

**(2010) 12 AHC CK 0231**

**In the Allahabad High Court**

**Case No :** Writ Petition No. 1175 (SB) of 2009 Connected with W.P. No. 838 (SB) of 2010; W.P. No. 703 (SB) of 2010; W.P. No. 539 (SB) of 2010; W.P. No. 369 (SB) of 2010; W.P. No. 1092 (SB) of 2009; W.P. No. 1328 (SB) of 2009; W.P. No. 394 (SB) of 2010; W.P. No. 1185

Dr. Gaurav Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 22-12-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12, 12(3), 12(4), 13, 31E

**Citation :** (2011) 1 UPLBEC 665

**Hon'ble Judges :** Vedpal, J;Devi Prasad Singh, J

**Bench :** Division Bench

**Final Decision :** Allowed

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**Judgement**

Devi Prasad Singh, J.—The part time teachers working in various degree colleges in State of U.P. affiliated to respective universities, governed by the U.P. State Universities Act, 1973 (in short 1973 Act), have approached this Court under Article 226 of the Constitution of India for regularization of their services as well as for payment of regular pay scale. The regularization and absorption has been claimed against duly created posts of lecturers in terms of Section 31-E of U.P. Higher Education Service Commission Act, 1980 (in short referred to as Commission Act), added by Third Amendment Act No.42 of 2006.

2. Brief facts giving rise to the dispute are discussed hereinafter:

Since regular vacancies of the post of Lecturer in various degree colleges in the State of U.P., could not be filled up under the Commission Act, expeditiously, creating obstruction in imparting education to students, the State. Government of U.P., by an order dated 22.7.1986, permitted the Committee of Management of respective degree colleges to make appointment of part time lecturers on

payment of fixed honorarium. Claiming regular pay scale being appointed against aforesaid vacancies, the part time teachers preferred Civil Misc. Writ Petition No.4812 of 1988 Km. Renu Tewari and Others v. The Director, Higher Education, U.P., Allahabad and Others. The petition was allowed by the order dated 4.10.1996 by a Division Bench of this Court. The operative portion of the judgment dated 4.10.1996 (supra), is reproduced as under:

In the premise we are of the view that the Government Order dated 22.7.1986 is liable to be quashed and the petitioners are entitled at least the minimum pay scale in the regular pay scale for lecturers teaching in same colleges. According to the petitioners it is scale of pay of Rs.2200-4000/-. In the circumstances, we direct that the petitioners be paid salary instead of per lecturer equivalent to Rs.15/-, if not already enhanced, in the minimum of the scale of pay. In case the pay scale has been enhanced, then salary shall be paid in the enhanced pay scale. We further provide that the case of the petitioners for regularization be considered in the light of observations made above and in accordance with law.

The writ petition is allowed in terms mentioned above. Parties to bear their own costs.

3. The Special Leave Appeal, filed against the judgment and order dated 4.10.1996 in the case of Km. Renu Tewari (supra), was dismissed, by the order dated 5.5.1997 passed by the Hon''ble Supreme Court after condoning the delay in filing the special leave petition. In view of dismissal of SLP by the Hon''ble Supreme Court with regard to the case of Km. Renu Tewari (supra), a large number of writ petitions were filed from time to time and almost all of them were decided in terms of judgment and order in the case of Km. Renu Tewari (supra).

4. Since still the Higher Education Service Commission was slow in filling the regular vacancy at its end, the State Government took a policy decision by the Government Order dated 7.4.1998 permitting the Committee of Management to engage part time teachers on payment of honorarium subject to condition that candidate must possess requisite qualification in accordance with norms of University Grant Commission (UGC) and approval given by the Director Higher Education with regard to Government-added graduate and post graduate colleges. In consequence thereof, in the Government-added degree and post graduate colleges, a large number of part time teachers were appointed subject to payment of honorarium.

