
(2007) 03 AHC CK 0207
In the Allahabad High Court

Dr. Kiran Lata Sahai and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

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

Citation : (2007) 5 ADJ 27 : (2007) 7 AWC 7519

Hon'ble Judges : V.M. Sahai, J; Shishir Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.M. Sahai and Shishir Kumar, JJ.—The present writ petition has been filed for issuing a writ of mandamus directing the respondents to regularize the petitioners-lecturers in Government Degree Colleges / Government Post Graduate Colleges of the State within a period to be specified by this Court in accordance with the U.P. Regularization of Adhoc Appointments (On Posts within the purview of the U.P. Public Service Commission) Rules 1979 as amended by Notification dated 20.12.2001. Further prayer is for issuing a writ in the nature of mandamus directing the respondents to treat the petitioners as regular and permanent lecturers in Government Degree / Post Graduate Degree Colleges in the State of U.P. w.e.f. 20.11.2001 or alternatively from 16.4.2004 with all consequential benefits.

2. The facts are that the Government had issued a Government Order and a scheme for appointment of guest lecturers in the Government Degree/ Post Graduate Degree Colleges in the State against the fixed payment commuted per lecturer. Such scheme was envisaged in order to meet teaching requirement on account of non-availability of regularly selected teachers for such colleges from the U.P. Public Service Commission. Each of the petitioners was appointed as guest lecturer in pursuance of the Government Order dated 22.7.1986 on different dates. The details regarding the initial date of appointment had been mentioned in para 22 of the writ petition. The recruitment and qualification for

such posts are governed by the Government Orders issued by the State Government from time to time. As the procedure for selection through Commission being a time consuming process, as such the Government had issued Government Order for appointment of the Lecturers for such colleges against a remuneration of Rs. 15/- per lecturer. Each of the petitioners is continuously functioning as lecturer since the aforesaid initial date of appointment and continuously discharging the teaching work in the different colleges though there exists no justification for referring the petitioners as guest lecturers and in making payment of salary commuted on normal rate per lecture. As the present petitioners were aggrieved by the aforesaid action of the respondents, they filed a writ petition before this Court numbered as Writ Petition No. 4812 of 1988. The aforesaid writ petition was allowed by Division Bench of this Court vide its judgment and order dated 10.10.1986. The Government Order dated 22.10.1987 was quashed and a further direction was issued to the effect that the petitioners are entitled at least to the minimum of pay scale in the regular pay scale for lecturers teaching in Degree Colleges i.e. Rs. 2200-4000. A further direction was issued for considering the petitioners for regularization in accordance with the observations contained in the judgment and in accordance with law.

3. Against the aforesaid order passed by this Court, a SLP was filed before the Apex Court, which was also rejected. In compliance with the directions issued by this Court, the Government has issued an order sanctioning the payment of salary to the petitioners in accordance with the directions issued by the High Court that all such teachers be treated as adhoc lecturers with effect from 10.10.1996. The effect of the aforesaid order was that the petitioners were treated as adhoc lecturers with effect from 10.10.1996. The State Government has framed a rule known as U.P. Regularization of Adhoc Appointment (On the posts within the purview of Public Service Commission), Rules 1979, conferring entitlement of regularization upon adhoc employees covered by the said rule. On 20.12.2001 the State Government had issued a notification notifying the U.P. Regularization of Adhoc Appointments (On the posts within the purview of Public Service Commission) (III amendment) Rules 2001 whereby the benefit of Regularization has been extended to all adhoc appointments made on or before 30.6.1998. In pursuance of the order dated 1.4.2004 the petitioners have been treated as Adhoc Lecturers with effect from 10.10.1996 which is a date prior to 30.6.1998, as such, the petitioners also stand covered by the aforesaid notification but up till date none of the petitioners has been accorded any consideration for regularization in terms of the aforesaid notification. It has further been submitted that similarly situated employees who were also the petitioners in the writ petition mentioned above, on the basis of contempt application filed before the Lucknow Bench of this Court, the State Government had issued a notification dated 16.4.2004 regularizing 13 lecturers but the petitioners who were also in similar situation have not been accorded any consideration for regularization till date.

4. The petitioners have been informed by the Directorate of Education that the petitioners have not been regularized on account of the objections regarding their qualification as they are not possessed with the minimum qualification specified as on date, as such they are not entitled for regularization.

