh25, seems to project otherwise.

(v) Even the issue of transferability of regular employees referred to in State of Haryana v. Jasmer Singh25, in our view, has not been examined closely. Inasmuch as, temporary employees can be directed to work anywhere, within or outside their cadre, and they have no choice but to accept. This is again, a further disadvantage suffered by temporary employees, yet the judgment projects as if it is to their advantage.

(vi) It is also necessary to appreciate, that in all temporary appointments (- work-charge, daily-wage, casual, ad-hoc, contractual, and the like), the distinguishing features referred to in State of Haryana v. Jasmer Singh25, are inevitable, yet in all the judgments referred to above (rendered before and after, the judgment in the State of Haryana v. Jasmer Singh25), the proposition recorded in the instant judgment, was never endorsed.

(vii) It is not the case of the appellants, that the respondent-employees do not possess the minimum qualifications required to be possessed for regular appointment. And therefore, this proposition would not be applicable to the facts of the cases in hand.

(viii) Another reason for us in passing by, the judgment in State of Haryana v. Jasmer Singh25 is, that the bench deciding the matter had in mind, that daily-wagers in the State of Haryana, were entitled to regularization on completion of 3/5 years of service, and therefore, all the concerned employees, would in any case be entitled to wages in the regular pay-scale, after a little while. This factual position was noticed in the judgment itself.

(ix) It is not necessary for us to refer the matter for adjudication to a larger bench, because the judgment in State of Haryana v. Jasmer Singh25, is irreconcilable and inconsistent with a large number of judgments, some of which are by larger benches, where the benefit of the principle in question was extended to temporary employees (including daily-wagers).

(x) For all the above reasons, we are of the view that the claim of the appellants cannot be considered, on the basis of the judgment in State of Haryana v. Jasmer Singh25.

47. We shall now endeavour to examine the impugned judgments.

48. First and foremost, it is essential for us to deal with the judgment dated 11.11.2011 rendered by the full bench of the High Court (in Avtar Singh v. State of Punjab & Ors., CWP no. 14796 of 2003). A perusal of the above judgment reveals, that the High Court conspicuously focused its attention to the decision of the Constitution Bench in the Secretary, State of Karnataka case28. While dealing with the above judgment, the full bench expressed the view, that though at the first impression, the judgment appeared to expound that payment of minimum wages drawn by regular employees, had also to be extended to persons employed on temporary basis, but a careful reading of the same would show that, that was not so. Learned counsel, representing the State of Punjab, reiterated the above position. In order to understand the tenor of the aforesaid assertion, reference was made to paragraphs 44 and 48, of the judgment of the Constitution Bench, which are extracted hereunder:-

> 44. The concept of equal pay for equal work is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. ..It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.
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> 48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a

> wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.

The arguments based on Articles 14 and 16 of the Constitution are therefore overruled. We have given our thoughtful consideration to the observations recorded by this Court, as were relied upon by the full bench (- as also, by the learned counsel representing the State of Punjab). It is not possible for us to concur with the inference drawn by the full bench, for the reasons recorded hereunder:-

(i) We are of the considered view, that in paragraph 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity, and regularization in service. It was held, that on the issue of pay parity, the concept of equality would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of equality could not be invoked for absorbing temporary employees in Government service, or for making temporary employees regular/permanent. All the observations made in the above extracted paragraphs, relate to the subject of regularization/permanence, and not, to the principle of equal pay for equal work. As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good, by making such a direction.

(ii) Insofar as paragraph 48 extracted above is concerned, all that needs to be stated is, that they were merely submissions of learned counsel, and not conclusions drawn by this Court. Therefore, nothing further needs to be stated, with reference to paragraph 48.

(iii) We are therefore of the view, that the High Court seriously erred in interpreting the judgment rendered by this Court in the Secretary, State of Karnataka case28, by placing reliance on paragraphs 44 and 48 extracted above, for drawing its inferences with reference to the subject of pay parity. On the above subject/issue, this Courts conclusions were recorded in paragraph 55 (extracted

in paragraph 36, hereinabove), which have already been dealt with by us in an earlier part of this judgment.

