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**(2003) 05 RAJ CK 0085**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 619 of 1999**

Dayalal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision : 07-05-2003**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 23  
Government Aided Hostel Control Rules, 1982 — Rule 6

**Citation : (2003) 4 RLW 2680 : (2003) 3 WLC 599**

**Hon'ble Judges : P.C. Tatia, J**

**Bench : Single Bench**

**Advocate : M. Mridul, sisted by R.N. Upadhyay, for the Appellant; Servashri Ravi Bhansali, A.K. Singh and Mridul Jain, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Prakash Tatia, J.

Heard learned counsel for the parties. These bunch of writ petitions involving substantially common questions of facts and laws are being decided by this, judgment.

S.B. Civil Writ Petition No. 619/1999 & 620/99.

1. Six petitioners preferred this writ petition No. 619/1999. All these petitioners were appointed on the post of Additional Superintendent/Assistant Superintendent vide orders issued on various dates in the years from 1985 to 1986, copies of which are placed on record jointly as Annex. 1. These appointment orders were issued by the District Probation and Social Welfare Officer, Banswara. In the appointment orders of the petitioners No. 1, 4, 5, & 6 it is mentioned that they are appointed on the post of Additional Superintendents on fixed allowance of Rs. 250/- per month with the condition that petitioners will have to remain at headquarters and they will have to work regularly and daily. In the appointment order of the respondents No. 2 & 3, it is mentioned that they

are appointed on the post of Assistant Superintendents with the same condition of remaining at headquarters. In these orders Rs. 250/- have been termed as salary and not as allowance. These all appointments are described as temporary appointments. According to petitioners, duties of Superintendents and Assistant Superintendents have been detailed in the Government Aided Hostel Control Rules, 1982 (for the short Rules of 1982). The duties of the Superintendents and Assistant Superintendents are given in Rule 6 of Rules of 1982. Sub-Rule 7 of Rule 6 of Rules of 1982 provides that the duties/work of Additional Superintendents will be the same as of Assistant Superintendents appointed in the government hostels and wherever in the Rules of 1982 designation of Assistant Superintendent has been used, it will be read as Additional Superintendent for the aided hostels. Meaning thereby work and duties of Additional Superintendent and the work and duties of the Assistant Superintendents shall be the same. Only difference appears to be of description, and if read with sub-rules (8) and (10) of the Rule 1 of the Rules of 1982 further difference is that Assistant Superintendents are to be appointed by the department whereas Additional Superintendents are to be appointed by the aided societies. It is relevant to mention here that though as per sub-rules (8) and (10) of the Rule 1, appointing authorities are different for the above two posts but all the petitioners were appointed by the respondents No. 3 and not by the aided institution, irrespective of the post, whether on the post of Addl. Superintendent or on the post of Assistant Superintendent. The State Government on 7th June 1996 amended the Rules of 1982 and deleted the prefix "Assistant" from the post Assistant Superintendent. The petitioners claimed that after deletion of the word "Assistant" from the Rules of 1982, the petitioners are working on the post of the Superintendents. The petitioners are working on the post of Superintendents is an admitted fact as the respondents have admitted it in their reply to the writ petition.

2. The petitioner of the S.B. Civil Writ Petition No. 620/1999 was appointed on the post of Superintendent by the respondents No. 6 "Sangh" vide Annex. 1. Except this difference of appointment, the facts and the grounds raised in this writ petition are similar to the facts of the S.B. Civil Writ Petition No. 619/1999.

3. The grievances of the petitioners are that the petitioners who were appointed by the respondent Govt. Dept. and working on the post of Superintendents in aided hostels were appointed under the Rules of 1982 and are governed by the same Rules and are discharging the same duties which are being discharged by the Superintendents appointed by the same Dept. under same Rules of 1982 but only difference is that they are working in the government hostels whereas the petitioners are working in the hostels which are aided by the government. Only because of the reason that the petitioners are working in the aided hostels the petitioners are being paid salary of only petty amount of Rs. 250/- per month whereas the Superintendents appointed in the government hostels are being paid much more higher salaries than the petitioners. The salaries of the petitioner have no comparison with the salary paid to the Superintendents working in the

government hostels. The salaries of the petitioners is only Rs. 250/- against salaries of the Superintendents working in government hostels which is Rs. 4000-6100 for category "A" & "B" hostels and Rs. 3200-4900 for the category "C" hostels. According to petitioners of these two writ petitions, though they are not being paid the adequate salary still respondents are threatening that their services will be terminated by the respondents, therefore, the petitioners preferred these writ petitions seeking relief"s of regularisation of their services on the post of Hostel Superintendent from the date of their initial appointment and directions against the respondents directing them to pay the petitioners, pay at per which is being paid to the Hotel Superintendent of class "C" hostels of the Social Welfare Dept. of the Government and in the alternative, the respondents be directed to pay the salary to the petitioners in the pay scales provided by the Rajasthan Civil Services (Revised Scales) Rules, 1998 from the date the petitioners were appointed with further direction to respondents to pay the salary with interest @ of 18% per annum.

4. It is relevant to mention here that in S.B. Civil Writ Petitions No. 619/99 and 620/99 no interim order was passed but in these two writ petitions, the learned counsel for the respondents sought time to "take instructions whether in case of the Assistant Hostel Superintendents, a scheme which has been framed by the State and approved by the Hon"ble Supreme Court in respect of Cooks and Chowkidars, can also be prepared and implemented for the reasons that they are also working for more than 15 years." Despite time granted, the Govt. did not take any decision regarding grievances of the petitioners.

