
(2008) 04 AHC CK 0247
In the Allahabad High Court

Anurag Tripathi and Others	APPELLANT
Vs	
State of U.P. and U.P. Higher Education Service Commission	RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 23, 39

Citation : (2008) 5 AWC 5383 : (2008) 2 UPLBEC 1979

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

B.S. Chauhan and Arun Tandon, JJ.—This bunch of nearly 169 petitions, is in respect of appointment of part-time teachers, in various Degree Colleges of the State of Uttar Pradesh affiliated to Universities covered by the U.P. State Universities Act, 1973 (hereinafter referred to as the Act, 1973), in terms of the Government Order dated 07.04.1998, on honorarium @ Rs. 100/- to be paid on per lecture basis subject to the maximum of Rs. 5000/- per month (now enhanced to Rs. 8000/-), against duly created posts of Lecturers, as well as absorption of such part-time teachers against substantive vacancies of Lecturers in terms of Section 31-E of the U.P. Higher Education Service Commission Act, 1980 (hereinafter called the Commission's Act) added vide 3rd Amendment Act No. 42 of 2006. While a set of prospective applicants question the process of absorption as per Section 31-E of the Commission's Act itself.

2. The aforesaid writ petitions may be categorized into four groups:

(a) Writ petitions filed by part-time teachers appointed under Government Order dated 07.04.1998 subject to the maximum of Rs. 5000/- per month (now enhanced to Rs. 8000/-) seeking salary at par with the regularly appointed Lecturers with a further relief for a writ of mandamus commanding the College as well as Directorate of Higher Education to not to interfere in the working of such part-time teachers till regularly selected teachers recommended by the

Commission joins.

(b) Writ petitions filed by the part-time teachers with the prayer that they be absorbed against substantive vacant post of Lecturers in affiliated Degree Colleges in terms of Section 31-E of the Commission's Act.

(c) Writ Petition No. 1722 of 2007, Writ Petition No. 31429 of 2007 as well as Writ Petition No. 10858 of 2008 have been filed by part-time teachers who have already obtained an order from this Court In an earlier writ petition for their continuance till regularly selected candidates from the Commission join. They now seek the relief of payment of salary at par with the regularly selected Lecturers.

(d) Writ Petition No. 5210 of 2007 (Anurag Tripathi and Ors. v. State of U.P. and Ors.) challenges the vires of Section 31-E of the U.P. Higher Education Services Commission Act, 1980 as added by U.P. Act No. 42 of 2006 which provides absorption of part-time teachers against substantive vacancies on the post of Lecturers.

3. Before advertng to the facts relevant for decision of the aforesaid writ petitions, it would be worthwhile to reproduce the legislative history qua the mode and manner of appointment of Lecturers in Aided Degree Colleges affiliated to various State Universities covered by the Act, 1973.

4. Prior to the enforcement of Act, 1973 Universities in the State of Uttar Pradesh had been established under different State Acts namely Lucknow University Act, 1920, Allahabad University Act, 1921, Agra University Act, 1926, Gorakhpur University Act, 1956, Varshney Vishwavidyalaya Act, 1956, Kanpur and Meerut Universities Act, 1965. The Parliament with a view to tone the higher education in the State of Uttar Pradesh enacted the Act, 1973 which also inter alia provided for the appointment of teachers in the Universities/Affiliated Degree Colleges. Section 31 of the Act, 1973 provided for appointment of teaching faculty of the University as well as of teachers of the affiliated colleges other than government colleges, to be made only on the recommendation of the Selection Committee as provided for under Sub Section 2 thereof.

5. Section 31 itself provided for constitution of different Selection Committees for different categories of posts, which were broadly classified as that of Professor, Reader and Lecturer for the University faculty. In respect of affiliated and associated Degree Colleges (other than Government Colleges) the teaching posts were broadly classified as that of Director/Principal and Teacher (Lecturer) for whom different Selection Committees were provided. Under the aforesaid provisions, it was contemplated by the legislature that appointment on all the teaching posts in the University as well as in Degree Colleges shall be made by direct recruitment only through open market selection. The intention being that merit alone would be the criteria for appointment on a teaching post in the University as well as the affiliated Degree Colleges.

6. The desire of keeping the standard of education at par excellent, expressed by the legislature at the time of enactment of Act, 1973, has been negated by providing for regularization/absorption of ad hoc teachers, temporary teachers and part-time teachers from time to time as would be clear from the following.

7. Vide U.P. Act No. 05 of 1977 u/s 31 (3) (b), persons appointed on temporary posts up to the date of commencement of the Act of 1973 were directed to be absorbed on substantive basis against the post which were temporary at the time of appointment but had subsequently been converted into a permanent posts or against a newly created posts or against any other post substantively vacant in the same department. This absorption/regularization was followed by the U.P. Act No. 01 of 1992 whereby short term appointees were directed to be substantively appointed by the Executive Council against the substantive posts in the same cadre provided that such short term appointees were in fact appointed on or before 30.06.1991 subject to the conditions stipulated therein. The process of appointment by direct recruitment was further diluted with the enforcement of Act No. 09 of 1985 and Act No. 04 1996 whereby personal promotion on the post of Reader and Professor was provided for.

8. Since the provision Act, 1973 qua selection and appointment of teachers in affiliated Degree Colleges (other than minority and government institutions) failed to achieve the desired results, the State of Uttar Pradesh decided to establish a Service Commission for selection of teachers for appointment to colleges affiliated/recognized by Universities vide Commission's Act

Section 12 of the said Act provided as follows:

Procedure for appointment of teachers -(1) Every appointment as a teacher of any college shall be made by the management in accordance with the provisions of this Act and every appointment made in contravention thereof shall be void.