5. An association of part time teachers, "Uchch Shiksha Yuva Kalyan Samiti" filed Civil Misc. Writ Petition No.37014 of 1999 which was allowed by a Division Bench of this Court at Allahabad, vide judgment and order dated 12.4.2002 in terms of judgment in the case of Km. Renu Tiwari (supra). It was impugned before the Hon''ble Supreme Court by the State Government and the judgment and order dated 12.4.2002 was stayed by their lordships of Hon''ble Supreme Court. Later on, the State Government on 20.3.2007, had withdrawn the SLP filed against the judgment and order dated 12.4.2002 (supra), on the ground that the State

Government was inclined to absorb the part time lecturers on their respective posts subject to fulfilment of certain conditions. Since SLP was withdrawn, the Uchch Shiksha Yuva Kalyan Samiti filed a contempt petition on account of non-compliance of the judgment and order dated 12.4.2002 (supra). It appears that in consequence thereof, the Government Order dated 21.11.2007 was issued providing therein that all part time teachers who preferred writ petitions, shall be paid minimum pay scale at the rate of Rs.8000/- per month. The Government Order dated 21.11.2007 is reproduced as under:

6. The order dated 21.11.2007 was further modified by the State Government by subsequent order dated 6.1.2009 which is reproduced as under:

7. Again, the State Government by Office Memorandum dated 13.1.2009, has rejected the payment of honorarium while deciding certain representations. Thereafter, the amount with regard to honorarium was increased to the maximum limit of Rs. 12,000/- by the Government Order dated 23.1.2009 subject to deduction of Rs.600/- for non-working days.

8. In the meantime, a part time teacher Malvika Shekhar filed Civil Misc. Writ Petition No. 44332 of 2003 Malvika Shekhar v. Director Higher Education, U.P.) for continuance of service and payment of honorarium. A Division Bench of this Court at Allahabad, while dismissing the writ petition by its judgment and order dated 29.9.2003, directed the State Government that since there is no provision in the Act to make appointment on the basis of honorarium, all the appointments of part time teachers shall be rescinded and the vacancies shall be filled under the U.P. Higher Education Services Commission Act.

9. The judgment in the case of Malvika Shekhar's case (supra) passed by the Division Bench at Allahabad, was stayed by Hon'ble Supreme Court and order of termination was kept suspended. It appears that during the pendency of special leave petition, in the Hon'ble Supreme Court in the Malvika Shekhar's case, a bunch of writ petitions was filed in this Court challenging the validity of Section 31-E of the Commission Act as well as part time teachers appointed in pursuance of the Government Order dated 7.4.1998, claiming salary at par with the regular appointees. All the writ petitions were clubbed together and heard finally by a Division Bench. The leading writ petition was, Writ Petition No.5110 of 2007 : Anurag Tripathi and another v. State of U.P. and Others. The case of Anurag Tripathi (supra) was heard and decided by the Division Bench, vide judgment and order dated 4.4.2008. While deciding finally, the Division Bench took note of the fact that SLP No.84/2004 was pending in the Hon'ble Supreme Court with regard to judgment in Malvika Shekhar's case. The Division Bench upheld the vires of Section 31-E of the Commission Act and provided that only those part time teachers will be considered for regularization for which the Commission has not made any advertisement. Relevant portion of the judgment of Anurag Tripathi (supra), is reproduced as under:

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.

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.

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 agains: 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.

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.

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.

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

(a) Part-time teachers appointed under the Government Order dated 17.4.1998 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.

Dated:4.4.2008

V.R./5210/07

10. Thus, from the plain reading of the judgment of Anurag Tripathi (supra), it is evident that though their lordships while deciding the dispute held that State should not appoint any part time lecturers henceforth, but permitted to regularize all those teachers who were serving against those vacancies/posts which were not advertised by the Commission.