(4) S.B. Civil Writ Petition No. 4106/99, S.B. Civil Writ Petition No. 1628/99

Roshan AH and Lekh Ram preferred two writ petitions, S.B. Civil Writ Petition 4016/99 and S.B. Civil Writ Petition No. 1628/99. Both these petitioners alleged that they were appointed in the government hostels on the posts of Chowkidar. The petitioner Roshan Ali placed on record his appointment order Annexure-1 which was issued by the Assistant Superintendent, Government Hostel, Sri Ganganagar. The Petitioner Lekh Ram has not submitted his appointment order. But his appointment on the post of Chowkidar is not in dispute rather it has been admitted by the respondents in their reply to the writ. These petitioners are getting the Rs. 600/- P.M. only which is said to be salary by the petitioners. The petitioner"s services are in danger due to the order 28.12.98 of the State Government in pursuance of which, the District Probation and Social Welfare Officer issued follow up order dated 21.1.99, directing the concerned hostels to remove part-time Chowkidars and Cooks and appoint Ex-military employee or Ex-military employee"s widows. The petitioners apprehending their termination of . services preferred these two writ petitions seeking quashing of the order dated 28.12.1998 and 21.1.1999 on the grounds that when the services of the Cooks and Chowkidars have been regularised earlier by the State Government by framing a scheme and there exists no reason for not regularising the services of the present petitioners by applying same principle which was applied earlier. It is

also submitted that need of the Chowkidar in hostels is imperative which is also apparent from the order dated 21.1.1999 (Annexure-2) wherein it is mentioned that after removing these part-time employees the post may be filled up from Ex-military employee or from widows of Ex-military employee. It is also submitted that the petitioners are being discriminated and their services are being terminated only to give appointment to the Ex-military employees and their widows to give favour based on no reason and petitioners even right of consideration is denied by the respondents. The petitioners cannot be replaced by these persons.

5. The respondents submitted that though these petitioners were appointed on the post of Chowkidar in the Government Hostels but their appointment orders were issued by the Mess Committee which is constituted from the students residing in the hostels and the appointments were not made by the Government. The State Government is giving only fixed amount of Rs. 600/- per month which is in the form of an aid to the concerned hostel and is paid to the Mess Committee which in turn, pays to these Chowkidars. In the reply to the writ petition it is also submitted that the State Government issued an order on 28.12.1998 in compliance to the order of the High Court Dated 15.7.1998 passed in Ram Babu Sharma v. State and Ors. (1), and decided to stop practice of appointing employees of class IV on consolidated salary/wages and also decided not to keep any employee appointed on consolidated amount/wages, therefore, it was ordered that no further appointment be given to any person on consolidated salary/wages and wherever employees are working on the consolidated salary/wages, they should be removed from service. According to the respondents, therefore, the Department of Personnel issued instructions and directed that those persons who have been engaged in consolidated amount should be removed immediately. It is relevant to mention here that in the above judgment, the High Court deprecated the tendency of the employing Class IV employees or employing any person on any other post on the consolidated amount/wages. It is further submitted by the respondents that the Chowkidars and the Cooks are only part-time employees that too for ten months in a year only and, therefore, the petitioners accepted work on amount of Rs. 600/- per month which was earlier Rs. 300/- per month only. The scheme framed and placed before the Hon"ble Supreme Court to regularise the services of the Chowkidars and Cooks was applicable only upon those employees who were working on 1.5.1995 whereas the petitioners were appointed in the month of January, 1998 and, therefore, they are not covered under the scheme. The respondents in their reply could not give any answer to the questions posed by the petitioners that why the petitioners' services are being terminated merely for making way for another temporary appointment, that is for Ex-army service men or their widows and why the services of petitioners cannot be considered for substantive appointment as per their merit. In these two writ petitions, this Court by order dated 17.5.1999 and 11.11.1999 restrained the respondents from terminating the services of the petitioners, therefore, the petitioners are in service.

(6). S.B. Civil Writ Petition No. 1627/99, S.B. Civil Writ Petition No. 1706/99 and S.B. Civil Writ Petition No. 59/2001

6. These three writ petitions are filed by the employees, petitioners Hans Raj and Tej Pal (S.B. Civil Writ Petition No. 1627/99), Smt. Meera (S.B. Civil Writ Petition No. 1706/99) and Manna Lal (S.B. Civil Writ Petition No. 59/2001) who were appointed on the post of the Cook in the Government Hostel run by the Social Welfare Department on fixed salary of Rs. 600/- per month. These petitioners are seeking relief of quashing of the order dated 28 December 1998 and the order dated 21st January 1999 with further prayers that the respondents be restrained from terminating services of the petitioners and the respondents be directed to pay the salary, payable to the Cooks/Class IV employees which is being paid to the cooks in term of the order of this Court and the order of Hon'ble Supreme Court. The pleas which are taken in the reply to the writ petitions filed by the employees working on the post of Chowkidar are also taken in reply to these writ petitions. In S.B. Civil Writ Petition No. 1706/99 and in S.B. Civil Writ Petition No. 1627/99 on 17.5.1999 this Court directed respondents to maintain the status quo regarding service of the petitioners but in S.B. Civil Writ Petition No. 59/2001 no interim order was passed and on 23.4.2001 the Court directed to list S.B. Civil Writ Petition No. 59/2001 along with other writ petitions No. 1627/99, 1628/99 and-1706/99.