(2) The management shall intimate the existing vacancies and the vacancies, likely to be caused during the course of the ensuing academic year, to the Director at such time and in such manner, as may be prescribed.

(3) The Director shall notify to the Commission at such time and in such manner as may be prescribed a subject wise consolidated list of vacancies intimated to him from all colleges.

(4) The manner of selection of persons for appointment to the posts of teachers of a college shall be such, as may be determined by regulations:

Provided that the Commission shall with a view to inviting talented persons give wide publicity in the State to the vacancies notified to it under Sub-section (3):

Provided further that the candidates shall be required to indicate their order of preference for the various colleges, vacancies wherein have been advertised.

Section 12 of the Commission's Act, therefore, provided that appointment on the post of teachers to be made on the recommendation of the Higher Education

Services Commission only and any appointment made in contravention thereof shall be void.

9. As the legislature was aware that establishment of the Commission and regular appointment by direct recruitment on the post of teachers on its recommendation is to take some-time, it provided for ad hoc appointment u/s 16 of the Act pending regular selection by the Commission. Thereafter vide U.P. Act No. 02 of 1992 power of the State to issue Removal of Difficulties Order as provided u/s 31-A of the Commission's Act was circumscribed by providing that no such order shall be made after expiry of two years from the date of commencement of the Amending Act of 1992.

10. At this stage the Court may taken note of the various advertisement and selections made by the said Commission for the purpose of filling up the vacancies on the post of Lecturer in various Degree Colleges as disclosed by the Director of Higher Education in his affidavit The details are as follows:

Between 1980 to 1994 only six advertisements for the post of Lecturers were published by the Commission namely:

Advertisement No. No. of Post No. of Candidates Advertised Selected a. Adv. No. 02 of 1983 97 73 b. Adv. No. 03 of 1983 207 Cancelled c. Adv. No. 06 of 1985 264 239 d. Adv. No. 07 of 1985 111 107 e. Adv. No. 09 of 1986 86 64 f. Adv. No. 10 of 1986 317 222 g. Adv. No. 17 of 1991 194 119 h. Adv. No. 19 of 1991 259 Cancelled

Total Selections: 824

For the period 1994 to 2007 the position is as follows:

Advertisement selection	Total No. of available	Total No. of advertised	Total No. of placements.	No. vacancies notification to the commission
-----	-----	-----	-----	-----
722	722			20/1994 557
-----	-----	-----	-----	-----
149	149			24/1998 52
-----	-----	-----	-----	-----
870	870			26/1998 631
-----	-----	-----	-----	-----
97 97 34				27/2000
28/2000	183	183		49
-----	-----	-----	-----	-----
1640	1640			29/2000 1253
-----	-----	-----	-----	-----
57 57 31 The				30/2002
128 128 68 results of different subject were received during the period of 2 years	(2003	to		31/2002 2005)

-----					32/2002	
842 842 791						
-----					37/2003	
838	838	Selection process completed but result stayed by the Hon''ble Court's order dated 18-7-05 passed in writ petition No. 48149 of 2003				
-----					38/2005	
281	281	Selection process is on but result is stayed under the aforesaid order dated			18-7-2005	
-----					40/2006	
245			179		179	
-----					41/2007	
552	552	Selection	yet	to	start	

142/2007	337	337	Selection yet to vacancies advertised start and last date for filling the application was			15.2.2008

(From 1994 up to December, 2007 total 6941 vacancies were advertised while selection and placements were made against only 3635 vacancies).

11. It will be seen from the aforesaid that in the last 27 years of its existence the Higher Education Service Commission could select only $824 + 3656 = 4459$ candidates.

12. The Court has been informed that as of date nearly 9000 vacancies on the post of Lecturer in the Aided Degree Colleges remained unfilled. If the efficiency of the Higher Education Commission in last 27 years is an indication of the things to come it would mean that the Commission will take nearly 54 years to fill all the existing vacancies as of date. We at this stage can only hope that the State would take some radical steps to save the Higher Education in U.P. from getting bad to worse.

13. Another reason disclosed to the Court for the inordinate delay in the selection of teachers for affiliated Degree Colleges is that the State Government enforced U.P. Act No. 04 of 1994, namely, The Uttar Pradesh Public Services Reservation for Scheduled Caste and Scheduled Tribe Act, 1994 where-under the post of teacher and other staff of educational institutions receiving grant in aid from the State Government have been included. The Act provides for reservation in favour of Scheduled Caste to the extent of 21%, Scheduled Tribes 2% and Other Backward Classes 27%. Despite the enforcement of the reservation, no corresponding amendments have been introduced in the Commission's Act and there exists a serious dispute with regard to the cadre strength against which the percentage of reservation is to be applied. Parties are at a variance as to whether (a) the reservation is to be applied with reference to number of post in a particular subject taught in the college (b) to the number of total posts in a particular faculty of the College or (c) against the total posts of Lecturers in the

College as a whole.

14. Lastly it has been informed that with every change of the Government in the State, there has been a change of Chairman and the members of the Commission and for the period 26.06.1997 to 23.02.1999 (i.e. 01 year 08 months), and thereafter between 14.09.2001 to 05.08.2002 (11 months), there has been no Chairman of the Commission. This has also contributed to the delayed selections.