11. It has been brought to the notice of this Court by the learned Counsel for the petitioners that State while filing counter affidavit informed that there are almost 9000 unfilled vacancies of lecturers in different colleges of the State of U.P. The State also took stand that it shall absorb the services of all part time lecturers where the appointments have been made strictly in terms of (Government Order and Reservation Rules have been followed. Copy of counter affidavit has been filed as Annexure No.5 to the Writ Petition No. 1907 (S/B) of 2009. The Civil Appeal No. 884 of 2004 : Suyash Shukla and Another v. State of U.P. and Others, was partly allowed by Hon''ble Supreme Court by the judgment and order dated 28.4.2008. Their lordships of Hon''ble Supreme Court while allowing the appeal, held that High Court should not have issued sweeping directions to the State authorities to terminate services of all part time teachers that too, without hearing the affected parties. Relevant portion of the judgment of Suyash Shukla, passed by Hon''ble Supreme Court in the Civil Appeal No.884 of 2004, is reproduced as under:

The difficulty has arisen because the impugned order is passed in Civil Miscellaneous Writ Petition No. 44332 of 2003 in the case of Malvika Shekhar v. Director, Higher Education, U.P. and Others, whereunder the High Court vide sweeping direction has directed the concerned authorities to see that appointment of all teachers on honorarium basis should be immediately terminated. The said order which is quoted hereinabove is passed even without hearing the affected parties. Therefore, to that extent alone, we set aside the above quoted part of the order and we direct the High Court to once again consider the said Civil Miscellaneous Writ Petition No.44332 of 2003 in the light of the later developments, namely, selection of certain candidates by U.P. Higher Education Service Commission. It would be open to the affected parties to move an I.A. in the pending Writ Petition No.44332 of 2003 since the Management has prepared the Chart of number of selectees to be fitted against some of the posts. If, however, the High Court is of the view that every affected teacher should file separate Writ Petition, on the basis that they had not done so earlier it may so direct accordingly.

We make it clear that till the High Court decides the above matters, as directed above, the present status quo will continue.

Accordingly, to above extent, the said Civil Miscellaneous Writ Petition No.44332 of 2003 filed in the High Court stands restored to the file of the High Court for fresh disposal in accordance with law.

Civil Appeals stand disposed of accordingly.

Sd-[S.H. Kapadia]

Sd-[B. Sudershan Reddy]

New Delhi,

April 28, 2008

12. Thus, the controversy came back to this Court again, for adjudication of dispute with regard to regularization and payment of salary through this bunch of writ petitions.

13. u/s 12 and 13 of the Commission Act, to their wisdom, the Legislature has provided that regular vacancies of the degree and post graduate colleges shall be filled up after due advertisement in the newspaper. In Anurag Tripathi (supra), the Division Bench observed that regularization u/s 31-E of the Act may be done only against those vacancies which could not have been filled up u/s 12 and 13 of the commission Act. For convenience, Section 12 and 13 and Section 31-E of the Commission Act, are reproduced as under:

12. 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.

Provided that a permanent teacher of an affiliated or associated college, who has been appointed in accordance with the provisions of this Act and has completed ten years service as such and who wishes to be transferred to any other college, may be transferred in the manner prescribed by rules from one college to another, only when the respective Management of the colleges concerned give their consents in writing.

1-a. Notwithstanding any decree or order of a Court, a teacher who has been appointed as such by transfer from one college to another in pursuance of the Government Order No.429 Shiksha Mantri/Sattar-6-98-15-95, dated August 17, 1998 or No.393/Sattar-1-99-15 (6)-99, dated October 28, 1999 shall be deemed to have been validly appointed as if the provisions of the principal Act as amended by the Uttar Pradesh Higher Education Services Commission (Second Amendment) Act, 2004 were in force at all material times.

(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.

Explanation.-The expression "academic year" means the period of 12 months commencing on July 1.

(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 post 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.