7. In considered the arguments advanced by the learned counsel for the parties, perused the record. Though there are different posts involved in these writ petitions and there are different appointment orders issued by different authorities but looking to the nature of controversy and the point of law involved in these writ petitions, all the writ petitions were heard together and are being decided by this common judgment.

8. Learned counsel for the respondents raised the preliminary objections that the effective alternate remedy is available to the petitioners to challenge the action of the respondents and the petitioners may approach the Labour Court for redressal of their grievances and relied upon the Constitution Bench decision of this Court delivered in the case of Gopi Lal Teli v. The State of Rajasthan and Ors., (2), and upon the judgment of Hon'ble Supreme Court delivered in the case of Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others v. Sahangoo Ram Arya and Anr. (3), where in the Apex Court held that when the statute has provided for the constitution of the Tribunal for adjudicating the disputes of a government servant, the fact that the Tribunal has no authority to grant an interim order is no ground to by-pass the said Tribunal. The learned counsel for the respondents further submitted that when disputed questions of facts are involved, the writ petition cannot be maintained and in support of this learned counsel for the respondents relies upon the judgments of Hon'ble Supreme Court delivered in the cases of State of M.P. and Ors. v. M.V. Vyasaya & Co. (4), State of Goa and Ors. v. Leukoplast (India) Ltd. (5), Visakhapatnam Port Trust and Ors. v. Ram Bahadur Thakur Pvt. Ltd. (6). The respondents also

submitted that since in some of the writ petitions the petitioners have not impleaded the voluntary organisation under whom the petitioners are working, therefore, the writ petitions of the petitioners deserve to be dismissed on this count also.

9. From the facts referred above in detail, it is clear that the facts which are necessary for deciding these writ petitions are not in dispute. The relevant facts are that the petitioners are working on the post of Superintendent, Chowkidars and on the post of Cooks. They are claiming equal salary on the ground of parity in work with the employees working on the same post in the government hostel which are run by the Social Welfare Department of the government. The amount of salary paid to the petitioners and their counterparts in the Social Welfare Department are not in dispute rather are admitted facts. The duties which are discharged by the petitioners and the similarity in the duties which are being performed by the petitioner's counterpart in the Hostels run by Social Welfare Department of the Government are also not in dispute rather it is an admitted fact by the respondents that the employees appointed in the hostel is run by the Social Welfare Department of the government and the duties of the employees appointed in the Hostel run by the voluntary organisation or societies are the same. Not only this but the Rules of 1982 also says that work and duties will be the same, irrespective of fact whether these employees are working in the Hostels run by voluntary organisations or societies or by the Social Welfare Department of the Govt. It is also admitted fact that both the set of employees are governed by the same Rules of 1982. Letal question on the basis of above undisputed facts arises is whether the petitioners are entitled for the same pay which their counter parts are getting? Therefore, the writ petition of the petitioners cannot be dismissed on alleged ground of involvement of disputed questions of facts and the judgments relied upon by the learned counsel for the respondents have no application to the facts of this case. It is further relevant to mention here that in the writ petition in which the voluntary organisation is also party, no such objection was raised by those private respondents.

10. Though the respondents raised the objection of availability of alternate remedy but failed to substantiate how the reliefs claimed by the petitioners can be granted by the Labour Court particularly, the directions against the respondents to frame any scheme for regularisation of the services of the petitioners and pay the salary which is being paid to the employees holding the equivalent post in the different Hostels run by the respondent's Department- The judgment of the Supreme Court delivered in the case of K. Krishnamacharyulu and Ors v. Sir Venkateswar Hindu College of Engineering and Anr. (7), applies to the facts of this case as public interest is involved in these matters and therefore, the writ petitions cannot be . dismissed. The facts of these matters disclose presence of public interest in this matter which is that, whether petitioners can be given a fix salary of negligible amount against their full time work that too, for forever despite the constitutional prohibition of taking Begar under Article 23 of the Constitution of India? Therefore, in view of the peculiar facts of involvement

of undisputed facts and looking to the nature of the dispute and the reliefs claimed by the petitioners in the writ petitions and to examine the allegations of violation of fundamental right of the petitioners, the reasons demand exercise of powers by the High Court under Article 226 of the Constitution of India to examine the matter instead of leaving the matter for deciding it by an other form.

11. Coming to the merit of the cases; in identical dispute relating to this very Social Welfare Department, of the Govt. of Rajasthan, the matter relating to employees appointed on the post of Cooks and Chowkidars were subject matter in Appeal No. 385/94 which was decided by this Court on 16.2.94 and decision of this court was challenged and taken up to the Hon"ble Supreme Court by the State of Rajasthan by filing State of Rajasthan and Ors. v. Mod Singh and Ors. (8). The said SLP was decided on 29th March 1996 on the basis of a scheme placed before the Supreme Court by the State Government. The State itself submitted the scheme to regularise the employees and employees who completed service of the period of not only five years or two years but worked only for even lesser period of one year and working on 1st May 1995, their services were regularised by the State. According to petitioners when the employees who worked only for one year and even lesser period still their services had been regularised by the State Government with all monetary benefits then there is no reason for not regularising the services of the petitioners and giving same benefit to the petitioners by the State. The petitioners therefore claimed that they are entitled to be regularised on the post of the Superintendent as done in the matter of Chowkidars and the Cooks or by preparing a scheme of the same nature referred above. Learned counsel for the petitioners vehemently submitted that the respondents instead of considering the cases of the petitioners for regularisation of the services of the petitioners on the posts, are bent upon to remove the petitioners to make room for others like Ex-army persons and widows of Ex-military employee which the respondent could not justify before this court which is clear from the reply of the State. It is also submitted that the petitioners are also eligible candidate .for the post and at least have right of consideration for the post which is denied by the respondent. The petitioners also claimed the same emoluments which are being paid to the Hostel Superintendents in the social welfare Department on the ground of "equal pay for equal work". It is also submitted that, it is strange that the petitioners are being paid salary of Rs. 250/- per month whereas the persons working under them like Chowkidars and Cooks, are getting much more salary therefore, the action of the respondents is highly arbitrary, unreasonable and unfair. According to the petitioners payment of Rs. only 250/- per month is nothing but taking Begar from the petitioners which is permitted by Article 23 of the Constitution of India.