5. It has been submitted on behalf of the petitioners that the bare perusal of the Regularization Rules of 1979 as amended clearly demonstrates that it permits regularization of adhoc appointees who possessed the requisite qualification at a time of initial appointment. The qualification, which has been prescribed subsequently, cannot be a basis for refusal. On 15.9.1986 the Director of Education issued a circular, which also specified the minimum qualification, required for the purpose of appointment as Lecturer. The Government has also issued a Government Order whereby 5% relaxation has been granted with regard to the academic qualification. As each of the petitioners possessed the requisite qualification as specified in the circular letter dated 15.6.1986 read with Government Order dated 30.3.1989, which was the basis of appointment, granted to the petitioner, there cannot be any justification for raising any objection against the qualification possessed by the petitioners with regard to the qualification, which may exist on the date of appointment as Lecturer. The action of the respondents are arbitrary and violative of Article 14 of the Constitution of India.

6. Sri Ashok Khare, learned Senior Advocate has submitted that as on the date when the petitioners were given appointment as guest lecturers, the qualification prescribed for the purpose of appointment, the petitioners were having the said qualification, therefore, if the qualification has been changed subsequently, that cannot be a basis for denial of the claim of the petitioners for regularization as the rule clearly provides that qualification at the time of initial date of appointment is to be seen. The learned Counsel for the petitioners has placed reliance upon Rule 8 of U.P. Higher Education (Group A) Service Rules 1985 and has submitted that a candidate for direct recruitment to the post of lecturer must possess the qualification prescribed by the statute of the various State Universities governed by the U.P. State Universities Act, 1973. The learned Counsel for the petitioners has brought to the notice of the Court para 11.13, which was inserted by the second amendment with effect from 20.6.1977, which provides regarding the qualification and appointment of teachers in the affiliated colleges of the first statute of Meerut University. The aforesaid provision is quoted below:

11.13. (1) In the case of any college Affiliated to the University, the following shall be the minimum qualifications for the post of a Lecturer in the Faculties of Arts, Commerce and science, namely:

(a) a consistently good, academic record(that is to say, the overall record of all assessments throughout the academic career of a candidate) with first or high second class (that is to say with an aggregate of a more than 54 per cent marks) Master''s degree in the subject concerned or equivalent degree of a foreign

University in such subject; and

(b) M. Phil. Degree or a recognized degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work.

(2) If a candidate possessing the qualification specified in Sub-clause (b) of Clause (1) is not available or is not considered suitable, the management of a college may, on the recommendation of the Selection Committee appoint a candidate possessing consistently good academic record on the condition that he will have to attain the qualifications referred to in that sub-clause within a period of five years from the date of his appointment:

Provided that where the teacher so appointed fails to attain such qualification within the said period of five years, he shall not be entitled to yearly increments after such period, until he attains such qualification.

(2-A) If a candidate has served as a teacher continuously for a period of not less than 5 years before 1st July 1977 and has obtained an average of not less than 48 per cent marks in all examinations from High school to Master's degree, the Selection Committee may relax the requirement prescribed in Clauses (1) and (2):

Provided that if a candidate holds Master's Degree in more subjects than one, then the marks obtained in the Master's Degree in the concerned subject alone shall be taken into account*.

(2-B) Notwithstanding anything contained in these Statutes if a candidate was selected by the selection committee constituted under Clause (c) or Clause (d) of Sub-section (4) of Section 31 of the Act, and such selection is pending approval of the Vice-Chancellor since before August 1, 1975 (the date of enforcement of statutes laying down revised qualifications of teachers of degree colleges, other than Principal), or April 20, 1977 (the date of enforcement of Statutes laying down revised qualifications of Principals of degree colleges), as the case may be, then the qualifications laid down in any statutes, Ordinances or Government Orders in force immediately before such date shall apply.

(3) If a candidate holds a doctorate degree in the subject concerned the selection committee may relax any of the requirements in the Clauses (1) and (2).

Note. The original Clause (3) was as follows:

(3) If a candidate holds a doctorate degree in the Subject concerned the Selection Committee may relax the requirement relating to more than 54 per cent marks in the master's Degree.

(4) In the case of any college affiliated to the University, the minimum qualification for the post of a Lecturer in the Faculty of Law shall be a degree in Master of Laws.