13. Recommendation of Commission.-(1) The Commission shall, as soon as possible, after the notification of vacancies to it under subsection (3) of Section 12, hold interview (with or without written examination) of the candidates and send to the Director a list recommending such number of names of candidates found most suitable in each subject as may be, so far practicable, twenty-five per cent more than the number of vacancies in that subject. Such names shall be arranged in order of merit shown in the interview, or in the examination and interview if an examination is held.

(2) The list sent by the Commission shall be valid till the receipt of a new list from the Commission.

(3) The Director shall having due regard in the prescribed manner, to the order of preference, if any indicated by the candidates under the second proviso to sub-section (4) of Section 12, intimate to the Management to name of a candidate from the list referred to in subsection (1) for being appointed in the vacancy intimated under subsection (2) of Section 12.

(4) Where a vacancy occurs due to death, resignation or otherwise during the period of validity of the list referred to in sub-section (2) and such vacancy has not been notified to the Commission under sub-section (3) of Section 12, the Director may intimate to the Management the name of a candidate from such list for appointment in such vacancy.

(5) Notwithstanding anything in the preceding provisions, where to abolition of any post of teacher in any college, services of the person substantively appointed to such post is terminated the State Government may make suitable order for his appointment in a suitable vacancy, whether notified under sub-section (3) of Section 12 or not in any other college, and thereupon the Director shall intimate to the Management accordingly.

(6) The Director shall send a copy of the intimation made under subsection (3) or sub-section (4) or sub-section (5) to the candidate concerned.

31-E. Absorption of teacher on honorarium.-(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 subsection (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.

14. A combined reading of aforesaid statutory provisions, shows that provisions contained in Section 31-E of the Act, cannot be treated as substitute to Section 12 and 13 of the Act. Section 31-E of the Act, has been introduced to deal with emergent situation whereby, the Commission has failed to fill up the vacancies within reasonable period disturbing academic atmosphere of the institutions causing loss to students. In pursuance of the Government Order, the appointment could have been done in case vacancies have not been notified and in case vacancies have been notified, then such appointment could have been done only for the period till the regularly selected incumbent u/s 12 and 13 of the Act resumes duty. Such stop gap arrangement cannot be equated with the regular selection. That is why, in the case of Anurag Tripathi (supra), the Division Bench observed that regularization u/s 31-E of the Act may be made only in those cases where vacancies have not been advertised. In case vacancies advertised, then part time teachers appointed in pursuance of the Government Order dated 17.4.1998 would be entitled to continue till regularly selected candidate recommended by the Commission, joins. The entitlement of part time teachers have also been dealt with in the case of Anurag Tripathi (supra), providing that they shall be entitled for minimum pay scale in terms of Government Order. Since the judgment of Km. Renu Tiwari (supra), has not been set aside or modified by their lordships of Hon"ble Supreme Court rather, the

special leave appeal, has been dismissed, undoubtedly, the part time teachers shall be entitled for salary in the minimum of pay scale in terms of judgment in the case of Km. Renu Tiwari (supra).

15. In the case of Malvika Shekhar or Suyash Shukla (supra), the Division Bench of this Court at Allahabad had not considered the validity of Section 31-E of the Act and in Anurag Tripathi (supra), the vires of Section 31-E of the Act, has been upheld with right to claim regularization with certain conditions provided in the judgment. The judgment of Anurag Tripathi (supra), is also a Division Bench judgment, which has not been set aside or modified till date and being a subsequent judgment, it shall cover the field.

16. On the other hand, the judgment in the case of Malvika Shekhar (supra) is the earlier judgment which has been later on, set aside by Hon'ble Supreme Court, vide judgment and order dated 28.4.2008 to the extent it directs for termination of services. In the case of Malvika Shekhar, the Division Bench has not considered various statutory provisions and the law as discussed in the case of Anurag Tripathi (supra). Accordingly, the judgment and order passed in the case of Anurag Tripathi, seems to have a binding effect. We are in respectful agreement with the judgment of Anurag Tripathi (supra).