12. The respondent State submitted reply to the writ petitions, denying the allegations levelled by the petitioner. According to respondent-State and the Social Welfare Department the petitioners were employed by the voluntary organisation/Society and not appointed by the either State for by the Social

Welfare Department. As per sub-rule (10) of Rule 2 of the Rules of 1982 appointment on the post of Additional Superintendent can be given only by the aided institution itself and therefore, the petitioner cannot claim any relief from the respondent State or from its Department, that is Social Welfare Department. As per sub clause 2 of the sub Rule 6 of the Rules of 1982, the aided institutions are liable to make the payment of the salaries and allowances of the Assistant Superintendents appointed by such institutions. The respondents also submitted that the appointments of the petitioners itself are contrary to the Rules as the respondent No. 3 was not competent to issue any appointment order for the post Additional Superintendent or any person in the aided hostels, as the right of appointment vests with the aided Voluntary Organisation/Society only. The respondent department is only providing allowance of Rs. 250/- per month and Rs. 600/- per month as the case may be looking to the post and which is paid to the Mess Committee of the institution by the Department. It is further submitted that the pay scales of the Hostel Superintendents in A & B Categories of Hostels have been prescribed in the Rules of 1982 but the same are applicable only in the hostel which are being run by the government. Therefore, the petitioners are not entitled for the same salary and allowances which are paid to the employees appointed in the government hostels. However, in para 9 of the reply, the respondents admitted that the Superintendents are required to stay at the hostel for 24 hours if the accommodation is available in the hostel.

13. The judgments relied upon by the learned counsel for the parties are required to be considered first as identical controversies were raised and considered in various earlier judgments of this Court as well as by the Supreme Court. This Court in the Civil Writ Petition No. 3453 of 1994, Anshkalin Samaj Kalyan Sangh, Banswara v. The State of Rajasthan and Ors., (9), decided on 26 May 1995, considered the same controversy in detail. Brief facts of the above case will be relevant in these cases also. This writ petition was filed by the Association of the employees of Banswara. The members of the petitioner-Association were in service as Cook or Chowkidar since last one year to 14 years and were getting salary of Rs. 330/- per month only. Those employees sought regularisation of their services on same grounds which are taken by the petitioner in these writ petitions. In that writ petition also the defence of the State was that these employees were employed by the "Mess Committee" running respective hostels and the work of the employees is only part-time work. This Court considered large number of judgments of the Hon'ble Supreme Court which are; in the cases of Dhirendra Chamoli and Anr. v. State of U.P. (10), Surendra Singh and Anr. v. Engineer in Chief, CPWD and Anr. (11), Bhagwan Das and Ors v. State of Haryana and others (12), Daily rated casual Labour Employees under T.N.T. Department through Bhartiya Dak Tar Majdoor Manch v. Union of India and Anr. (13), U.P. Income Tax Department, Contingent Paid Staff Welfare Association v. Union of India and Ors. (14), Bhagwati Prasad v. Delhi State Mineral Development Corporation v. Delhi State Mineral Corporation (15), The Dharwad District PWD Literate Daily Wages Employees Association etc. v.

State of Karnataka and Ors. etc. (16), Graih Kalyan Kendra Workers Union v. Union of India and Ors. (17), Karnataka State Private College Stop-gap lecturers Association v. State of Karnataka and Ors. (18), Sandeep Kumar and Ors. v. State of U.P. and Ors. (19), S.K. Nair and Ors. v. Union of India and Ors. (20), Director, Institute of Management Development, U.P. v. Smt. Puspa Srivastava (21), State of Haryana and Ors. v. Piara Singh and Ors. (22), Vijay Kumar and Ors. v. State of Punjab and Ors. (23), State of W.B. and Ors. v. Hari Narain Bhowal and Ors. (24), and various judgments of the Rajasthan High Court on the points relating to the right of equal pay for equal work and its assumed status of fundamental right in service jurisprudence having regard to the constitutional mandate under Articles 14 and 16 of the Constitution of India and the point relating to the temporary and ad hoc appointments continued for long were also considered and, thereafter, in the above judgment it has been held :-

"The "Mess Committees" of the hostel is not a corporate entity or a distinct individuality. This is a committee appointed under the Rules of 1982. The arrangements which are the "Mess Committee" is supposed to manage the hostels is not even like an arrangement with an independent contractor moreover even a person employed through an independent contractor can be taken to be an employee of the principal who engaged the contractor. In this case the employment is said to be through "Mess Committee" which is nothing but a body appointed by the State itself to carry on day to day activity and to look after daily chorus of the hostel."