15. The Court may now refer to the various steps taken by the State legislature for regularizing ad hoc/short term appointment etc. because of the failure of the Commission to recommend suitable candidates against the vacant posts from time to time. The first amendment in that regard was enforced by addition of Section 31(1) (b) to the Commission's Act vide Act No. 21 of 1988 whereby ad hoc teachers and Principal directly appointed on or before 03.01.1984 were directed to be regularized. Thereafter by addition of Section 31-B (2) (a) (added vide Act No. 26 of 1989) regularization of ad hoc teachers appointed on or before 03.01.1984 against a vacancy referable to paragraph 2 of the U.P. Higher Education Service Commission (Removal of Difficulties) Order, 1982 and 1983 were directed to be regularized. Thereafter vide U.P. Act No. 02 of 1992, Section 31 (C) was added to the Commission's Act whereby a teacher appointed on ad hoc basis after 03.01.1984 but not later than 2.11.1991 was directed to be regularized. Sub Clause 4 of Section 31-C of the Act, 1973 provided that all such teachers who are not offered substantive appointment under earlier sub section would be removed from service. However by U.P. Act No. 10 of 1997 Sub Section 5 was added to Section 31-C and it was provided that all those teachers who were not found suitable for substantive appointment earlier, may now be reconsidered for substantive appointment, and it was declared that it would be deemed that they had never ceased to hold the post.

16. With the enforcement of Act No. 02 of 1992, Section 16 of the Act, 1973 which provided for ad hoc appointment of teachers pending regular selection by the Commission was deleted. As a result whereof there remained no power to make ad hoc appointment against the substantive vacancies. Similarly the power of the State Government to issue directions for removing the difficulties faced in the enforcement of the Commission's Act stood lost after expiry of two years from the date of enforcement of U.P. Act No. 02 of 1992 (subsequent to 02.03.1991) as is apparent from the language of Section 31-A (proviso) itself.

17. Thus the legislature realised that power to make ad hoc appointment was the root cause for regularization being claimed and granted by the State, it decided to do away with such a power of ad- hoc appointment itself with a clear purpose that all appointments against substantive vacancies should be made on the recommendation of the Commission after due selection.

18. The State of U.P. now decided to exercise its executive powers and came out with the Government Order dated 07.04.1998. This Government Order for the

first time provided for a new category of Stop Gap appointment of teachers in affiliated Degree Colleges commonly termed as part time teachers. The appointment of part time teachers was required to be made against substantive vacancies of Lecturers against duly created post in affiliated Degree Colleges. The appointment were to be made with the following stipulations:

- a) The par-time teacher had to be appointed for a fixed period which would expire at the end of the academic session, automatically.
- b) The part time teacher was to be paid @ Rs. 100/- per lecture subject to the maximum of Rs. 5000/- per month (now enhanced to Rs. 8000/-).
- c) Part time teacher will have no right to renewal of his appointment and he would be offered engagement in the ensuing academic year only if he is successful in the selections to be held a fresh for the said subsequent year.
- d) Part time teacher shall have no right to claim reaularisation.

It is under these specific stipulation under the Government Order that part time teachers including all the petitioners (except those of Writ Petition No. 5210 of 2007) have been appointed.

19. This Court is not required to examine the issue as to whether the Government Order dated 07.04.1998 providing for appointment of such part-time teachers is in accordance with law or not inasmuch as a Division Bench of this Court in the case of Malvika Shekhar Vs. Director, Higher Education and Others, has held that such appointments are void being contrary to the provisions of the Commission's Act and, therefore, directed that such appointments be terminated forthwith. We have been informed that against the said judgment of this Court, SLP (Civil) No. 84 of 2004 is pending consideration before the Hon'ble Supreme Court wherein interim orders have been passed in favour of such part time appointees whereunder they still continue in the employment. Reference may also be had to another Division Bench judgment of this Court in the case of Dr. Alok Kumar Singh and Others Vs. State of U.P. and Others, wherein this Court after noticing the provisions of the Commission's Act and the Government Order dated 07.04.1998 held that petitioners who were appointed in terms of the Government Order dated 07.04.1998 had no right to the post. Their process of selection is quite different, the nature of duties performed are also not similar to that of regularly appointed Lecturers.

20. While the aforesaid issues qua the legality of appointment of part time teachers under Government Order dated 07.04.1998 was pending consideration before the Hon'ble Supreme Court the State legislature has come up with U.P. Act No. 42 of 2006 whereby Section 31-E has been added to the Commission's Act which reads as follows:

31-E (1) Subject to the provisions contained in Section 12 and 13. if any vacancy exists, which can not be filled under the provisions of said sections, a teacher on honorarium shall be absorbed in the manner prescribed under Sub-section (2),

who is working in grant in aid college, possessing educational qualifications determined by the State Government, receiving honorarium. Thereby working for a minimum period of three academic sessions and has been working till the date of commencement of the Uttar Pradesh Higher Education Services Commission (Third Amendment) Act, 2006.

(2) Where any substantive vacancy in the post of a teacher in a grant in aid college is to be filled by direct recruitment, such post shall, at the instance of the Director, be offered by the management to teacher on honorarium referred to in Sub-section (1).

(3) Where any teacher on honorarium who has been offered appointment in accordance with the provisions of Sub-section (2) fails to join the post within the time allowed, which shall not be less than Fifteen days, his further claim shall cease automatically.

Explanation:- For the purposes of this section:

teacher on honorarium" means a person working in grant-in-aid college and is engaged in teaching a course of study and receiving payment from the Funds of State aid on a fixed honorarium appointed on a contractual basis with the prior approval of the Director.

