
(2014) 03 SHI CK 0109

In the High Court Of Himachal Pradesh

Case No : C.W.P. Nos. 2978, 9622, 9937/2012, 2766, 7451 and 7850/2013

Anil Verma and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 309
Himachal Pradesh Police Act, 2007 — Section 17

Citation : (2014) 03 SHI CK 0109

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : M.L. Sharma, Senior Advocate, Bhuvnesh, Onkar Jairath, Man Singh and Rahul Thakur, Advocates for the Appellant; Shrawan Dogra, Advocate General, Meenakshi Sharma, Parmod Thakur, Additional Advocate General and Kush, Deputy Advocate General, Advocates for the Respondent

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in all these petitions, the same are taken up together for hearing and are being disposed of by a common order.

2. All India Council for Technical Education has prescribed norms for Polytechnic Institutions. According to these norms, staff structure of an institution will depend on factors which primarily include curriculum structure, work schedules (weekly semester and annually), student intake, disciplines offered, instructional methods and, media employed, student contact hours, group and class sizes and co-curricular and extra-curricular activities requiring staff time involvement and training, and development of staff themselves. The additional teaching and technical staff for new courses is to be provided as per following norms:--

Weekly Work Schedule

Teachers of polytechnics have to perform a variety of tasks which include formal instruction in class rooms, tutorial classes, laboratories and workshops, preparation of instruction, assessment and evaluation of student work,

counseling and guidance of students and other developmental activities. Each institution has to deploy personnel and allocate work, considering accomplishment of institutional goals and objectives and meeting as far as possible individual competence, preferences and interest. The breakdown of workloads to be treated as a guideline with scope of flexibility is as under:--

The student-staff ratio will depend on (i) teacher time required for formal instruction requiring student contact (ii) student time devoted to formal learning requiring teacher contact and (iii) class sizes for different forms of instruction. The student staff ratio is to be worked out for specific curricula. The teaching load may be such that it should not be allowed to rise beyond 16:1. However, desirable ratio is 11:1. The staff pattern is - Principal and Teaching staff, workshop staff, teaching and supporting staff, library, instructional resource production centre and computer staff.

3. In exercise of the powers under Article 309 of the Constitution of India, the respondent-State has framed the Rules called the Himachal Pradesh Technical Education Department Class III Service Rules, 1973. These Rules were duly notified on 11th October 1973. Rule 2 is dictionary clause. As per Rule 2(e) "direct recruitment" means recruitment made other-wise than by promotion. The educational and professional qualifications of candidates are prescribed under Rule 6. The method of recruitment is provided under Rule 7. The posts of Lecturers and Junior Lecturers in (Maths/English/Physics/Chemistry) are selection post. The essential qualification is second Class Master's Degree in the subject concerned of a recognized University. The post is to be filled up by way of direct recruitment. The departmental promotion committee is to be presided over by the Chairman of the Himachal Pradesh Public Service Commission or a member thereof to be nominated by him. The respondent-State has framed the Rules called the Himachal Pradesh Technical Educational, Vocational and Industrial Training Department, Lecturer Engineering (Polytechnic), Class-I (Gazetted), Recruitment and Promotion Rules, 2011. These Rules were notified on 25.10.2011. The cadre strength of the post was is 112. The minimum qualification for filling up the post of Lecturer Engineering (Polytechnic) is 1st Class Bachelor's Degree in appropriate branch of Engineering Technology or equivalent. The post is to be filled up 100% by direct recruitment on a regular basis or by recruitment on contract basis as the case may be. According to Rule 15, selection for appointment to the post in the case of direct recruitment is to be made on the basis of viva-voce test if the H.P. Public Service Commission or other recruiting authority as the case may be so considers necessary or expedient or by a written test or practical test, the standard syllabus etc. of which is to be determined by the Commission or other recruiting authority as the case may be. Rule 15-A lays down the manner in which the appointments have to be made on contract basis. The Principal Secretary/Secretary (Technical Education) to the Government of Himachal Pradesh after obtaining the approval from the Government can fill up the vacant posts on contract basis after placing the requisition with the concerned agency, i.e. H.P. Public Service Commission.

The selection is to be made in accordance with the eligibility conditions prescribed in the Rules. The Lecturer Engineering (Polytechnic) appointed on contract basis get consolidated fixed contractual amount at the rate of Rs. 21,000/- per month. The Principal Secretary/Secretary (Technical Education) to the Government of Himachal Pradesh is appointing and disciplinary authority. Selection for appointment to the post in the case of contract appointment is to be made on the basis of viva-voce test and if it considered necessary or expedient by a written test or practical test the standards/syllabus etc. of which is to be determined by the concerned recruiting agency, i.e. the H.P. Public Service Commission. The Committee for selection of contractual appointees is to be constituted by the recruiting agency, i.e. H.P. Public Service Commission.

4. In order to overcome shortage of teaching staff, the respondent-State resorted to fill up the posts of Lecturers on lecturer/hourly basis. These teachers are being paid now a sum of Rs. 350 per hour for theory period and Rs. 150/- per hour for practical. These lecturers on lecture/hourly basis were recruited on the basis of requisition received from the employment exchanges. These posts were duly advertised in the leading vernacular newspaper. The petitioners have placed on record one of the advertisements whereby the posts were to be filled up in Government Polytechnic College, Sundernagar, District Mandi. This advertisement has been placed on record by the petitioners by way of CMP No. 16384/2012. The minimum qualification prescribed for filling up the post was at least second class bachelor degree in respective branch of Engineering or equivalent from recognized university with two years teaching/professional experience in Government/Semi Government or well reputed private organization or three years diploma in respective branch of Engineering with T.T.T.I Diploma and five years professional/Teaching Experience in Govt./Semi Govt. or well reputed private organization. The interested candidates were required to submit their applications to the Principal, Government Polytechnic College Sundernagar, District Mandi by 10.1.2005 till 5.00 P.M. and the personal interview was fixed for 17.1.2005 at 11.00 A.M. The candidates who were appointed had passed the viva-voce examination conducted by a duly constituted selection committee.