14. After this, the Court considered the relevant provisions of the Rules of 1982 relating to the nature of the duties of the Cooks and Chowkidars and thereafter, held that the Chowkidars and Cooks are whole time workers. The Court also found that no fresh appointment on a fixed amount is to be made if the hostel is attached to an educational institute and for the independent hostels it has not been provided that part time class IV employee will be appointed and the class IV employee has to be on the premises 24 hours and has to work as office peon of the hostel- office as well as to look after the cleanliness of the hostels and thereafter the court held that job of the class IV employee in the hostel is full time job. Ultimately, it was held that all Class IV employees, Chowkidars and Cooks employed in such hostels are entitled to pay equivalent to their counter part serving in the government but declined to issue directions for their regularisation straightway. Instead of directing respondent to regularise the services of the employees, the court directed that the employees who have put in service of five years or more shall be immediately taken up for consideration and scheme for regularisation of their services shall be framed and put into effect within a period of six months. Not only this but this Court directed to frame a scheme for regularisation of employment of such employees who have not completed five years service. The directions were made applicable in the cases of all the employees similarly situated working in the hostels of the Social Welfare Department of the State irrespective of the fact whether such employees have filed writ petitions or not, however, it was made clear that benefit of this order

shall be available to only those employees who were in service on the day of filing of petition or the date of this order as the case may be. It appears that directions issued by this Court in S.B. Civil Writ Petition No. 3453/94 in its decision dated 26.5.1995 were accepted by the State Government and an action plan/scheme to regularise 775 part-time employees was framed to regularise the services in phased manner. This plan appears to have been submitted before the Hon'ble Supreme Court in Special Leave to State of Rajasthan and Anr. v. Mod Singh (25), which was decided along with other connected Special Leave to Appeals. It appears that one earlier judgment of the Division Bench of this Court delivered in D.B. Civil Special Appeal No. 385/94 dated 19.2.1994 was challenged by the State before the Hon'ble Supreme Court which was also relating to the same controversy and, therefore, the scheme, framed by the State Government in pursuance of the directions given in S.B. Civil Writ Petition No. 3453/94 dated 26.5.95, was submitted before the Supreme Court and on the basis of this scheme the Supreme Court by its order dated 29.4.1996 in Special Leave to Appeal (Civil) No. 21173/94 and connected appeals disposed of the Leave to Appeals with direction to the State Government to regularise the services of the employees as per the scheme. It appears that though the scheme was framed in pursuance of the direction issued in S.B. Civil Writ Petition No. 3453/94 decided on 26.5.1995 but the said judgment was under challenge before the Division Bench in D.B. Special Appeal No. 553/95 and before the decision of that appeal since the State Government submitted scheme for regularisation of the employees before the Supreme Court in the SLP referred above and the Special Leave Petitions were disposed of by the Supreme Court by its order dated 29.3.1996, the Division Bench of this Court also disposed of the appeal of the State Government on 18.7.1996 against the decision of this Court dated 26.5.1995 and issued same directions to the appellant-State to regularise the services of the members of the petitioner-Association in accordance with the scheme which was submitted before the Supreme Court.

15. It is clear from the direction issued by this Court in Anshkalin Samaj Kalyan Sangh's case (S.B. Civil Writ Petition No, 3453/94) that benefit of the order dated 26 May 1995 be provided to all similarly situated employees working in the hostels under the Social Welfare Department of the State irrespective of the fact whether such employees have filed petitions in the court or not and further direction to give benefit of this order to those employees who were in service on the day of filing of the petition or the date of the order passed in above writ petition as the case may be. The respondents despite this direction of this Court did not disclose in what circumstances again the petitioners were given appointment on the post of Cooks and Chowkidars particularly in the light of the observation of this Court in said judgment that "mess committee" is not a corporate entity or a distinct individuality and the committee is appointed under the Rules of 1982 and supposed to manage the hostels which is not even like in arrangement with an independent contractor and despite the observations of the High Court that even a person employed to an independent contractor can be

taken to be an employee of the principal who engaged the contractor and knowing it well that services of Cooks and Chowkidars are full time services and not part time services. At this stage i need not to go into to find out, whether the petitioners can claim their direct employment even if their appointment order are issued by the "Voluntary Organisations or Co-operative societies" or by the "mess committee". The fact is that (1) the petitioners are in employment and the employment was given under Rules of 1982 and (2) the employees similarly situated and worked for five years or even lesser period were given benefit of their services by framing scheme and (3) the State Government permitted these employments (of Superintendents) for such a long period of about 13 years when the writ petitions were filed and now the petitioners have almost completed about more than 17 years and despite above referred judgment of this court the Cooks and the Chowkidars were given appointments again then (4) why the similar scheme cannot be framed to regularise the services of these employ ees in the same line in which the scheme was framed earlier has not been disclosed and particularly because of the reasons that (5) the posts are available and (6) these employees cannot be denied their right of consideration nor can be compelled to work on such of meagre consolidated amount of only and (7) the practice of employing class IV and other employees on consolidated amount was deprecated by the High Court and (8) the directions of the High Court issued in the writ petition No. 497/98 Ram Babu Sharma v. State and Ors. And the directions issued in S.B. Civil Writ Petition No. 3453/94 could have been implemented by framing scheme but instead of giving effect to the direction of this Court and instead of giving effect to the directions of this Court in true sprit and perspectives, in fact the State flouted the spirit and the direction of this Court. So far as appointments to the post of Cooks and Chowkidars are concerned, certainly they were given appointment in the years 1995 and onwards but by now these employees have completed service of about more than 3 to 7 years. As per the direction of this Court delivered in case of Anshkain Samaj Kalyan Sangh, the appointments on the post of Cooks and Chowkidars are full-time job and it is not in dispute that posts are in existence and required to be kept filled, therefore, for these employees also there exists no reason for not framing the same scheme as framed earlier as right of consideration of their candidature accrued in favour of these employees also and these employees cannot be removed to give appointment to the exarmy servicemen or their widows. Therefore, the petitioner are entitled for the reliefs claimed in the writ petitions.