(4) Where the Management fails to offer any post to a teacher on honorarium in accordance with the provisions of Sub-section (2) within the time specified by the Director, the Director, may himself issue the letter of appointment to such teacher on honorarium and the teacher on honorarium concerned shall be entitled to get his salary as teacher, from the date, he joins the post in pursuance of such letter of appointment.

21. Section 31-E has provided for absorption of such part time teachers against substantive vacancy of Lecturer available in Degree College. The validity of Section 31-E has been challenged by way of Writ Petition No. 5210 of 2007 (Anurag Tripathi and Ors. v. State of U.P. and Ors.) on the basic plea that such absorption is violative of Article 14 of the Constitution of India and amount to denial of opportunity of consideration to open market candidates like the petitioner of the said petition.

22. We have heard Shri Ashok Khare, Senior Advocate, Shri P.S. Baghel, Shri Shailendra and Smt. Arti Raje along with other counsels on behalf of the part-time teachers in various writ petitions, Shri G.K. Singh on behalf of the petitioners in Writ Petition No. 5210 of 2007, Additional Advocate General, Shri Zafar Naiyar, on behalf of the State respondents.

23. The Court may first deal with the right of the part-time teachers to claim salary at par with regular Lecturers appointed in various Degree Colleges on the principle of Equal Pay for Equal Work. The issue is no more res integra, a Division Bench of this Court in the case of Alok Kumar Singh (Supra) has specifically held that the mode and manner as well as the nature of appointment of such part

time teachers including the duties and responsibilities discharged by them are altogether different vis a vis a regularly appointed teachers. In paragraph Nos. 8 and 9 it has been recorded as follows:

8. The Government Order dated 07.04.1998 only provides a summary process of selection on local arrangement, and the Advertisement was localized. In view of the transitory nature of such engagement highly qualified persons generally retrain from such job. Such candidates cannot be equated with full time regular teachers appointed by the U.P. Higher Education Service Commission. It is stated in Paragraph 5 (p) of the counter-affidavit filed by the State Government that petitioners participated in the selection process in pursuance of the impugned advertisement and hence they cannot challenge the same.

9. In view of the averments made in the counter-affidavit of the State Government it is evident that the petitioners are working only on contract basis without any regular selection through the Commission, and they cannot be equated with regularly selected teachers. Hence, they have no right to the post. Their appointment was under the Government Order dated 07.04.1998 to deliver lectures for a very short span of time and they cannot claim regularization. Their duties and function are also different from the regularly selected teachers. These appointments were made only due to the shortage of regularly selected candidates so that the teaching work may not suffer. However, the appointees cannot claim any right to continue.

(Emphasis added)

24. We may also consider the plea for such parity as claimed by the petitioners with reference to Article 23 of the Constitution of India. According to the petitioners, they are required to discharge identical duties of teaching requisite number of classes (periods), examination duties and other administrative responsibilities like any other regular Lecturers in the Degree College. Despite performance of such identical duties they are being paid only on per lecture basis and that to subject to the maximum prescribed, while pay package for a regular Lecturer is about Rs. 15,000/- per month at the age of initial appointment. It is, therefore, contended that the respondents are taking Begar from the petitioners which is prohibited under Article 23 of the Constitution of India. The petitioners, therefore, claim an entitlement for similar pay.

25. This very Bench had considered the duties which are required to be performed by part-time teachers in terms of their appointment in the Writ Petition No. 12931 of 2008, Tarun Kumar v. State of UP. and Ors. decided on 05.03.2008 and rejected the case that such teachers were being exploited and were forced to do begar observing as follows:

In the instant case, the aforesaid anti-begar law does not apply at all. It is not the case of the petitioner that he had been working as full time teacher or had ever been appointed as full time lecturer nor he has stated that he had been forced to work in contravention of the terms of his appointment letter or the

Government Order under which he has been appointed....

We may clarify that it is at the option of such teacher appointed on per lecture basis to take as many lectures as he wants and for each lecture he is entitled to get Rs. 100/= per lecture subject however the maximum of Rs. 5,000/= (now enhanced Rs. 8,000/=), meaning thereby that the day an appointee completes 50 lectures in a month now 80 lectures in a month, he has a right to refuse any further responsibility to teach the students and in such a situation the management would have to make alternative arrangements.

In view of the above, the petition is devoid of merit and is accordingly dismissed. However, if the petitioner feels aggrieved that he is being exploited by the Committee of Management and is being forced to work in contravention of the said Government Order dated 17th April, 1998 or terms and conditions incorporated in his appointment letter, he is at liberty to approach the Civil Court for damages against the management of the college. However, he cannot be permitted to have any claim against the public exchequer.

26. We, therefore, hold that petitioners are not required to discharge same duties and responsibilities as are to be performed by a regular Lecturer. Payment for the duties performed by the part-time Lecturer is being made on the scale provided by an expert body namely University Grants Commission, on per lecture basis @ Rs. 100/- such payment has not been shown to be insufficient or a pittance as alleged by the petitioners. The plea of "Begar" has, therefore, been stated only to be rejected.

27. Reference may also be had to the judgements of the Hon''ble Supreme Court wherein the principle of equal pay for equal work has been explained and it has been now settled that persons who are appointed after following a different procedure, the appointment being of different nature and who do not perform identical duties as are performed by regularly appointed persons are not entitled to the benefits of the said principle.

28. In State of Haryana and Others Vs. Jasmer Singh and Others, , the Hon''ble Supreme Court considered the provisions of Articles 39(d), 14 and 16 of the Constitution and held that the principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organisation. There may be differences in educational or technical qualifications, which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that the good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. The evaluation of such jobs for the

purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted. The Court further observed as under:

The respondents, who are employed on daily wagers cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age at the time of recruitment. They are not selected in the manner in which the regular employees are selected. In other words, the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which daily-rated workmen are not subjected to. They can not, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.