17. It has been vehemently argued by the learned Counsel for the petitioners that the petitioners are entitled for regularization in service as well as for their regular pay scale. The condition given in para 2 of the Government Order dated 6.1.2009, should be struck down being arbitrary and violative of right to livelihood.

18. Learned Counsel for the petitioners relied upon the cases of Vijay Kumar and others Vs. State of Punjab and others, Vijay Kumar and Others v. State of Punjab and Others; (2006) 9 SCC 337 State of U.P. and Others v. Puttilal; (2006) 9 SCC 221 U.P. State Sugar Corpn. Ltd. and Another Vs. Sant Raj Singh and Others, U.P. State Sugar Corporation Ltd. and Another v. Sant Raj Singh and Others; (2007) (25) LCD 1668 U.P. State Electricity Board v. Puran Chandra Pandey and Others; (2010) 3 UPLBEC 1823 U.P. Land Development Corporation and Another v. Mohd. Khurseed Anwar and Another; 2006 (24) LCD 1616 U.P. Co-operative Bank Ltd. and Others v. Sri Pratap Singh Bist and Others; AIR 2001 SC 362 Inder Jeet Khurana Vs. State of Haryana and Others, Union of India (UOI) and Another Vs. Hansoli Devi and Others, Ramesh Mehta Vs. Sanwal Chand Singhvi and Others, M/s. Andhra Steel Corporation Ltd. Vs. The Andhra Pradesh State Electricity Board and others, : Kuldeep Singh Vs. Govt. of NCT of Delhi, National Buildings Construction Corporation Vs. S. Raghunathan and Others, Punjab Communications Ltd. Vs. Union of India and Others, Union of India and others Vs. Hindustan Development Corpn. and others, Directorate of Enforcement Vs. Deepak Mahajan and another, Directorate of Enforcement v. Deepak Mahajan and Another; (2009) 2 UPLBEC 1443 Dr. Vishwajeet Singh v. State of U.P. and Others; and (2010) 3 UPLBEC 1761: Hera Lal v. State of U.P. and Others.

19. On the other hand, learned standing Counsel submits that the petitioners are not entitled for regularization since only the persons appointed u/s 12 and 13 of the Commission Act shall be entitled for payment of regular pay scale being selected by the Commission. Being part time teachers, the petitioners shall not be entitled for payment of regular pay scale unless their services are regularized u/s 31-E of the Commission Act.

20. Section 31-E is an enabling provision to regularize the part time teacher appointed against regular vacancies subject to fulfilment of certain condition as observed in Anurag Tripathi (supra). The Commission Act does not seem to contain any provision conferring power on the Committee of Management to engage part time teachers, except the Government Order (supra). Hence the services of part time teachers cannot be equated with regular teachers appointed u/s 12 and 13 of the Commission Act. Section 31-E is a concession given by Legislature in lieu of time spent by the part time teachers while serving against the regular vacancies subject to fulfilment of certain conditions. Concession or relaxation given at a time cannot substitute regular features.

21. So far as the submission of learned Counsel for the petitioners that the petitioners are entitled for regularization of their service subject to fulfilment of conditions given in Section 31-E of the Commission Act in case they have put their service for three continuous preceding years in pursuance of the Section 31-E of the Commission Act is concerned, that can be looked into only subject to rider provided by this Court in the case of Anurag Tripathi (supra) being the judgment of Coordinate Bench. The observation given in the case of Anurag Tripathi (supra), is binding.

22. The controversy has already been dealt with elaborately in the case of Anurag Tripathi (supra) by the Division Bench. Hence it is not necessary to reconsider the same issue after taking into account the judgment relied upon by the learned Counsel for the petitioners which are based on different facts and circumstances.

23. In case the State or its authorities have got any grievance against the directions issued in the case of Anurag Tripathi, then they could have preferred SLP but it appears that it has not been done hence it attains finality and it is not necessary to make the same exercise again with regard to regularization and payment of salary which seems to have been settled in the case of Anurag Tripathi (supra).