16. Above is one aspect of the matter and otherwise also the petitioners are entitled for the reliefs claimed by them for the reasons given hereafter. The question of nature of job of the Superintendent, Assistant Superintendent and Additional Superintendent engaged in the hostels run by the Social Welfare Department and the Hostels run by the aided institutes were not subject matter in the above writ petitions but this will not detain us for long in view of the fact that the respondents issued notification dated 7.6.1996 and deleted the word

"Assistant", a prefix from the post "Assistant Superintendent" and in reply to the writ petition the respondents very rightly admitted that the Superintendents are required to stay in the hostels for 24 hours. Sub-rule 7 of Rule 6 of the Rules of 1982 even before withdrawal of prefix "Assistant" from the post "Assistant Superintendent" provided that the work of the Assistant Superintendent and the Additional Superintendent appointed in the aided hostel and the government hostels respectively will be the same. Therefore, after deletion of the word "Assistant" from the Rules of 1982 and looking to the nature of the duties there is no distinction between the work of Superintendents appointed or working in the government hostels or in the aided institutes. This position makes it clear that the employees, for whom 90% aid is given by the State Government and framed the Rules for these employees and are in force since 1982 and are being amended by the State Government by issuing orders from time to time and the appointment orders are issued from the Government Departments which is clear from the six orders placed on record by the petitioner in writ petition No. 619/99, are at par with their counter parts working in the Government Hostels run by the Social welfare Department of the State. Though the State in its reply submitted that the appointment on the post of Additional Superintends in the hostels" are to be made by the voluntary organisation or the society who are running the aided hostels but the fact is that the appointment orders were issued by the District Probation and Social Welfare Officer, Banswara and not by the voluntary organisation or the society. Even appointment orders of petitioners Sukh Dev and Mangi Lal on the post of Assistant Superintendent were also issued by the District Probation and Social Welfare Officer, Banswara. The appointment orders which were issued as back as in the year 1985 to 1986 and in pursuance of which these petitioners are working and getting the petty amount of Rs. 250/- per month which is coming from the government itself, may it be through any agency like the voluntary organisation or the society, the State is now cannot, in the year 1999, that too in reply challenge the appointments of these petitioners. If the State Government treated those appointments as illegal then how the State Government continued to give aid to maintain the illegal appointments has not been explained by the respondents. It is an admitted position that the Assistant Superintendents could have been appointed by the Departments of the State only and Additional Superintendents are required to be appointed by the aided institutions, then it appears that in appointment orders the petitioners have been wrongly described as Additional Superintendents and in fact they were appointed on the post of Assistant Superintendents. This appears to be well understood by the respondent-State, therefore, after the deletion of word Assistant from the post "Assistant Superintendent", the persons working on the post of Assistant Superintendents are working on the post of Superintendent only in pursuance of the order dated 7.6.1996 (Annexure 2), copy of which is placed on record in S.B. Civil Writ Petition No. 619/99. In reply to the writ petition the respondents further submitted that the employees working on the post of Additional Superintendent are also now working as Superintendent in the aided hostels run by the voluntary organisation or the society. These facts make it clear

that the employees were appointed by the department and irrespective of the designation given to them either Assistant Superintendent or the Additional Superintendent, their designations have been changed by the State Government and in addition to above, their services are sought to be terminated by the order of the State Government only. Therefore, by no stretch of imagination it can be said that these petitioners were not appointed by the department of the State Government. This Court in *Anshkalin Samaj Kalyan Sangh v. State of Rajasthan & Ors.* (26), even held as under :-

"A reading of Rules of 1982 framed by the State Government as executive instructions (Annexure R/1 to the return) clearly shows that the hostels are run by the State and even those hostels which are not run by the State are aided and effectively controlled by the State."

And, thereafter, further held as under :-

"In this case the employment is said to be through "Mess Committee" which is nothing but a body appointed by the State itself to carry on day to day activity and to look after daily chorus of the hostel."

And observed that :-

"Even a person employed through an independent contractor can be taken to be an employee of the principal who engaged the contractor."

And thereafter, the Court directed the respondent-State to frame the scheme to regularise the services of the Chowkidars and the Cooks appointed by the Mess Committee running the hostels, the petitioners cannot be given a different treatment than the treatment given to the Chowkidars and the Cooks. After the above decision of this Court, the entitlement of equal benefits of the salary to the persons doing the same work but not in government employment was further considered in a number of judgments, one of which relied upon by the learned counsel for the petitioners is delivered in the case of *Chandigarh Administration and Ors. v. Mrs. Rajni Vali and Ors.* (27). In this case, the lecturers who were teaching different subjects in class XI and XII demanded salary at par with their counter parts and sought relief that expenses so incurred should be apportioned by the Chandigarh Administration and the management of institution in the ratio 95% and 5% as is being done between the State Government and the management of the institution aided schools. The Supreme Court after considering earlier judgments of the Supreme Court held that there is no jurisdiction for denying the claim of the respondents for parity of pay scale and if the contention of the appellant will be accepted it will amount to confirming the discriminatory treatment against the respondents. The Hon'ble Supreme Court also observed that the State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. I need not to refer much more authorities cited by the learned counsel for the petitioners in view of the recent decision of Division Bench of this Court delivered in D.B. Civil Writ Petition No. 2565/99 and other connected 23 petitions

decided on 28.5.2002 wherein the Division Bench after considering various earlier judgments and the constitutional scheme held that the teachers of aided educational institutions must be paid the same pay scale and allowances as that of the teachers in government educational institutions and the Division Bench in this judgment further held that :-