(Emphasis added)

29. In *Union of India and others versus Nanda Kumar and others*, (1997) 11 SCC 661, the Hon'ble Supreme Court after considering large number of its earlier judgements including *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, *Jacob M. Puthuparambil v. Kerala Water Authority* (1999) 1 SCC 28, held that the daily wagers or casual labourers employed on temporary basis by the railway administration would not be granted pay parity.

30. A similar view has been reiterated in *State of U.P. and Ors. v. Ministerial Karamchari Sangh* AIR 1998 SC 303 observing that the issue of pay parity should be assigned to the Expert Body as it cannot be done by the Courts.

31. In *Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others*, the Hon'ble Supreme Court considered a similar issue of pay parity to the daily-rated workers working since long considering large number of its earlier judgments including *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, *Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others*, *Basudev Pati Vs. State of Orissa and Another*, *State of Haryana and others Vs. Piara Singh and others etc. etc.*, *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, and held that for their absorption etc. the University may frame the Scheme for regularisation and as regularisation cannot be directed in absence of regular post and such employees can be entitled for minimum wages under the Statute, if any, or the prevailing wages in the locality but the question of claiming the minimum of the pay scale of a regular employee would not arise.

In *State of Haryana and Another Vs. Tilak Raj and Others*, the Hon'ble Supreme Court held as under:

A scale of pay is attached to a definite post and in case of daily wager, he holds no post. The respondent workers cannot be held to hold any post to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with other group vis-avis an alleged discrimination.... Equal pay for equal work is a concept which requires for its applicability complete and wholesome identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

(Emphasis added)

32. While deciding the said case, reliance had been placed by the Hon"ble Supreme Court on its earlier judgments including *State of U.P. v. J.P. Chaurasia* AIR 1989 SC 19; *Harbans Lal v. State of Himachal Pradesh* (1989) 4 SCC 549. In *Harbans Lal* (supra), it has been held that a mere nomenclature designating a person is not enough to come to a conclusion that he was doing the same work. A comparison cannot be made with counterparts in other establishments with different locations though owned by the same management. The quality of work which is produced may be different, even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of principle of pay parity requires consideration of various dimensions of given job.

33. In *State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc.*, , a similar view has been reiterated for rejecting the claim of "equal pay for equal work" observing that 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 a Competent Authority cannot be challenged. A classification based on different educational qualifications may also justify different pay scale.

34. In *State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others*, , after considering very large number of its earlier judgments and considering the provisions of Articles 14, 16 and 39(d) of the Constitution of India, the Hon"ble Supreme Court held that daily wagers cannot claim pay scale as that of government employees. The Court again reiterated the law laid down by it in its earlier judgment in *Mahendra L. Jain and Others Vs. Indore Development Authority and Others*, wherein it has been held that the daily wagers do not hold the post, therefore, they were not the employees of the State. Salary of a regular scale of pay, it is trite, is payable to an employee only when he holds a status.

35. In *U.P. State Sugar Corporation Ltd. and Anr. v. Sant Raj Singh and Ors.* AIR

2000 SC 2296, the Hon"ble Supreme Court held that the doctrine of "equal pay for equal work" as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher qualification has all along been treated to be a valid basis for classification of two categories of employees.

36. Accordingly the relief prayed for in all the writ petitions qua payment of salary at par with regular Lecturers is hereby rejected.

37. We may now examine the issue of continuance of such part-time teachers till regularly selected candidates join.

38. On behalf of the petitioners it has been contended that under the Government Order dated 07.04.1998, it has been provided that a part time teacher if appointed would not be entitled to continue automatically in the next academic session. In the next academic session the entire process for fresh recruitment has to be re-initiated and if the candidate is again selected as part time teacher in terms of the Government Order dated 17.04.1998, he would then only become entitled to continue in the subsequent session. It is submitted that such an arrangement on the face of it, is arbitrary and inasmuch as it amounts to replacement of a part-time teacher by another other part time teacher. It is contended that once a person has been selected for appointment as part time teacher after following the procedure prescribed, there is little or no justification for any fresh selection being held after the end of the earlier academic year for like nature of appointment to be made in the subsequent year. It is submitted that the part-time teachers appointed in a Degree college are not to be treated as a daily wage labourers nor they can be asked to undergo the process of selection again and again for continuance as par-time teacher only. Teachers by the profession are liable to be treated with respect.

39. This Court may not enter into the aforesaid aspect of the matter inasmuch as the counsel for the petitioner has produced before us a copy of the interim order passed by the Hon"ble Supreme Court passed in SLP (Civil) No. 84 of 2004 wherein identically situate part time teachers have been directed to be continued till regularly selected candidates join. For ready reference the order of the Hon"ble Supreme Court dated 11.05.2005 is being quoted herein below:

Applications for impleadment are allowed.

It is stated that Mr. Jeevan Prakash, Advocate, has instructions to appear on behalf of the respondents. Vakalatnama shall be filed within a week.

In view of the clear terms in the order of engagement that the concerned employee has to vacate when duly selected persons are posted, the continuance of the concerned employee in terms of the High Court's order shall be till the person duly selected joins. Interim order stands modified accordingly.