5. The petitioners have placed on record copy of the office order, Annexure MA-18 at page 173 of the paper book, whereby a committee was constituted for recruitment of lecturers in various disciplines on hourly/lecture basis. It is evident from Annexure MA-18, that the Chairman was the Principal and H.O.D. Applied Science and Lecturer Engineering were members of the Committee. The names of the petitioners and the similarly situated persons were sponsored by the employment exchange and they were selected by a duly constituted selection committee. The recommendations made by the duly constituted selection committee were got approved from the Directorate Technical Education Vocational & Industrial Training H.P. Sundernagar as is evident from office order dated 27.8.2012, Annexure M-19 at page 174 of the paper book. The petitioners made a representation to the Director, Technical Education and Vocational and Industrial Training, Sundernagar, Himachal Pradesh on 29.2.2011 to the effect

that they be appointed on contract basis instead of hourly/lecture basis. The Director, Technical Education, Vocational and Industrial Training, H.P. Sundernagar sent a communication dated 25.4.2011, Annexure P-3, to the Secretary (Technical Education) to the Government of H.P.. The text of the letter reads as under:--

"Please refer to your letter No. EDN(TE)B(15) 8/2009 dated 14.3.2011 on the above cited subject.

In this connection, I have the honour to bring to your kind notice that a number of posts falling vacant due to the retirements, promotions and other reasons in Technical Educational Institutions are required to be filled up immediately in the interest of teaching work. It is also intimated that in the recent past, the admission intake in various disciplines has increased in polytechnics and a number of new trades have also been introduced in Industrial Training Institutes without creation of posts of the Training Instructors. Government Polytechnics at Talwar has been established, where only 08 posts have been created and no post of Engineering-faculty, supporting technical staff ministerial and Class-IV has been created. The posts created for Government Polytechnic Banikhet and Chamba have also not been allowed to be filled-up. There is a complete ban on direct recruitments, resultantly no appointments can be made even on contract basis without seeking the prior approval of Government. The process of seeking the approval of the Government for creation of additional posts, permission for filling-up of the vacant posts and recruitment through the concerned recruitment agencies is time consuming and cumbersome. In view of the aforesaid, the Department is facing acute shortage of staff in Technical Education Institutions and same is adversely affecting the teaching work. The posts in the Technical Educational Institutions can not be let vacant for a long as it affects the very purpose for which they have been created.

In view of the aforesaid, the department engages teaching staff in Technical Educational Institutions under the control of Department on lecture/hourly basis. A number of teachers/staff have been engaged almost in all the Institutions under the Student Fund of the Institute by calling applications through Employment office and conducting the Interviews as per the requirement of R&P Rules of the concerned post at the level of concerned Institution so that the teaching/training of the students may not suffer. A number of persons so employed are continuing as such for the last 4/5 years.

A number of representations made to the Govt. of HP have been received for conversion of their such services to contract basis.

As per the policy of the Government an employee has to work for about 40 to 42 hours in a week. Therefore, the considered view of the Department is that Government may consider the demand/request of those employees who fulfill the requisite qualifications as per the R & P Rules and have been working more than 5 years continuously and have completed 9600 hours. It is submitted that Govt.

may consider such cases for appointment on contract basis against the existing sanctioned posts by making a policy. It is further submitted that this situation is peculiar being department specific and there is a strong premise for evolving policy in respect of Technical Education Department by the State Govt."

6. It is evident from the contents of communication, Annexure P3 that there was complete ban on direct recruitment. It was also highlighted in the communication that the process for seeking the approval of the Government for creation of additional posts, permission for filling up of the vacant posts and recruitment through the concerned recruitment agencies was time consuming and cumbersome, which was adversely affecting the teaching work. It was also highlighted in the communication that the posts in the Technical Educational Institutions could not be left vacant for a long as it was affecting the very purpose for which they had been created. In these circumstances, the decision was taken to fill up the post of Lecturers on hourly/lecture basis. These candidates were duly appointed on hourly/lecture basis and were duly interviewed as per the Recruitment and Promotion Rules of the concerned post at the level of concerned Institution so that teaching and training of the students may not suffer. The petitioners and similarly situated persons have been continuously teaching for the last more than five years and they have completed 9600 hours as per communication dated 25.4.2011.

7. The petitioners sought information under the Right to Information Act, 2005 whether four lecturers, namely, Renuka Sharma, Mohan Singh Thakur, Sushil Patial and Lekh Raj were appointed on contract basis or not. The information was also sought whether approval of Himachal Pradesh Public Service Commission was taken for recruitment of these four lecturers. The information was supplied by the Directorate of Technical Education, Sundernagar, which is at page 150 of the paper book vide Annexure MA-4 dated 27.8.2012. The Directorate of Technical Education, Sundernagar, informed the petitioners that the approval of Himachal Pradesh Public Service Commission was not taken for the recruitment of these four lecturers on contract basis. These lecturers were appointed on consolidated salary of Rs. 7880/- + 50% D.P. per month, during the period of contract. These lecturers were also interviewed by a duly constituted selection committee comprising of the Principal, Department nominee member and one subject expert in Physics, English, Chemistry and Mathematics. The Director, Technical Education, Vocational and Industrial Training, Himachal Pradesh, Sundernagar, sent a communication dated 6.9.2012 to the Secretary (Technical Education) to the Government of Himachal Pradesh with a plea to provide regular contract for employees working on lecture/hourly basis in various government polytechnic/engineering colleges. The Director again highlighted the difficulties being faced by the Institutions inviting the posts on regular basis. The Director also highlighted in the communication dated 6.9.2012 that in the institutions of Technical Education, the effective teaching work was undertaken for ten and half months. As per the accepted norms, the Government servant is required to work for minimum 40 hours a week and at this rate teaching hours worked out to be

1680 hours per annum. As per the AICTE norms, 25% of the total working time is to be devoted for preparatory work and therefore, the effective time spent on teaching, works out to be 1260 hours.

8. This Court on 21.9.2012 directed the respondent-State to file supplementary affidavit clarifying the stand on the basis of Annexure P-3 dated 25.4.2011. In sequel thereto, the supplementary affidavit was filed. However, the same was incomplete. Therefore, this court directed the respondent-State on 10.12.2012 to file better affidavit dealing with Annexure P3 dated 25.4.2011. This Court thereafter passed the following order on 18.3.2013:--

"Mr. M.L. Sharma, learned senior counsel for the petitioners, on the basis of instructions imparted to him by his clients, submits that the similar situate persons, who were initially appointed on period basis have been appointed on contractual basis within a period of six months. If that is so, the respondents-State is directed to consider the case of the petitioners on the same analogy for conferment of contractual status within a period of two weeks from today.