Once the government has decided to provide grant-in-aid in accordance with the Section 7(3) and 7(4) of the Act, it leaves no room for the sanctioning authority to exercise its discretion to grant or not to grant aid in regard to the items covered u/s 7(3) and 7(4) of the Act."

And, thereafter, held that :-

"Selection scale being salary, once the State Government has decided to grant aid to the NGEI (Non-Government Educational Institutions), it will form the part of grant-in-aid and thus the State Government in the eventuality of sanctioning the grant will pay for the same in accordance with the percentage prescribed to be category in which the NGEIs is placed."

17. The sum and substance of the above judgments is that even the employees of a private institution in given circumstances as mentioned in the judgments above can claim parity of the salary with the government employees discharging the same duties which the employees engaged in the particular institution are discharging and once the State Government decides to give grant or aid then the State Government is bound to give the grant or aid so that the employees working in private institutions and getting aid from the government, they may get the salary at par with their counter parts working in the government. Here the position of the petitioners is better than the position of the persons who were found to be entitled for the benefit of the parity of salary in the above referred judgment because of the reason that all the petitioners are not only discharging the duties which their counter parts are discharging but here the appointments are made under the same set of the Rules under which the Superintendents working in the government hostels were appointed, therefore, the discrimination is more grave. It will be further relevant to mention here that the petitioner in S.B. Civil Writ Petition No. 620/99 submitted that these hostels are for the children of Schedule Tribes and Schedule Castes and for other migratory community who are pursuing studies in the different classes from Class VI to XI and government provides 90% of the aid for the expenses incurred on the running of these hostels and there is full control of the Government over these hostels. The State in its reply admitted the facts mentioned by the petitioner. Therefore, also there appears to be no jurisdiction for the State to give a discriminatory treatment to the employees of the private aided institutions of such nature which are also essential part of maintaining the educational standards of the students. Therefore, the principles on which the benefits have been given to the teaching staff of the private educational institutions getting the aid from the government, the employees working in the even hostels run by the voluntary organisation/society are also entitled for the same benefits which are

made available to their counter parts working in the hostels run by the government itself.

18. Next is whether there exists any jurisdiction for removing the petitioners from services? The services of the petitioners are being sought to be terminated in compliance of the decision of the government dated 28.12.1998 which is said to be taken in compliance to the directions issued by the High Court in *Ram Babu Sharma v. The State and Ors.* (28), decided on 15.7.1998. The direction of this Court mentioned in the order Annexure-3 itself makes it clear that the act of the State Government of giving appointment to poor persons on consolidated fixed amount was deprecated by the High Court and this condemnation is being encashed by the State by removing the employees working for such a long period of more than 5 to 17 years without considering that whether the stigma upon it, of giving less salary to the employees, can be removed by the State government by framing a scheme again as framed earlier and approved by the Hon''ble Apex Court and by giving relief to the poor employees of the regular salary by regularising their services, the State Government straightway issued directions to take the bread from the these poor employees. Not only this but in alleged compliance of the direction of this Court, the Social Welfare Department issued directions to remove these poor employees and engage other persons from Ex-army persons or their widows without disclosing any reason why these poor employees who are working since so many years and the posts are available, cannot be even considered for giving regular appointment with regular pay scale if the procedure of appointing employees on consolidated amount is not permissible as held by this Court in the above *Ram Babu Sharma v. State and Ors.* (supra), decided on 15.7.1997 ? This shows complete non-application of mind of the State Government over the directions issued by this Court in the above writ petition and the State authorities failed to implement the directions of this Court in correct and proper spirit and perspective and because of absolutely unwanted erroneous decision, the poor employees are made to suffer heavily. Therefore, the orders dated 28.12.1998 and dated 21.1.1999 cannot be allowed to stand and deserves to be quashed and set aside.

19. This Court in above writ petition No. 3453/94 held that direction to regularise the employment of employees cannot be issued by the court. The Division Bench of the Court in the case of *Kalu and 12 Ors. v. U.O.I. and Ors.* (29), in which I was also party to the judgment, after considering the number of judgments of the Hon''ble Supreme Court also held that the regularisation cannot be Claimed merely on the basis of the long period of service but at the same time, it has been held that the employer may frame a scheme to give uniform benefit to the employees and can judge the suitability of the employees and regularise the services of the employees. Here in this case when once this Court has issued directions which have been accepted by the respondent- State and scheme was framed which was placed before the Hon''ble Supreme Court, and the Hon''ble Supreme Court directed to give effect to the scheme then, if the State has committed the same mistake or allowed the mistake to be continued in giving

appointments to the employees and the employees worked for several years, much more years than the years for which the employees worked and whose services were regularised, then it was the duty of the State to first find out why the scheme of the same type cannot be framed and implemented to give similar treatment to these employees though appointed subsequently but appointed either by the State or by the authorities over which the complete administrative control as well as financial control is of the State Government. It is relevant to mention here that the respondents were given opportunity to explain why the same scheme which was framed earlier cannot be framed to regulate the services of the petitioners by order dated 10 December 2001 in S.B. Civil Writ Petitions Nos; 619/99 and 620/99 but the State could not submit any reason against framing of the scheme once again. Therefore, also the petitioners are entitled for the relief of direction against the respondent State for framing the scheme for regularisation of the petitioners' services and the respondents have no right to terminate the services of the petitioners by taking help of the directions issued by this Court in the S.B. Civil Writ Petition No. 497/98 Ram Babu Sharma's case decided on 15 July 1998.