In view of the aforesaid and subject to the final orders to be passed by the

Hon"ble Supreme Court in the said Special Leave Petition, it is provided that part time teachers appointed strictly in accordance with the Government Order dated 07.04.1998 would be entitled to continue on same terms and conditions as were applicable at the time of their first appointment (subject however to the revision of a maximum amount prescribed on per lecture basis) till regularly selected candidates join.

40. This takes the Court to the hotly contested issue qua absorption of part time teachers against substantive vacancies on the post of Lecturers in Degree Colleges as per Section 31-E (added by U.P. Act No. 46 of 2006) to the Commissions Act. As already noticed hereinabove, a Division Bench of this Court in the case of Malvika Shekhar (supra) has held that appointment of part time teachers under the Government Order dated 17-04-98 were void being violative of Article 12 of the Commission's Act. It is no doubt true that against the said judgment of the Division Bench, SLP has been filed before the Hon"ble Supreme Court wherein operation of the judgment and order of this Court has been stayed. It merely mean that such part time teachers who were to be removed from employment in terms of the Division Bench judgment have been permitted to continue till the issue of the legality of their appointment is finally adjudicated upon by the Hon"ble Supreme Court.

41. A issue does arise as to whether even after appointment of such part time teachers having been declared null and void by a Division Bench of this Court and the matter of such appointments being sub-judice before of the Hon"ble Supreme Court is it proper and appropriate to direct for regularization of such part-time teachers u/s 31-E to the Commission's Act. Reference may be had to the judgment of the Hon"ble Supreme Court in the case of Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another, wherein the Hon"ble Supreme Court has considered that a teacher continuing under an interim order of the Court cannot be held to be in continuous service in his own right under an order of appointment. For ready reference relevant portion of the judgment reads as follows:

6. ...But the crucial question is : whether the respondent was continuously serving the institution under Clause (c) of Section 33-B (i)? Admittedly the service of the respondent came to be terminated w.e.f. June 30, 1988. Though he had obtained the stay order and continued to be in service, it was not by virtue of his own right under an order of appointment, he continued in the office with permission of the Management.

No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merge in the final order to be passed in the case and if the SLP is ultimately dismissed, the interim order would stand nullified automatically. Even otherwise interim orders are passed to maintain the status as is prevailing on the date of the order. Normally there should not be any change of status of the litigant during the pendency of the proceedings.

42. In view of the aforesaid we have no hesitation to record that the part time teachers who have been appointed under the Government Order cannot be considered for absorption in terms of Section 31-E of the Commission's Act so long as SLP against the judgment of this Court in the case of Malvika Shekhar (Supra) is not decided by the Hon"ble Apex Court.

43. The Court may also examine as to whether the provision incorporated u/s 31-E providing for absorption of such part time teachers is ultra vires to the provisions of the Constitution of India or to the Commission's Act or not. At the very outset this Court may record that absorption under an statutory provision can not be provided qua an appointment which was null and void at the inception, inasmuch as no life can be infused in a dead body.

44. More so, if an order is bad in its inception, it does not get sanctified at a later stage. (Vide Upen Chandra Gogoi Vs. State of Assam and Others, ; Satchidananda Mishra Vs. State of Orissa and Others, ; and Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari,

In C. Albert Morris Vs. K. Chandrasekaran and Others, the Hon"ble Apex Court held that a right in law exists only and only when it has a lawful origin.

In State of U.P. Vs. Neeraj Awasthi and Others, wherein it has been held that regularisation cannot be a mode of appointment. Illegal appointments cannot be regularised. Neither temporary nor permanent status be conferred by regularization. An attempt to induct an employee without following the procedure for selection prescribed by law would amount to back-door entry, the practice whereof has been deprecated.

45. From the history of the legislation qua appointment on the post of Lecturers in the aided recognized Degree Colleges, it would be seen that in the last 37 years the State has come up at least with six orders/statutory provisions wherein ad hoc, temporary appointments and part time appointments have been directed to be either regularized or absorbed against the substantive post of Lecturers.

46. This Court may record that post of Lecturers/Principal/Readers/Professor in Degree Colleges and Universities were treated to be a class in themselves and therefore all these posts were provided to be filled by way of direct recruitment only, meaning thereby that any other factor except merit was irrelevant for the purposes of appointment on the posts. Every candidate is required to compete in the process of selection with candidates from open market for appointment at every stage of the hierarchy of the posts in Degree Colleges/Universities. The purpose is obvious. Education is the back bone of any civilized country. If compromises are permitted to be made in the quality of education to be imparted, there is little or no doubt that the back bone of the country would at least bend if not broken. Such a situation would not be in the interest of the public at large. The State, Executive, the legislature have to ensure that best qualified faculty members are made available for imparting education in Degree Colleges and Universities and no attempt to marginalise the said concept of best

teachers by any executive or legislative Act can be approved of by this Court.

47. It is no doubt true that the legislature in respect of a subject within its legislative domain may make law, subject to the constitutional scheme, as in the circumstances and conditions is required, including a provision for regularisation/absorption of ad hoc or part-time employees. It is also not in doubt that the Court shall not normally interfere with such legislations which are within the legislative competence except if they violate some of the fundamental rights guaranteed by the Constitution. The power of the Court to interfere with the legislative act has been dealt with in series of judgments by the Hon''ble Supreme Court.

48. In *A.K. Roy v. Union of India and Ors.* AIR 1982 SC 719, the Hon''ble Supreme Court has held that Ordinance cannot be struck down on the ground of non-application of mind or mala fides or that the prevailing circumstances did not warrant issue of Ordinance. It can be struck down either on the ground of want of competence of the legislature or being violative of the provisions of Part III of the Constitution. The Courts are precluded from inquiring into the propriety to exercise the legislative power as it has to be assumed that the legislative discretion is properly exercised. The motive of the legislature in passing a Statute cannot be scrutinised by the Courts, nor the Courts can examine whether the legislature had applied its mind to the provisions of the Statute before passing it. The propriety necessitated by a legislature is for the determination of the legislative authority and not for determination by the Court.