49. It would also be relevant to mention, that to substantiate its inference drawn from the judgment rendered by this Court in the Secretary, State of Karnataka case28, the full bench of the High Court, placed reliance on State of Punjab v. Surjit Singh32, and while doing so, reference was made to the following observations recorded in paragraphs 27 to 30 (of the said judgment). Learned counsel for the State of Punjab has reiterated the above position. Paragraphs 27 to 30 aforementioned are being extracted hereunder:-

> 27. While laying down the law that regularization under the constitutional scheme is wholly impermissible, the Court in State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, had issued certain directions relating to the employees in the services of the Commercial Taxes Department, as noticed hereinbefore. The employees of the Commercial Taxes Department were in service for more than ten years. They were appointed in 1985-1986. They were sought to be regularized in terms of a scheme. Recommendations were made by the Director, Commercial Taxes for their absorption. It was only when such recommendations were not acceded to, the Administrative Tribunal was approached. It rejected their claim. The High Court, however, allowed their prayer which was in question before this Court.
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> 28. This Court stated: (Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1, pp. 19-20, para 8) "8. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka, (1990) 2 SCC 396, and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts."
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> 29. It is in the aforementioned factual backdrop, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India, directed: (Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1, p. 43, para 55) "55. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their

> cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

30. We, therefore, do not see that any law has been laid down in para 55 of the judgment in Umadevi case. Directions were issued in view of the limited controversy. As indicated, the States grievances were limited. Yet again, we are of the view, that the full bench erred in referring to the above observations, to draw its conclusions. Our reasons are summarized hereinbelow:-

(i) It is apparent, that this Court in State of Punjab v. Surjit Singh32, did hold, that the determination rendered in paragraph 55 of the judgment in the Secretary, State of Karnataka case28, was in exercise of the power vested in this Court, under Article 142 of the Constitution of India. But the above observation does not lead, to the conclusion or the inference, that the principle of equal pay for equal work is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded, that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee, discharging the same duties. It needs to be noticed, that on the subject of pay parity, the findings recorded by this Court in the Secretary, State of Karnataka case28, were limited to the conclusions recorded in paragraph 55 thereof (which we have dealt with above, while dealing with the case law, on the principle of equal pay for equal work).

(ii) Even in the case under reference - State of Punjab v. Surjit Singh32, this Court accepted the principle of equal pay for equal work, as applicable to temporary employees, by requiring the State to examine the claim of the respondents for pay parity, by appointing an expert committee. The expert committee was required to determine, whether the respondents satisfied the conditions stipulated in different judgments of this Court including State of Punjab v. Charanjit Singh30, wherein this Court had acceded to the proposition, that daily-wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage payable to regular employees. And had therefore, remanded the matter back to the High Court for a fresh

adjudication. Paragraph 38 of the judgment in State of Punjab v. Surjit Singh32, wherein the remand was directed, is being extracted below:-

> 38. We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by appointing an expert committee as to whether the principles of law laid down herein viz. as to whether the respondents satisfy the factors for invocation of the decision in State of Haryana v. Charajnit Singh, (2006) 9 SCC 321 in its entirety including the question of appointment in terms of the recruitment rules have been followed.
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> (iii) For all the above reasons, we are of the view, that the claim of the temporary employees, for minimum wages, at par with regularly engaged Government employees, cannot be declined, on the basis of the judgment in State of Punjab v. Surjit Singh32.

50. The impugned judgment rendered by the full bench, also relied upon the judgment in Satya Prakash v. State of Bihar[35], which also attempted to interpret the judgment in the Secretary, State of Karnataka case28. Learned counsel for the State of Punjab also referred to the same, to canvass the case of the State government. Relevant observations relied upon, are reproduced below:-

> 7. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. The appellants were only engaged on daily wages in the Bihar Intermediate Education Council.
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> 8. In State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.
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> 9. Paragraph 53 of Umadevi (3) judgment, deals with irregular appointments (not illegal appointments). The Constitution Bench specifically referred to the judgments in State of Mysore vs. S.V. Narayanappa, AIR 1967 SC 1071, and R.N. Nanjundappa vs. T. Thimmiah, (1972) 1 SCC 409, in para 15 of Umadevi (3) judgment as well. Let us refer to paras 15 and 16 of Umadevi (3) judgment in this context.
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> 15. In our view, the appellants herein would fall under the category of persons mentioned in paras 8 and 55 of the judgment and not in para 53 of judgment of Umadevi (3). Yet again, all that needs to be stated is, that the observations relied upon by the full bench of the High Court, dealt with the issue of regularization, and not with the concept of equal pay for equal work.

Paragraph 7 extracted above, leaves no room for any doubt, that the issue being considered in the Satya Prakash case35, pertained to regularization of the appellants in service. Our view, that the issue being dealt with pertained to regularization gains further ground from the fact (recorded in paragraph 1 of the above judgment), that the appellants in the Satya Prakash case35 had approached this Court, to claim the benefit of paragraph 53 of the judgment in the Secretary, State of Karnataka case28. Paragraph 53 aforementioned, is reproduced below:-

> 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Maysore v. S.V. Narayanappa, AIR 1967 SC 1071, R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409, and B.N. Nagarajan v.

State of Karnataka, (1979) 4 SCC 507, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme. A perusal of paragraph 53 extracted above, leaves no room for any doubt, that the issue canvassed was of regularization, and not pay parity. We are therefore of the view, that reliance on paragraph 53, for determining the question of pay parity (claimed by the concerned employees), resulted in the High Court drawing an incorrect inference.