Mr. M.L. Sharma, learned Senior Advocate prays for and is granted three days" time to place on record the additional material, by way of affidavit, necessary for the adjudication of this petition. Respondents-State is also directed to file supplementary affidavit explaining the outcome of Annexure P-3, dated 25.4.2011 and Annexure MA-2, dated 6.9.2012 by the next date of hearing. In the meantime the services of the petitioner shall not be terminated.

List on 3.4.2013."

9. In sequel thereto, the respondent-State filed supplementary affidavit on 26.6.2013. In the supplementary affidavit, there is reference to communication dated 30.4.2013, Annexure R-2. The text of the letter dated 30.4.2013 reads as under:--

"I am directed to refer to your letter Nos. STV (TE) H_E(1)-1151/2012-21551 dated 08-04-2013, STV (TE) H-B (2)10/2011/Instructions-14277 dated 07-03-2013 received from Dy. Advocate General, H.P. addressed to this office as well as to you on the subject cited above and to say that though we may consider appointment on contract basis generally, but there cannot be any regularization or conversion of services of officials working on hourly basis and no policy thereof may be considered against the R& P Rules.

It is, therefore, requested to file the reply in the Hon"ble Court within stipulated time relying upon the Rules of the Hon"ble Supreme Court in the matter of Secretary, State of Karnataka and Others Vs. Umadevi and Others, / S.C. Chandra and Others Vs. State of Jharkhand and Others, (copy enclosed for ready reference.)"

10. The Court vide order dated 17.12.2013 directed the Special Secretary (Technical Education), Himachal Pradesh, to file a supplementary affidavit as to what steps have been taken by the State Government for giving status of

contractual employees to the petitioners. The supplementary affidavit filed by the under Secretary (Technical Education) to the Government of Himachal Pradesh is at page 346 of the paper book. According to the supplementary affidavit, 38 posts of teaching faculty in Government Polytechnic Colleges, 4 posts in Government College of Pharmacy, Rohru and 26 posts in various government engineering colleges had been filled up through the Himachal Pradesh Public Service Commission. It was also stated in the affidavit that the Commission takes some time to fill up the posts, but with the objective that the studies of the students may not suffer for want of teaching faculty, alternative stopgap arrangements are made by engaging the lecturers of the related subjects on hourly/lecture basis till the posts are filled up through Public Service Commission. The staff engaged on hourly/lecture basis is paid honorarium from the student welfare fund available with the Institutions. The Principal of the concerned Institution is competent to make such an alternative temporary arrangement. It was also stated that the workload in these institutions is not commensurate for full day deployment and as such conversion of hourly/lecture basis lecturers to contract basis cannot be considered. It was also stated that the staff engaged on hourly/lecture basis is not being paid from the consolidated fund of the State Government, thus, such incumbents cannot be considered as government servants and cannot be considered for conversion to contract basis.

11. The respondent-State has filed its replies to the respective writ petitions. The consistent stand of the respondent-State is that there is no master and servant relationship between the State Government and the petitioners. The arrangement is made only a stop gap arrangement to overcome shortage of teaching staff in the Government Polytechnic Colleges. The petitioners are paid from the student welfare fund and not from the consolidated fund of the State Government.

12. The petitioners have filed detailed rejoinders to the replies filed by respondent-State. The petitioners have filed additional documents on record, by way of CMP No. 16384/2012 and CMP No. 543/2013, giving therein details of the duties being discharged by the petitioners and similarly situated persons. The documents placed on record give the details the manner in which the posts were advertised, the petitioners were selected by a duly constituted selection committee and the approval was sought from the Director, Technical Education, under the Right to Information Act with regard to the candidates, who had been appointed on contract basis.

13. It is evident from the material placed on record that the posts of Lecturers on hourly/lecture basis were duly advertised. The names of the petitioners and similarly situated persons were sponsored by the employment exchange and they were selected by a duly constituted selection committee consisting of the Principal being Chairman, H.O.D. Applied Science and Lecturer Engineering being members. Initially they were being paid a sum of Rs. 300/- per hour for theory period and Rs. 150/- per hour for practical. According to the appointment letters,

engagement of the petitioners was purely on hourly/lecture basis. The work and the conduct of the petitioners was to be adjudged satisfactorily by the Principal concerned. The arrangement was out of student welfare fund and strictly to be governed on the status/availability of funds. The services of these lecturers were liable to be terminated on joining/contract Lecturers. These teachers were to carry out the teaching work (theory/practical) or any other student related activity assigned by the HOD.

14. The petitioners sought information under the Right to Information Act from the Principal, Polytechnic College, Kangra. The Principal, Government Polytechnic College, Kangra, informed the petitioners that the Recruitment and Promotion Rules for lecture/hourly basis Lecturers are the same Rules, which are followed to recruit regular/contract lecturer as per Annexure PA-8. The petitioners were also informed by the Principal, Government Millennium Polytechnic Chamba on 30.11.2011 under the Right to Information Act that the recruitment of Lecturers on lecture basis is made on the basis of the Recruitment and Promotion Rules of the regular faculty, as supplied by the Directorate Office from time to time. It is, thus, evident that the petitioners have been recruited as per Recruitment and Promotion Rules, which are followed for the recruitment of Lecturers on regular/contract basis.

15. It is not in dispute that the petitioners are duly qualified as per the Recruitment and Promotion Rules and fully eligible to be considered for appointment as lecturers on contract basis. The petitioners were also informed by the Director of Technical Education, Sundernagar vide communication dated 15.12.2011 Annexure PA-3 at page 243 of the paper book, that the Recruitment and Promotion Rules have been framed for the post of Lecture and the same qualification and experience are applicable to the period basis lecturer.

16. Now, the Court will advert to the manner in which the petitioners and similarly situated persons were being paid a sum of Rs. 300 per hour for theory period and Rs. 150/- per hour for practical.

17. Mr. Shrawan Dogra, learned Advocate General, has brought to the notice of the Court notification dated 23.4.2012, whereby the Students Welfare Fund Rules, 2012 have been notified. He has made specific reference to Rule 3 (11), which reads as under:--

"Expenditure on special invitees for guest lectures and faculty engaged on lecture basis as per dire curriculum needs, eminent personalities, poets, actors, etc. & expenditure for stay in guest houses/hotels vehicles and meals etc."