49. In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.,* , the Supreme Court held that an enactment cannot be struck down on the ground that the Court thinks justified. The Parliament and the Legislatures composed as they are the representative of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom.

50. In *Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others,* , the Apex Court had taken a similar view that an Ordinance can be struck down either on the ground of want of competence or being violative of the provisions of Part III of the Constitution. There is always a presumption regarding the constitutional validity of the legislation.

51. Reference has been made before us to the judgment of the Hon''ble Supreme Court in the case of Reserved Pool Teachers who were directed to be substantively appointed u/s 21 (B) of the U.P. Secondary Education Services Selection Board, 1982 even when they had worked for a few days only when the regular teachers through out the State of U.P. were on strike. Such appointment of Reserved Pool Teachers was approved by the Hon''ble Supreme Court, in the case of *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, and it was held as follows:

The reserve pool teachers thus formed a separate and distinct from other

applicants for the posts of teachers in recognized institutions. The differentia which distinguished the class of reserve pool teachers from the class of other applicants for the posts of teachers in recognized institutions is the service rendered by the reserve pool teachers to the State and its educational system in a time of crisis and this differentia bears a reasonable and rational nexus or relation tot the object sought to be achieved by Ordinances Nos. 10 and 22 of 1978 read with the Intermediate Educational Act, namely, to keep the system of High School and Intermediate Education in the State functioning smoothly without interruption so that the students may not suffer a detriment.

(Emphasis added)

52. The Court may also notice the judgment of the Hon''ble Supreme Court which has been the sheet anchor of the petitioners qua their absorption namely State of Karnataka and Anr. v. B. Suvarna Malini and Anr. (2001) 1 SCC 728. The Hon''ble Supreme Court no doubt upheld the competence of the State legislature to provide for absorption of part time teachers however what is worthwhile to notice is the paragraph 9 of the said judgment which reads as follows:

From the materials on record, it appears that the State Government has been regulating the mode of appointment of part-time Lecturers and it is not correct that there has been no process of selection before such appointment of part-time Lecturers. Even though the selection had not been made by the Public Service Commission, yet there was a process of selection and it further appears that unqualified people were not being appointed as part-time Lecturers. Part-time Lecturers having formed a class by themselves and for some reason or the others, they having been deprived of the benefits of the earlier directions of this Court on account of inaction on the part of the State Government, the matter was re-examined by a Committee of experts as to how best, the services of these part-time Lecturers can be utilized and at the same time, there will be no dilution in the quality of teaching nor can there be any infraction in the minimum qualification necessary for appointment as a Lecturer. The concept of equality before the law does not involve the idea of absolute equality among human beings which is a physical impossibility All that Article 14 guarantees is a similarity or treatment contra-distinguished from identical treatment. Equality before law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though, they are the same. It of course means denial of any special privilege by reason of birth, creed or the like. The legislature as well as the executive Government, while dealing with diverse problems arising out of an infinite variety of human relations must of necessity have the power of making special laws, to attain any particular object and to achieve that object, it must have the power of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per se amount to discrimination. When the Absorption Rules are examined from the aforesaid

standpoint and when we consider the circumstances under which the said Rules were made to solve a human problem and that the Rules made were put to objection to the general public and even the Public Service Commission was consulted and finally was (sicwere laid) before the State Legislature to have their concurrence, we are of the considered opinion that the High Court committed an error in striking down the Rules on the ground that they were discriminatory. When this Court deprecates the regularization and absorption, when it comes to the conclusion that such regularization and absorption has become a common method of allowing back-door entries and then regularizing such entries, it is not that in every case, the Court would be justified in striking down the process of absorption or regularization, more so when such absorption has been made as a legislative measure and that also as a one-time measure. and at the same time insisting upon the essential qualifications to be duly complied with, by the persons intended to be absorbed on regular basis.

(Emphasis added)

53. It would be seen that the Hon''ble Supreme Court deprecated the practice of regularisation when it is used as a common method of allowing back-door entries. It saved the regularization in the case of State of Karnataka (Supra) after specifically noticing that it was a one time measure. The facts in hand before us depict an entirely different picture as already stated above that in the last 37 years the State has amended the Act with at least six times for regularization/absorption of temporary teachers/ad hoc teachers while the process of regular open market selection has been given a back seat.

The State earlier experimented by providing Selection Committee under the Act, 1973 for regular appointment on the post of Lecturers. It changed the procedure in its entirety by enforcing the Commission''s Act. The Commission had hardly been able to do justice to the object for which it had been created. The number of selections made against the total number of vacancies available is insufficient to the extent of negligible. Huge number of vacancies as of date i.e. nearly 9000 are awaiting regular selection by the Commission.

54. For various reasons the Commission has not been able to function e.g. non-requisition of vacancies as per the rules applicable, because of absence of members and the Chairman for long durations. Every change of the Government has resulted in change of the Chairman and its members which has made the situation worst. In such circumstances the problem which has been generated qua nonavailability of selected teachers of the required member for Degree Colleges is hand made of the government itself.