51. The full bench of the High Court, while adjudicating upon the above controversy had concluded, that temporary employees were not entitled to the minimum of the regular pay-scale, merely for the reason, that the activities carried on by daily-wagers and regular employees were similar. The full bench however, made two exceptions. Temporary employees, who fell in either of the two exceptions, were held entitled to wages at the minimum of the pay-scale drawn by regular employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder:-

> (1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.
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> (2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months. A perusal of the above conclusion drawn in the impugned judgment (passed by the full bench), reveals that the full bench carved an exception for employees who were not appointed against regular sanctioned posts, if their services had remained continuous (with notional breaks, as well), for a period of 10 years. This category of temporary employees, was extended the benefit of wages at the minimum of the regular pay-scale. In the Secretary, State of Karnataka case28, similarly, employees who had rendered 10 years service, were granted an exception (refer to paragraph 53 of the judgment, extracted in the preceding paragraph). The above position adopted by the High Court reveals, that the High Court intermingled the legal position determined by this Court on the subject of regularization of employees, while adjudicating upon the proposition of pay parity, emerging under the principle of equal pay for equal work. In our view, it is this mix-up, which has resulted in the High Court recording its afore-extracted conclusions.

(ii) The High Court extended different wages to temporary employees, by categorizing them on the basis of their length of service. This is clearly in the teeth of judgment in the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch case22. In the above judgment, this Court held, that classification of employees based on their length of service (- those who had not completed 720 days of service, in a period of 3 years; those who had completed more than 720 days of service - with effect from 1.4.1977; and those who had completed 1200 days of service), for payment of different levels of wages (even though they were admittedly discharging the same duties), was not tenable. The classification was held to be violative of Articles 14 and 16 of the Constitution.

(iii) Based on the consideration recorded hereinabove, the determination in the impugned judgment rendered by the full bench of the High Court, whereby it classified temporary employees for differential treatment on the subject of wages, is clearly unsustainable, and is liable to be set aside.

52. In view of all our above conclusions, the decision rendered by the full bench of the High Court in Avtar Singh v. State of Punjab & Ors. (CWP no. 14796 of 2003), dated 11.11.2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the division bench of the High Court in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009) is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010), with the modification, that the concerned employees would be entitled to the minimum of the pay-scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.

53. We shall now deal with the claim of temporary employees before this Court.

54. There is no room for any doubt, that the principle of equal pay for equal work has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of equal pay for equal work has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. 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. Any one, 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 dependents 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.

56. 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:-

> Article 7 The States Parties to the present Covenant recognize 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:
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> (i) 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. 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.

57. 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 concerned employees (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 summarized by us in paragraph 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 concerned temporary employees 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 summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of equal pay for equal work would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, 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.

59. Disposed of in the above terms.

60. It would be unfair for us, if we do not express our gratitude for the assistance rendered to us by Mr. Rakesh Khanna, Additional Advocate General, Punjab. He researched for us, on our asking, all the judgments on the issue of pay parity. He presented them to us, irrespective of whether the conclusions recorded therein, would or would not favour the cause supported by him. He also assisted us, on different parameters and outlines, suggested by us, during the course of hearing.

...J.

(Jagdish Singh Khehar) ...J.

(S.A. Bobde) New Delhi;

October 26, 2016.

Note: The emphases supplied in all the quotations in the instant judgment, are ours.

ITEM NO.1A COURT NO.3 SECTION IV

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). 213/2013

STATE OF PUNJAB AND ORS Appellant(s)

VERSUS

JAGJIT SINGH AND ORS Respondent(s)

WITH

C.A. No. 10356/2016 @ SLP(C) No.31676/2016 @ CC 15616/2011 C.A. No. 10357/2016 @ SLP(C) No.31677/2016 @ CC 16434/2011 C.A. No. 10358/2016 @ SLP(C) No.37162/2012 C.A. No. 10360/2016 @ SLP(C) No.37164/2012 C.A. No. 10361/2016 @ SLP(C) No.37165/2012 C.A. No. 211/2013 C.A. No. 212/2013 C.A. No. 214/2013 C.A. No. 217/2013 C.A. No. 218/2013 C.A. No. 219/2013 C.A. No. 220/2013 C.A. No. 221/2013 C.A. No. 222/2013 C.A. No. 223/2013 C.A. No. 224/2013 C.A. No. 225/2013 C.A. No. 226/2013 C.A. No. 227/2013 C.A. No. 228/2013 C.A. No. 229/2013 C.A. No. 230/2013 C.A. No. 231/2013 C.A. No. 232/2013 C.A. No. 233/2013 C.A. No. 234/2013 C.A. No. 235/2013 C.A. No. 236/2013 C.A. No. 245/2013 C.A. No. 246/2013 C.A. No. 247/2013 C.A. No. 248/2013 C.A. No. 249/2013 C.A. No. 257/2013 C.A. No. 260/2013 C.A. No.