According to Rule 4(a), the Principal or the officer/official appointed by the Principal shall maintain separate cash-books with complete record of day-to-day transactions and the money shall be kept in separate chest.

18. Mr. M.L. Sharma, learned Senior Advocate, has drawn attention of the Court to Annexure PA-1 dated 31.5.2011, whereby instructions have been issued to all

the Principals/DDOs, Industrial Training Institutes, Himachal Pradesh that the salary of the teachers appointed on hourly/lecture basis, earlier paid from the Student Welfare Fund, shall be recouped from the honorarium S.O.E-99. The Principals/DDOs were directed to raise the demands accordingly, so that budget could be allocated under honorarium SOE-99.

19. The Under Secretary (Technical Education) to the Government of Himachal Pradesh has also informed the Director, Technical Education, Vocational and Industrial Training, H.P. Sundernagar vide Annexure P9 dated 18.1.2010 that the proposal to fill up the vacant posts on lecture/period basis was taken up with the Finance Department, who concurred with the proposal with the condition that the Department should first hire instructors/teachers on period basis and charge the expenditure to Student Welfare Fund and if the fund was not available, the expenditure may be met from professional services or Honorarium SOEs.

20. Mr. M.L. Sharma, learned Senior Advocate has also argued that the appointment in the case of hourly/lecture basis is only a misnomer, however fact of the matter is that the petitioners are discharging the same and similar duties, which are being discharged by the regular/contract lecturers. According to him, petitioners have been recruited strictly in accordance with Recruitment and Promotion Rules and they are in possession of essential qualification and experience. He has also argued that the status of the petitioners should be converted to contract basis from the date of their initial appointment.

21. Learned Advocate General, has vehemently argued that the petitioners have not been recruited through the Himachal Pradesh Public Service Commission. The respondent-State has filed reply stating therein that the lecturers were appointed on contract basis in consultation with the Himachal Pradesh Public Service Commission. However, this plea is belied on the basis of the information sought by the petitioners, as noticed hereinabove, whereby it has been categorically admitted by the Principal that the four Lecturers on contract basis were not appointed through the Himachal Pradesh Public Service Commission. The petitioners have been appointed strictly as per the Recruitment and Promotion Rules and are in possession of the essential minimum qualification, as noticed hereinabove, on the basis of the information supplied to the petitioners under Right to Information Act. It is also evident from the material placed on record that the lecturers, who were appointed on contract basis, were appointed in the same manner in which the petitioners have been appointed. The lecturers appointed on contract basis have been regularized by the respondent-State in the pay band of Rs. 15600-39100 + 5400 G.P., as per office order dated 28.9.2012, Annexure MA-20.

22. Learned Senior Advocate, further argued that the persons, who were initially appointed on hourly/lecture basis, have been subsequently appointed on contractual basis. He has drawn attention of this Court to communication dated 30.12.2011 annexure PA-8 at page 261 of the paper book. It is clear from the phraseology of this letter that the Trainers/Instructors, appointed under the

Student Welfare Fund on contract basis, later on also engaged on contract on hourly basis, were to be given fresh contract on session to session basis with immediate effect and the remuneration/honorarium to be paid was fixed at Rs. 14,100/-maximum per month, subject to availability of funds in the Student Welfare Fund and the remuneration was to be regulated as per office order dated 22.7.2010 after observing all codal formalities. The petitioners have also been informed vide Annexure PA-8 that two Instructors, who were working on hourly basis, have been converted on contract basis purely on stop-gap arrangement under Student Welfare Fund w.e.f. 1.1.2012. Thus, there was a practice to convert the persons, appointed on hourly/lecture basis, on contract basis, paid under Student Welfare Fund. One Farah Naaz Kazmi was initially appointed purely on hourly/lecture basis at the rate of Rs. 150/- per lecture for theory and Rs. 75/- per lecture for practical and maximum of Rs. 7880/- for teaching subject of Mechanical Engineering as per letter dated 13.9.2005, Annexure PA-9. But, later on she was engaged on contractual basis as is evident from office order dated 25.2.2006, Annexure PA-10. It is, thus, not understandable why the petitioners have been discriminated by not conferring the status of contractual appointments at par with one Farah Naaz Kazmi, who was initially appointed on lecture basis from Student Welfare Fund and later on appointed on contract basis on consolidated sum of Rs. 7880/- per month.

23. The petitioners by way of CMP No. 543 of 2013 have placed on record sufficient data to establish that they are discharging the same and similar duties, which are being discharged by the regular/contract teachers. The petitioners have also placed on record the copies of the office orders, whereby they have been assigned duties for preparation of date sheet of house test, setting up of the question papers, master attendance compilations, spot evaluation, indent book maintained for the laboratory material, the duties of class Incharge, duties of College Committee and various different committees, duties in annual procurement plan, duties of invigilator, duties in PAT coaching class, duties of external examiner in practical and maintaining records of consumable items. The respondent-State has not denied the averments contained in CMP No. 543/2013. The petitioners have also placed on record copy of the time table at page 268 of the paper book.

24. What emerges from the facts, enumerated hereinabove, is that the petitioners have been recruited strictly as per the Recruitment and Promotion Rules. Their suitability has been adjudged by the same selection committee, who has adjudged the suitability of the contract lecturers. The petitioners possess the minimum educational qualification and other conditions as per Recruitment and Promotion Rules. They are discharging the same and similar duties, which are being discharged by the regular/contract teachers. However, they are being paid consolidated salary, that too on lecture/hour wise. It is clear from the recommendations made by the Director, Technical Education, Vocational and Industrial Training, Sundernagar, H.P., that the petitioners were recruited when there was acute shortage of lecturers. It has been highlighted by the Director

that the process for filling up vacant posts and recruitment through the concerned recruitment agencies was time consuming and cumbersome and the petitioners were appointed to make good the shortage of lecturers. The Director, Technical Education has also given the hours put in by each petitioner while undertaking theory and practical classes. It is admitted by the respondent-State that the petitioners have been recruited as per the Recruitment and Promotion Rules and they fulfill essential qualification. The Director has recommended the case of the petitioners on 25.4.2011 and 6.9.2012. The Special Secretary, Technical Education to the Government of Himachal Pradesh as per letter dated 30.4.2013, Annexure R-2 at page 276 of the paper book has clarified that the respondent-State could consider the appointment on contract basis generally, but there could not be regularization or conversion of services of officials working on hourly basis and no policy thereof could be considered against the Recruitment and Promotion Rules.