20. Most shocking aspect came to the notice of this court in these matters is that the petitioners, who are working for 24 hours and are having very decorative name of their designation like SUPERINTENDENT, are getting meagre sum of Rs. 250/- per month in the year 2003 in the organisations where the Cooks and Chowkidars are getting salary of Rs. 600/- per month, for their important duties of maintaining complete books and accounts for the hostels and the mess and they are to work as officiating cashier and is required to stay in the hostels itself, if accommodation is available. This is nothing but taking Begar b the employer from these employees in violation to the Article 23 of the Constitution of India. Unfortunately, nobody raised voice against this exploitation of the poor citizen of India with seriousness. The petitions were filed for getting the salary at par with the salary which is paid to their counter part employees. The petitioners could have submitted that the salary paid to them itself cannot be justified and even if no other employee, working on the same post, is getting higher salary still petitioners cannot be denied grant of higher salary because the amount of the salary paid to the petitioners cannot be justified and it even amounts to taking Begar from the petitioners in violation to constitutional provision of Article 23 of the Constitution of India. The court can take judicial notice of the fact that no one can survive on this small amount of Rs. 250/- or Rs. 600/- P.M. what to say about survival of employee's family or even only spouse on this salary when the prices of all commodities have gone so high and for which the courts have taken judicial notice on many occasions and in one of instance even quashed the statutory provision of the Rent Control Act, putting restriction against raising of rent. It appears that giving of such a poor salary of Rs. 250/- to an employee which is in the specific knowledge of the State Government itself was never examined by the State nor it was taken up by the any social organisation and if taken up by any social organisation then must have been left without taking it to

logical end to the stage of relief to the poor employees.

Giving a person employment on shockingly low salary demonstrates only the browbeaten and broken condition of the person serving for such a salary. The Sin in the form of salary given to such a cowed and scared person only prevented the person for time being from fighting for his self-respect and dignity which is sign of danger for any civilised society. The legislature might have thought that employer will be fair, enough and will give an appropriate name to their employees designation and therefore, framed the law to protect the exploitation of "workmen", "Labour", "daily wages employees" and the persons engage in the employment having identical or similar designations and the legislature might not have thought that the employer may not be so honest as expected, in describing their employees and therefore, probably have not framed any appropriate law to protect the right to live with self-respect and dignity of the employees having decorative namesake designations which brings them out from the purview of the statutory provisions protecting the minimum salary for their whole time work. The constitutional provision prohibiting Begar under Article 23 of the Constitution of India, very rarely made base for challenge to such inhuman acts of the States. Unfortunate aspect in this matter is that the employees are suffering continuously since decades and the State despite claiming that the State is giving 90% aid for these employees ignored that the State is hundred percent responsible to give effect to the Constitutional provisions and more onerous duty upon the State is when the matter is relating to the life of the citizen of the India.

Neither the State has right to pay a such paltry sum of rupees in the name of salary nor the State can ignore the fact that because of the sole reason of aid provided by the State, the employees are getting such paltry amount as salary and no one can take work from any citizen of India without giving at least minimum of the salary which is either fixed by law or by contract but must be reasonable remuneration for the services and that cannot be less than the amount which may be needed for men to "Live" otherwise it will violate the constitutional provision of Article 23 of the Constitution of India and for which the courts are competent to issue appropriate directions. The same principle applies to the Cooks and Chowkidars working on the sum of Rs. 600/-. It will be relevant to once again mention here that this litigation started because of the reading in the reverse direction of the spirit of the decision of this Court wherein keeping employees on fixed or consolidates sum was deprecated and this condemnation has been used by the State to deprive the employees from their employment itself leaving them to die. Therefore, even if the employees working in the hostel aided by the government and may be run by anybody, may it be voluntary organisation or any society, the employees are entitled for the respectable salary appropriate to their nature of work.

21. Therefore, the writ petitions filed by the petitioners deserve to be allowed. Hence allowed and it is held that the petitioners working on the posts of Superintendents, Cooks and Chowkidars are entitled for the salary which is given

to their counter parts holding the same post in the hostels run by the Social Welfare Department of the State Government. This entitlement will be from the date of filing of the writ petitions by the petitioners. Since it is also found that the services of the employees working in the hostels on consolidated amount are sought to be terminated on the basis of entirely wrong, unjust and illegal approach, therefore, the petitioners shall be permitted to continue to work on the post which they were holding on the date of filing the writ petition. The State government is directed to frame scheme in the same line in which the State government framed the earlier scheme and which was placed before the Supreme Court and the Supreme Court directed to implement the said scheme. The orders of the State Government dated 28 December 1998 and 21st January 1999 are quashed and set aside. The petitioners are entitled for the cost of the writ petition.