55. The legislature decided to delete the provision for ad hoc appointment as provided u/s 16 of the Commission''s Act, so that appointment through regular selection alone could be made. The Commission fails to deliver the goods and the number of vacancies continue to rise and as of date stand at nearly 9000. The State Government come up with the Government Order dated 17.04.1998

providing for part-time teachers to be paid on a per lecture basis through local process of selection based on marks obtained in various academic examinations. Such part-time teachers are now to be regularized u/s 31-E of the Commission's Act.

56. What had been taken away by deleting Section 16 of the Commission's Act, has indirectly been provided for under the Government Order dated 17.04.1998 and now such appointees are sought to be absorbed u/s 31-E of the Commission's Act. The Court fails to comprehend the exact intention of the State except that there is an attempt to somehow or the other to resort to appointments which are initially stop gap/part-time/ad hoc and thereafter to regularise such appointments. The total outcome of such practice is that the quality of education by teachers duly selected by the Commission has been made a casualty and the ultimate sufferers are the students for whom neither the State nor the authorities appear to have any concern.

57. We, therefore, have no hesitation to record that the State should consider to do way with the practice of short term, ad hoc/part time appointments and thereafter to direct regularization. We however refrain ourselves from striking down Section 31-E of the Commission's Act only in the background that such arrangement of absorption shall not be repeated and the State shall ensure regular appointment of Lecturers in the affiliated Degree Colleges with all promptness and all necessary steps for fulfilling the said object without any demur shall be taken.

58. We direct that the Commission shall advertise all vacancies as may be available in Degree Colleges within three months from the date a certified copy of this order is filed before the Director of Higher Education. For the said purpose the Director of Higher Commission shall ensure that letters are forwarded to the Management/Principals of all the Degree Colleges covered by the Commission's Act for requisitioning the existing vacancies along with the details of reservation applicable to the Commission with a copy to the Director within one month of the issuance of the letter. (In case of default by the Management/Principal, serious action should be taken). The Commission shall ensure advertisement of such vacancies and the names of the selected candidates shall be forwarded after due selection to the Director for placement within one year of the Advertisement. This process of placement in various Degree Colleges may be completed in respect of the existing vacancies immediately thereafter (except those which may be covered by Section 31-E of the Commission's Act) qua action shall be taken strictly in accordance with the judgment of the Hon''ble Supreme Court in SLP (Civil) No. 84 of 2004.

59. We may also explain as to what posts would be covered by Section 31-E of the Commission's Act. Section 31-E starts with a clause that the same is subject to the provisions of Section 12 and 13 of the Commission's Act and absorption against vacancies which cannot be filled under the said Section 12 and 13 alone are to be utilized for the purposes of absorption of part-time teachers. Section 12

of the Commission's Act provides that appointment on the post of teachers shall be made on the recommendation of Commission. Section 13 of the Commission's Act provide that Commission shall forward the select list of the candidates to the Director of Higher Education who in turn shall issue orders for placement of the selected candidates against the vacancies advertised. From a bare reading of the aforesaid Section 12 and 13 it would be seen that vacancies which have been notified and have been advertised can be filled u/s 12 and 13 of the Act.

60. It is settled law that the process of selection stands initiated with the advertisement (Vide Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, A.A. Calton Vs. Director of Education and Another, ; P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, and P. Mahendran and others Vs. State of Karnataka and others, . Therefore, once a vacancy has been advertised for direct recruitment u/s 12 it can be filled in accordance with Section 12 and 13 of the Act and it is in this background that the legislature has directed that for the purposes of Section 31-E only such vacancies which cannot be filled u/s 12 and 13 would be available for absorption for part-time teachers. We may clarify that any attempt to fill any advertised vacancy by the Commission through absorption u/s 31-E would adversely effect the reservation applied and may render the advertisement itself as illegal. If such advertised vacancies are withdrawn because of absorption u/s 31-E the entire process of selection already initiated by the Commission would be frustrated and this is not the intention of the legislation.

61. We, therefore, clarify that absorption, if any, u/s 31-E of the Commission's Act can be made only in respect of vacancies which had not been subject matter of an Advertisement by the Commission, such advertised vacancies will not be available for absorption u/s 31-E and the process of direct recruitment has to be completed by the Commission in accordance with law at the earliest.

62. All the writ petitions are accordingly disposed of with the following directions:

(a) Part-time teachers appointed under the Government Order dated 17.04.1998 would continue to function as such till regularly selected candidates recommended by the Commission joins, or in terms of the final judgment of the Hon''ble Supreme Court in SLP (Civil) No. 84 of 2004 whichever is earlier.

(b) Such Part-time teachers shall be entitled to payment at the rate provided for under the Government Order on per lecture basis subject to the maximum prescribed, they are not entitled to salary at par with regular Lecturers.

(c) Absorption u/s 31-E of the Commission's Act shall not be effected in favour of any part-time teacher till the Hon''ble Supreme Court considers and decide the SLP (Civil) No. 84 of 2004.

(d) Absorption, if any, of part-time teachers u/s 31-E of the Act subsequent to the judgment of the Hon''ble Supreme Court (if it is decided in favour of part-

time teachers) would be considered against such substantive vacancies which had not been advertised by the Commission till the enforcement of Act No. 46 of 2006.

(e) The Director of Higher Education shall ensure that all existing vacancies are requisitioned by the Management/Principal of the recognized affiliated and aided Degree Colleges within the time specified above and the Commission in turn shall ensure that regular selection are made against the said vacancies within one year from the date the requisition is received after following the procedure prescribed. The Director shall direct placement of the selected candidates immediately thereafter. There should be no complaint to this Court that selections could not be made by the Commission because of absence of Chairman/other member/other facilities being not made available by the State.