25. According to learned Advocate General, it is a loose language and the respondent-State has never agreed for conferment of status of contract basis on the petitioners. However, fact of the matter is that the respondent-State has not withdrawn the letter dated 30.4.2013, which was filed in sequel to the directions issued by the Court. Issuance of letter dated 30.4.2013 is purportedly on the basis of recommendations made by the Director Technical Education, Vocational and Industrial Training, Sundernagar, H.P., to the Special Secretary Technical Education on 25.4.2011 and 6.9.2012. The case of the petitioners is that they may be treated to be appointed on contract basis instead of hourly/lecture basis. The stand of the Special Secretary, Technical Education, is just and fair in the circumstances of the case.

26. The Court is of the considered view that the appointment of the petitioners and similarly situated persons should have been made on contract basis instead of hourly/lecture basis. The respondent-State is a welfare State. It cannot be permitted to exploit the teachers by designating them as Lecturers on hourly/lecture basis and then extract the work of regular/contract lecturers. The State cannot be oblivious to its social obligation to ensure that the teachers are given due respect and are paid handsome salaries. The students have fundamental right to be taught by the teachers, who are competent and duly qualified. The practice of the State-Government to give different nomenclatures to the teachers, namely, hourly/lecture/period/contract/ad-hoc/tenure basis, is deprecated. This method has been devised to deprive of the petitioners and similarly situated persons status of contract lecturers. The minimum salary of the lecturers appointed on contract basis is Rs. 21000/- per month, but the petitioners are being paid a paltry sum, that too on lecture/hourly basis, by extracting the work of regular/contract lecturers. There are instances when the similarly situated persons, who were appointed on lecture basis, have been appointed on contract basis including one Farah Naaz Kazmi. There is master and servant relationship between the respondent-State and the petitioners. The appointment letters to the petitioners have been issued by the Principal

concerned after seeking approval from the Director, Technical Education and Vocational and Industrial Training. The petitioners cannot be deprived of status of at least contract lectures merely on the basis of mode of payment of wages/salaries. The action of the respondent-State to appoint the Lecturers on hourly/lecture basis is arbitrary and unreasonable, thus, violative of Articles 14 and 16 of the Constitution of India. The conditions of service must be humane and the teachers should be paid at least living wages. The adverse effect of the ad hoc policies adopted by the respondent-State for recruitment of the teachers is that we are not able to have Institutions of international repute. It is better to have fewer Institutions with excellent infrastructure instead of permitting mushrooming of the technical Institutions without proper infrastructure and wherewithal. The aim and object of the State Policies should be towards excellence and not mediocracy.

27. There is no distinction between the petitioners and those lecturers who were appointed on contract basis. The mode of recruitment of contractual teachers is the same which is being followed to recruit the Lecturers on hourly/period basis. They constitute one class except that they have been treated differently merely on the basis of artificial distinction by calling them "Lecturers appointed on hourly/lecture basis". The objective of the State should be to appoint well-qualified teachers to impart education to the students. The manner in which the teachers are being appointed by the respondent-State by following ad hoc policies is detrimental to academics. The teachers must have secured tenure and honourable salary. The Court can take judicial notice of the fact that the petitioners and similarly situated persons are being paid less salary vis-à-vis even Peons in the nationalized Banks and other Public Corporations. The nation must respect teachers. The petitioners are entitled to the same monetary benefits, which are being paid to the contractual lecturers appointed on contract basis. There is no reason why the petitioners have been deprived of the same by not following the principles of "equal pay for equal work".

28. The respondent-State has not placed any tangible evidence on record to establish that who were teaching the students instead of petitioners and similarly situated persons in Government Polytechnic Colleges throughout the State. The Director, Technical Education, has admitted that there was dearth of teachers, that is why the petitioners and similarly situated persons were engaged. They have to impart education to the students as per guidelines laid down by the All India Council for Technical Education. The petitioners are supposed to teach for forty hours per week and student contact hours to formal training are 33-36 hours and the time period for student centered activities (library, studies, guidance, counseling and seminars) is 8-10 hours. The ratio of theory lecture class, tutorials, lab. Practical/workshop/drawing and project is 40 to 60:1, 20:1, 20:1 and 05:1. The contact hours of Lecturer and Senior Lecturer per week are 16-20 hours; for preparation, assessment and evaluation per week are 12 hours; and for administration, research guidance and counseling developmental activities etc. are 8 hours. The total hours for Lecturers and Senior Lecturers are

36-40 hours.

29. The acute shortage of Lecturers in the Government Polytechnic Colleges throughout the State have been made good by the petitioners and similarly situated persons and they have undertaken the teaching assignments as per the staff norms laid down by the AICTE. It has also come in the petition that in new Institutions there is no regularly appointed staff except the Principal and Head of the Department. The petitioners have been given nomenclature of Lecturers appointed on hourly/lecture basis just to deprive them the status of contract Lecturers, to which they are legally entitled. The respondent-State should recognize the services rendered by the petitioners towards teaching of the students as per norms prescribed by All India Council for Technical Education. In case the petitioners had not been imparting education to the students, the Institutions could be derecognized by the All India Council for Technical Education. The Lecturers on contract basis have been appointed in the same manner, in which the petitioners have been recruited. The petitioners have been working continuously for the last more than 6-7 years and are being paid a paltry amount. It has come on record that the names of the petitioners and similarly situated persons have also been reflected by the respondent-State to be appointed on contract basis/consolidated salary to the All India Council for Technical Education. It further strengthens the case of the petitioner that their appointment ought to have been made on contract basis instead of hourly/lecture basis. It is not in dispute that sanctioned posts are available with the State-Government against which the petitioners can be conferred with status of contract lecturers.