24. In the case reported in Gopabandhu Biswal Vs. Krishna Chandra Mohanty and Others, Hon"ble Supreme Court has held that precedent is an indispensable foundation upon which to decide what is the law and what law is applicable in a case. The proposition has been followed in the cases reported in Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Another, (sic) AIR SCW 103 Tribhuvandas Purshottamdas Thakur Vs. Ratilal

Motilal Patel, Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., H.V. Rajan Vs. C.N. Gopal and Others, Mamleshwar Prasad and Another v. Kanahaiya Lal (Dead) through Lrs.

There can be no dispute that the judgment of the Coordinate Bench is binding. It is so required by judicial propriety and judicial discipline. (Vide, Union of India (UOI) and Another Vs. K.S. Subramanian, The State of U.P. Vs. Ram Chandra Trivedi, Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., N. Meera Rani Vs. Government of Tamil Nadu and Another, General Manager, Telecom Vs. A. Srinivasa Rao and Others, Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha and Others, N.S. Giri Vs. The Corporation of City of Mangalore and Others, S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, S.H. Rangappa Vs. State of Karnataka and Another, P. Ramachandra Rao Vs. State of Karnataka, Union of India (UOI) and Another Vs. Hansoli Devi and Others, Babu Parasu Kaikadi (dead) by L.Rs. v. Babu (dead) by L.Rs. AIR 2004 SC 754; and Commissioner of Central Excise, Ahmedabad V. Orient Fabrics Pvt. Ltd. AIR 2004 SC 956).

25. In the event of disagreement the option open is to refer the matter to larger Bench narrating the points of disagreement. However, in the present case, we are in respectful agreement with the proposition flows from Km. Renu Tewari and Anurag Tripathi (*supra*).

26. Needless to say that only those candidates shall be entitled to be considered for regularization who fulfil the conditions provided in Section 31-E of the Commission Act including three years of continuous service on the date of commencement of the amended Act. Those who do not fulfil the condition, they shall be entitled to continue in service till regularly selected candidate through the Commission, resumes duty. The terms and conditions with regard to appointment and salary is the policy decision of the State Government and the petitioner belongs to such category of teachers who have not been appointed through the statutory body in pursuance of powers conferred by Section 12 and 13 of the Act. Hence no parity may be extended to them at par with regular teachers serving in degree and post graduate colleges. So far as payment of salary is concerned, in the case of Km. Renu Tiwari (*supra*), the Division Bench has already took view that minimum of pay scale admissible to regular teachers be provided to part time lecturers, seems to be a well reasoned judgment keeping in view the pace with time.

27. By catena of judgments their lordships of Hon"ble Supreme Court ruled that right to life includes quality and dignity of life. Life does not mean only animal living but a life which may fulfil the minimum requirements of food, cloth and shelter, vide Hinch Lal Tiwari Vs. Kamala Devi and Others, Bangalore Medical Trust Vs. B.S. Muddappa and others, Bangalore Medical Trust v. B.S. Mudappa; AIR 2007 SC 1046 Nagar Nigam, Meerut Vs. Al Faheem Meat Exports Pvt. Ltd

and Others, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Board of Trustees of the Port of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others,

28. Since in the case of Km. Renu Tiwari, the Division Bench has decided the claim of part time lecturers with regard to payment of regular salary, it is not open now, to reconsider the same aspect of the matter in these bunch of writ petitions. All part time lecturers shall be entitled for payment of salary in terms of judgment given in the case of Km. Renu Tiwari (supra).

29. In view of the above, we allow the writ petition in part maintaining the order in question subject to observations made herein above. The petitioners shall be entitled to be considered for regularization in pursuance of directions issued in Anurag Tripathi (supra). So far as the payment of salary is concerned, all the similarly situate candidates shall be entitled for salary in terms of Km. Renu Tiwari's case (supra).

30. No order as to costs. Writ petition partly allowed.