262/2013 C.A. No. 966/2013 C.A. No. 2231/2013 C.A. No. 2299/2013 C.A. No. 2300/2013 C.A. No. 2301/2013 C.A. No. 2702/2013 C.A. No. 7150/2013 C.A. No. 8248/2013 C.A. No. 8979/2013 C.A. No. 9295/2013 C.A. No. 10362/2016 @ SLP(C) No. 9464/2013 C.A. No. 10363/2016 @ SLP(C) No. 11966/2013 C.A. No. 10364/2016 @ SLP(C) No. 17707/2013 C.A. No. 10365/2016 @ SLP(C) No. 24410/2013 C.A. No. 871/2014 C.A. No. 10366/2016 @ SLP(C) No. 4340/2014 C.A. No. 10527/2014 [HEARD BY HON'BLE JAGDISH SINGH KHEHAR AND HON'BLE S.A.BOBDE, JJ.] Date : 26/10/2016 These appeals/petitions were called on for judgment today.

For Appellant(s) Mr. Rakesh Khanna, AAG
Mr. Jagjit Singh Chhabra,Adv.

& for Ms. Kaveeta Wadia,AOR(NP)

for Mr. Kuldip Singh,AOR(NP)

for M/s. Mahalakshmi Balaji & Co.(NP)

for Ms. Naresh Bakshi,AOR(NP)

For Respondent(s) Mr. Brijesh Kr. Tamber, Adv.
for Mr. A.V. Balan, AOR

Mr. Prem Prakash, Adv.

Mr. Mukesh K. Verma, Adv.
Mr. Ramesh Goyal, Adv.

for Mr. Ashwani Bhardwaj, AOR

Mr. Vijendra Kasana, Adv.
Mr. Chand Qureshi, Adv.

for Dr. Kailash Chand, AOR

Mr. Shish Pal Laler, Adv.
Mr. S.D. Sharma, Adv.

Mr. Sonit Sinhmar, Adv.

for Mr. Balbir Singh Gupta, AOR

Mr. Himanshu Gupta, Adv.

Mr. Dinesh Verma, Adv.
for Mr. S.L. Aneja, AOR

for Mr. Subhasish Bhowmick, AOR

Mr. Vikas Mahajan, Adv.
Mr. Vishal Mahajan, Adv.

Mr. Vinod Sharma, Adv.

for Mr. B.Y. Kulkarni, AOR

Mr. Ajay Kumar Singh, AOR

Mr. Ujjal Singh, Adv.
Mr. J.P. Singh, Adv.

for Mr. R.C. Kaushik, AOR

Ms. Manju Sharma, AOR

Mr. Anil Kumar Tandale, AOR

Mr. Ashok Mathur, AOR

Mr. Varun Punia, AOR

Mr. A.S. Pundir, AOR

Ms. Vanita Mehta, AOR

Mr. Balraj Dewan, AOR

Mr. Varinder Kumar Sharma, AOR

Mr. Yash Pal Dhingra, AOR

Hon'ble Mr. Justice Jagdish Singh Khehar pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice S.A. Bobde.

Leave granted in the special leave petitions.

For the reasons recorded in the reportable judgment, which is placed on the file, the appeals stand disposed of.

(Indu Pokhriyal)
Court Master

(Parveen Kumar)
AR-cum-PS

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[1] (1982) 1 SCC 618

[2] (1983) 1 SCC 304

[3] (1988) 3 SCC 91

[4] (1989) 1 SCC 121

[5] (1989) 2 SCC 235

[6] (1991) 1 SCC 619

[7] (2000) 8 SCC 580

[8] (2002) 4 SCC 556

[9] (2002) 6 SCC 72

[10] (2003) 5 SCC 188

[11] (2004) 1 SCC 347

[12] (2007) 8 SCC 279

[13] (2008) 10 SCC 1

[14] (2010) 5 SCC 225

[15] (2011) 2 SCC 452

[16] (2011) 11 SCC 122

[17] (2012) 12 SCC 666

[18] (2014) 6 SCC 756

[19] (1986) 1 SCC 637

[20] (1986) 1 SCC 639

[21] (1987) 4 SCC 634

[22] (1988) 1 SCC 122

[23] (1989) 4 SCC 459

[24] (1995) 5 SCC 210

[25] (1996) 11 SCC 77

[26] (1998) 9 SCC 595

[27] (2003) 6 SCC 123

[28] (2006) 4 SCC 1

[29] (1990) 2 SCC 396

[30] (2006) 9 SCC 321

[31] (2006) 9 SCC 337

[32] (2009) 9 SCC 514

[33] (2010) 7 SCC 739

[34] (2010) 12 SCC 400

[35] (2010) 4 SCC 179