30. The plea raised by the learned Advocate General that the petitioners' appointment was stop gap arrangement deserves rejection. The petitioners and similarly situated persons have teaching the students for the last more than 6-7 years. The stop gap arrangement can be for one or two academic sessions. Such stop gap arrangement cannot last for more than 6-7 years. The Lecturers appointed on contract basis have been regularized as per letter dated 28.9.2012. The petitioners shall be deemed to have been appointed on contract basis from the dates of their initial appointment.

CWP No. 9622/2012

31. The facts of CWP No. 9622/2012 are slightly different. The petitioners herein were engaged as practical Instructors on practical basis initially for two months at the rate of Rs. 100 per practical. The case of the petitioners, in a nutshell, is that they are fully eligible and qualified to be considered for the conferment of status of contract employees as per law instead of practical basis. The case of the respondent-State, in a nutshell, is that there is no master and servant relationship between the respondent-State and the petitioners as the salary of the petitioners is drawn from Student Welfare Fund and it is stop gap arrangement. The Director, Technical Education and Vocational and Industrial Training had taken up the matter with the Himachal Pradesh Subordinate

Services Selection Board, Hamirpur, to fill up three posts of workshop Instructors (Welding/Carpentry/Electrical) on contract basis vide communication dated 28.10.2011. The Secretary, H.P. Subordinate Services Selection Board, Hamirpur informed the Director, Technical Education and Vocational and Industrial Training that since there was no provision of contract basis recruitment in the Recruitment and Promotion Rules to fill up the posts of Workshop Instructors, the Board would not be in a position to advertise the posts. The Director Technical Education and Vocational and Industrial Training thereafter took up the matter with the Principal Secretary, Technical Education on 9.2.2011 requesting him that the drafts Rules be finalized to facilitate the filling up the posts on contract basis, however, fact of the matter is that till date the Principal Secretary, Technical Education has not finalized the draft Rules submitted to the State Government on 29.5.2010. It was expected from the Principal Secretary Technical Education to consider the request of the Director, Technical Education and Vocational and Industrial Training to finalize the draft Rules. The case of the petitioners has also been recommended by the Director, Technical Education and Vocational and Industrial Training on 6.9.2012 to change the category of the petitioners on contract basis instead of practical basis. The appointment letters to the petitioners have been issued by the concerned Principal. It cannot be said that there is no master and servant relationship between the respondent-State and the petitioners. Since the petitioners have been discharging their duties uninterruptedly from their initial appointment, it cannot be said that their appointment is a stop gap arrangement. The petitioners have been appointed in order to overcome the shortage of practical Instructors in the Government Polytechnic Colleges. The respondent-State has placed on record calculation sheets of remuneration paid to the petitioners on hourly basis from Student Welfare Fund, as per Annexure R-6 collectively. It is, thus, evident from the Annexure R-6 annexed to CWP No. 9622/2012 at pages 54 to 68 that the petitioners have been taking practical classes at par with the regularly appointed Instructors. Since they have been discharging the same and similar duties, which are being discharged by the regularly appointed Instructors, they are entitled to the same salary, which is being paid to the regularly appointed Instructors on the principles of "equal pay for equal work". The respondent-State has projected before the All India Council for Technical Education that the petitioners have been appointed on contract basis, i.e. whole time and are being paid consolidated salary.

32. Their Lordships of Hon"ble Supreme Court in Rudra Kumar Sain and Others Vs. Union of India and Others, have held that when a person is appointed after approval and consultation with appropriate authority and continuing in service for fairly long period, his appointment cannot be said to be stop-gap or fortuitous or ad-hoc. Their Lordships have held as under:--

"16. The three terms "ad hoc", "stop gap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the

meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to "fortuitous". In Black's Law dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stop-gap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

17. In Oxford Dictionary, the word "ad hoc" means for a particular purpose, specially. In the same Dictionary, the word "fortuitous" means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyer's Law Lexicon (2nd Edition) the word "ad hoc" is described as "for particular purpose, Made, established, acting or concerned with a particular and or purpose". The meaning of word fortuitous event" is given as "an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God".

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stop-gap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stop-gap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of

circumstances and situation in which such an (ad hoc, fortuitous or stopgap) appointment can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In his view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stop-gap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

33. Their Lordships of Hon"ble Supreme Court in U.P. Land Development Corporation and Another Vs. Mohd. Khursheed Anwar and Another, , have succinctly explained principles for "equal pay for equal work" as under:--

"13. The question whether the principle of "equal pay for equal work" can be read as part of the doctrine of equality has been considered by this Court in large number of cases. In Kishori Mohanlal Bakshi Vs. Union of India, , this Court observed that the principle of "equal pay for equal work" as an abstract doctrine had nothing to do with Article 14. This view has not been followed in most of the subsequent judgments.

14. In Randhir Singh Vs. Union of India (UOI) and Others, , the Court distinguished the three earlier judgments including Kishori Mohanlal Bakshi v. Union of India (supra) and observed:

"Our attention was drawn to Binoy Kumar Mukherjee v. Union of India and Makhan Singh v. Union of India, where reference was made to the observations of this Court in Kishori Mohanlal Bakshi v. Union of India describing the principle of "equal pay for equal work" as an abstract doctrine which had nothing to do with Article 14. We shall presently point out how the principle, "equal pay for equal work", is not an abstract doctrine but one of substance. Kishori Mohanlal Bakshi v. Union of India is not itself of any real assistance to us since what was decided there was that there could be different scales of pay for different grades of a service. It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of "equal pay for equal work" would be an abstract doctrine not

attracting Article 14 if sought to be applied to them.

It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a directive principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The Preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word "socialist" must mean something. Even if it does not mean "to each according to his need", it must at least mean "equal pay for equal work". "The principle of "equal pay for equal work" is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinean law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance" (vide International Labour Law by Istvan Szaszy, p. 265). The Preamble to the Constitution of the International Labour Organisation recognises the principle of "equal remuneration for work of equal value" as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest

so great that the peace and harmony of the world are imperilled". Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

15. The ratio of the judgment in Randhir Singh's case was invoked and applied in Dhirendra Chamoli and Another Vs. State of U.P., , Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, and other cases for extending the benefit of the principle of "equal pay for equal work" to different types of employees including daily wagers but the same was distinguished in Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, , State of U.P. and Others Vs. J.P. Chaurasia and Others, , Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others, , Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others, , State of Haryana and Others Vs. Jasmer Singh and Others, , Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty, , State of Haryana and Another Vs. Tilak Raj and Others, , Government of West Bengal Vs. Tarun K. Roy and Others, , State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., , S.C. Chandra and Others Vs. State of Jharkhand and Others, , Official Liquidator Vs. Dayanand and Others, and very recently in State of Punjab and Another Vs. Surjit Singh and Others, .

16. In Jawaharlal Nehru Technological University Vs. Smt. T. Sumalatha and Others, , a two-Judge Bench set aside the direction given by the High Court to the appellant to absorb the respondents in accordance with the policy contained in G.O. No. 212 dated 22.4.1994, but made some significant observations on the issue of payment of higher salary to them. The same are extracted below:

"Though the plea of regularisation in respect of any of the fifth respondents cannot be countenanced, the respondent employees should have a fair deal consistent with the guarantee enshrined in Articles 21 and 14 of the Constitution. They should not be made to work on a meagre salary for years together. It would be unfair and unreasonable to extract work from the employees who have been associated with the nodal centre almost from its inception by paying them remuneration which, by any objective standards, is grossly low. The Central Government itself has rightly realised the need to revise the consolidated salary and accordingly enhanced the grant on that account on two occasions. That revision was made more than six years back. It is high time that another revision is made. It is therefore imperative that the Ministry concerned of the Union of India should take expeditious steps to increase the salary of the investigators viz. Respondents 1 to 4 working in the nodal centre in Hyderabad. In the absence of details regarding the nature of work done by the said respondents and the equivalence of the job done by them to the other posts prevailing in the University or the Central Government institutions, we are not in a position to give

any direction based on the principle of "equal pay for equal work". However, we consider it just and expedient to direct Respondent 7 or 8, as the case may be, to take an expeditious decision to increase the consolidated salary that is being paid to Respondents 1 to 4 to a reasonable level commensurate with the work done by them and keeping in view the minimum salary that is being paid to the personnel doing a more or less similar job. As far as the fifth respondent is concerned, though we refrain from giving similar directions in view of the fact that the post is not specifically sanctioned under the Scheme, we would like to observe that the Central Government may consider increasing the quantum of office expenditure suitably so that the University will be able to disburse higher salary to the fifth respondent."

17. In Dayanand's case, the Court observed that the ratio of Randhir Singh's case has not been followed in later judgments and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc.

18. In Surjit Singh's case, the Court reviewed large number of judicial precedents and observed:

"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 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. 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."

19. In the light of the above stated legal position, we shall now consider whether the direction given by the Division Bench of the High Court to the appellants to pay salary to the respondents in the regular pay scale prescribed for the post of Assistant Engineer is legally correct. Here it is apposite to note that the High Court granted relief to the respondents by presuming that two posts of Assistant Engineer were utilized for appointing them. This assumption is *ex facie* fallacious because the documents produced before the High Court and this Court show that the respondents were engaged for a fixed period on a consolidated salary. There is nothing in the language of orders dated 18.2.1991 from which it can be inferred that the respondents were appointed against the sanctioned posts of Assistant Engineer (Civil). The correspondence exchanged between the State Government and the Corporation after 18.2.1991 cannot be relied upon for recording a finding that the respondents were appointed against the sanctioned posts of Assistant Engineer. Therefore, the direction given by the High Court for payment of salary to the respondents in the regular pay scale prescribed for the post of Assistant Engineer cannot be sustained. But, at the same time, we are convinced that the appellants were not justified in continuing the respondents on a consolidated salary of Rs. 2000/- per month despite the fact that at the time of their selection, two sanctioned posts of Assistant Engineer and one post of Junior Engineer were lying vacant and proposal for appointing the respondents without any nomenclature was made with the sole object of taking work of the particular post from them without paying salary in the regular pay-scale of any post.

20. To say the least, the decision of the Corporation to effect economy by depriving the respondents" even minimum of the pay-scale was totally arbitrary and unjustified. The very fact that the respondents were engaged on a

consolidated salary of Rs. 2,000/- per month and the prescribed pay-scale of the post of Assistant Engineer in other branches was Rs. 2200-4000/- and that of the Junior Engineer was Rs. 1,600 -2,660/- gives a clear indication that they were engaged to do the work of Assistant Engineer. The appellants had neither pleaded before the High Court nor it has been shown to this Court that the respondents were not qualified for the post of Assistant Engineer. It is also not the case of the appellants that the respondents suffered from any other disability which could impede their appointment on the post of Assistant Engineer. In the written statement filed before the High Court, the appellants did make a statement that the respondents were not discharging the duties of Assistant Engineer but no material was produced either before the High Court or before this Court to show any difference in the nature of duties being performed by the respondents and those which were required to be performed by an Assistant Engineer. It is, therefore, reasonable to take the view that the respondents had been arbitrarily deprived of their legitimate right to get minimum of the pay-scale prescribed for the post of Assistant Engineer.

21. In the result, the appeal is partly allowed. The impugned order is set aside. However, the appellants are directed to pay to the respondents 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."

34. Learned Advocate General, has placed strong reliance on Secretary, State of Karnataka and Others Vs. Umadevi and Others, . The ratio of this judgment has been considered by their Lordships of Hon"ble Supreme Court in Nihal Singh and ors. v. State of Punjab and ors., decided on 7.8.2013. Their Lordships have held as under:--

"17. It is obvious both from the said section and also the appointment orders, the appellants are appointed by the State in exercise of the statutory power under section 17 of the Act. The appellants are amenable to the disciplinary control of the State as in the case of any other regular police officers. The only distinction is that they are to be paid daily wages of Rs. 35 (which came to be revised from time to time). Further, such payment was to be made by the bank to whom the services of each one of the appellants is made available.

18. From the mere fact that the payment of wages came from the bank at whose disposal the services of each of the appellants was kept did not render the appellants employees of those banks. The appointment is made by the State. The disciplinary control vests with the State. The two factors which conclusively establish that the relationship of master and servant exists between the State and the appellants. A fact which is clearly recognized by the division bench of the High Court in LPA No. 209 of 1992. It may be worthwhile mentioning here that under the law of contracts in this country the consideration for a contract need not always necessarily flow from the parties to a contract. The decision of the SSP to reject the claim of the appellants only on the basis that the payment of

wages to the appellants herein was being made by the concerned banks rendering them disentitled to seek regularization of their services from the State is clearly untenable.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in *Umadevi's* case. To answer this question, the ratio decidendi of the *Umadevi's* case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution. "4. ...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 Commissions 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 the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The 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. Whether the wide powers under Article 226 of the Constitution are 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 recognised by our Constitution, has to be seriously pondered over."

(emphasis supplied)

23. It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This court while recognising the authority of the State to

make temporary appointments engaging workers on daily wages declared that the regularisation of the employment of such persons which was made without following the procedure conforming to the requirement of the Scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment. It was further declared that the jurisdiction of the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

24. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

25. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us. The High Court in its decision in LPA No. 209 of 1992 recorded that the decision to resort to the procedure under section 17 of the Act was taken in a meeting dated 24.3.1984 between the Advisor to the Government of Punjab and senior officers of the various Banks in the public sector. Such a decision was taken as there was a need to provide necessary security to the public sector banks. As the State was not in a position to provide requisite police guards to the banks, it was decided by the State to resort to section 17 of the Act. As the employment of such additional force would create a further financial burden on the State, various public sector banks undertook to take over the financial burden arising out of such employment. In this regard, the written statement filed before the High Court in the instant case by respondent nos.1 to 3 through the Assistant Inspector General of Police (Welfare & Litigation) is necessary to be noticed. It is stated in the said affidavit:

"2. That in meeting of higher officers held on 27.3.1984 in Governor House Chandigarh with Shri Surinder Nath, IPS, Advisor to Governor of Punjab, in which following decisions were taken:--

i) That it will not be possible to provide police guard to banks unless the Banks were willing to pay for the same and additional force could be arranged on that basis, it was decided that police guards should be requisitioned by the Banks for

their biggest branches located at the Distt. and Sub Divisional towns. They should place the requisition with the Distt. SSPs endorsing a copy of IG CID. In the requisition, they should clearly state that the costs of guard would be met by them. It will then be for the police department to get additional force sanctioned. This task should be done on a top priority. In the meantime depending upon the urgency of the need of any particular branch, police Deptt. may provide from police strength for its protection.

ii) For all other branches guards will be provided by Distt. SSP after selecting suitable ex-servicemen or other able bodied persons who will be appointed as Special Police Officer in terms of Section 17 of the Police Act. Preference may be given to persons who may already be in possession of licence weapons. All persons appointed as SPO for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons taking suitable position for protection of branches. These SPOs will work under the discipline and control and as per Police Act, they will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

26. It can be seen from the above that a selection process was designed under which the District Senior Superintendent of Police is required to choose suitable ex-servicemen or other able bodied persons for being appointed as Special Police Officers in terms of section 17 of the Act. It is indicated that the persons who are already in possession of a licensed weapon are to be given priority.

28. Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in Union of India (UOI) and Others Vs. N. Hargopal and Others, .[4]

29. The abovementioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

30. Such a process of selection is sanctioned by law under section 17 of the Act. Viewed in the context of the situation prevailing at that point of time in the State of Punjab, such a process cannot be said to be irrational. The need was to obtain the services of persons who had some experience and training in handling an extraordinary situation of dealing with armed miscreants."

35. Learned Advocate General, has also placed strong reliance on Kurukshetra Central Cooperative Bank Limited v. Mehar Chand and another, (2007) 15 Supreme Court Cases 680. In this case, their Lordships of Hon'ble Supreme Court have held that it was for the Bank to see whether regular post or part time post was required. In the instance case, the Director, Technical Education, has repeatedly brought to the notice of the Secretary (Technical Education) that the posts were required to impart education to the students in Government Polytechnic Colleges. When the posts could not be filled up on regular basis due

to process being cumbersome, the petitioners were appointed on hourly/lecture basis as per the Recruitment and Promotion Rules. Thus, this judgment is distinguishable.

36. Learned Advocate General has also argued that the Article 14 of the Constitution of India is a positive concept and the petitioners cannot claim any parity with the Lecturers appointed on contract basis. Suffice it to say, on the basis of analysis made hereinabove, that the petitioners in fact were required to be appointed on contract basis instead of hourly/lecture basis taking into consideration their mode of recruitment, qualification and experience etc..

37. Learned Advocate General has also placed reliance on *University of Rajasthan and Another Vs. Prem Lata Agarwal*, . In this judgment, the persons were appointed on temporary basis without proper selection. In the present case, the petitioners have been appointed strictly as per Recruitment and Promotion Rules and this has been reiterated by the Principal when the information was supplied to the petitioners under the information sought under Right to Information Act, as discussed hereinabove.

38. Learned Advocate General has also argued that the petitioners have accepted the appointment letters. It is now well settled that the citizen cannot waive his fundamental rights.

39. The Apex Court in *Nar Singh Pal Vs. Union of India and Others*, have held that there cannot be any waiver or estoppel against the fundamental rights. Their Lordships have held as under:

"13. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment . Thus, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the "temporary" status after having put in ten years" of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs. 6,350/- . was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained."

40. Accordingly, in view of the observations and analysis made hereinabove, the

writ petitions are allowed as follows:

CWP Nos. 2978/2012, 9622/2012, 9937/2012, 2766/2013, 7451/2013 and 7850/2013.

1. The petitioners are declared to be deemed to have been appointed as Lecturers on contract basis with all consequential benefits from the date of their initial appointment. They are also held entitled to the salary at par with the Lecturer appointed on contract basis, i.e. Rs. 21,000/- per month from the date of their initial appointment. The same should be paid to the petitioners, after deducting the amount already paid to them, within a period of six weeks from today.

2. The respondent-State is directed to regularize the services of petitioners, who have completed six years uninterrupted service.

CWP No. 9622/2012

1. The petitioners are entitled to salary being paid to the regularly appointed Instructors from the date of their initial appointment and the same be released to them, after deducting the amount already paid to them, within a period of six weeks from today.

2. The respondent-State is directed to finalize the Recruitment and Promotion Rules for the posts of practical Instructors by incorporating the clause for contractual appointment on the analogy of contractual Lecturers within a period of four weeks from today and take steps for appointing the petitioners on contract basis within a further period of six weeks and thereafter regularize the services of petitioners, who have completed six years" uninterrupted service."

Pending application(s), if any, also stands disposed of. No costs.