7. Mr. Khare further submits that the aforesaid 11.13 has been amended with

effect from 15.3.1989. The same is being reproduced below:

(11.13. (1) In the case of any college affiliated to the University the minimum qualification as (for the post of Lecturers in the Faculty of Arts) except the department of Music, Drawing and Painting and the Faculty of commerce, Agriculture, business Administration and science shall be Master's degree or an equivalent degree of a foreign University in the relevant subject with at least 55 per cent marks or its equivalent grade and consistently good academic record.

(2) In the case of any college affiliated to the University the minimum qualification for the post of a Lecturers in the Faculty of education shall be Master's degree or an equivalent degree of foreign University in education (that is an M.Ed. degree) with at least 55 per cent marks or its equivalent grade and consistently good academic record.,

(3) In the case of any college affiliated to the University the minimum qualification for the post of a Lecturer in the faculty of Law shall be a degree of Master of Laws or an equivalent degree of a foreign University with at least 55 per cent marks or its equivalent grade and consistently good academic record.

(4) In the case of any college affiliated to the University, the following shall be the minimum qualifications for the post of Lecturer in the Departments of Music, drawing and painting namely:

Either

Master's degree or an equivalent degree or diploma recognized by the University in the relevant subject with at least 55 per cent marks or its equivalent grade and constantly good academic record

Or

A traditional or a professional artist with highly commendable professional achievement in the subject concerned.

(5) For the purpose of this Statute the expression "consistently good academic record" in relation to the Faculty of Education or Faculty of Law or other Faculties shall have the same meaning as given to it in Sub-clause (a) or sub-clause(b) or Sub-clause (c) of Clause (5) of Statute 11.01 as the case may be.

(6) For appointment to the post of Lecturer only those candidates shall be eligible who besides fulfilling the minimum academic qualifications prescribed for the post of a Lecturer have qualified in a comprehensive test if any, to be conducted as per scheme of University Grants Commission.

(7) Where a confirmed teacher of an affiliated college having at least five years teaching experience who fulfilled the qualifications prescribed in the Statutes or ordinances of the University at the time of his initial appointment to the post of lecturer in that college, is a candidate for the post of a Lecturer in any other affiliated college, or is after retrenchment from the college where he served, a

candidate for the post of Lecturer in the same or any other affiliated college, the qualifications laid down in this Statute shall not be insisted upon in this respect.

8. It has been submitted that Clause 6 has been added to the effect that apart from fulfilling the minimum academic qualification prescribed for the post of lecturer who have qualified in a comprehensive test if any, to be conducted as per scheme of University Grant Commission. It has further been brought to the notice of the Court by Mr. Khare that according to the Regularization rules the petitioners were entitled to be regularized in view of Sub - Clause II which provides regarding requisite qualification prescribed for regular appointment at the time of such adhoc appointment. It has further been submitted that as 13 teachers who were similarly situated and appointed on the aforesaid post, their services have been regularized by order dated 16.4.2004 but the petitioners have been left out in spite of the fact that the petitioners have been given status of adhoc appointees. As the Government Order dated 20.7.1986 has already been quashed and by order dated 1.4.2004 the petitioners have been treated to be on adhoc basis effective from 10.10.1996, therefore rejection of the claim of the petitioners for regularization is wholly illegal, discriminatory and violative to Article 14 of the Constitution of India. Admittedly, on the date when the petitioners were given appointment they were having the requisite qualification to be appointed on the post of Lecturer. Therefore, if subsequently, the qualification has been changed effective from the later date, that will not be effective upon the petitioners. According to the Regularization Rules, it is clear that on the initial date of appointment, the requisite qualification should have been possessed by the person concerned. It has further been brought to the notice of the Court the order dated 1.4.2004 that as on the basis of the order dated 10.10.1996, the petitioners have been treated to be adhoc appointees and it has further been provided that the services which have been rendered by the petitioners as guest lecturers would make them entitled to get the benefit of career advancement scheme as well as other service benefits including pension and gratuity meaning thereby the services rendered by the petitioners as guest lecturers has been taken into consideration.

9. In view of the aforesaid fact, the petitioners submit that the claim of \\ the petitioners cannot be defeated and the petitioners are also entitled for regularization as the other similarly situated persons have already been regularized.

10. A counter affidavit has been filed on behalf of the respondents and it has been submitted that the posts of Lecturer in Government Colleges are group A gazetted post which are to be filled by the U.P. Public Service Commission as per the prescribed procedure. The minimum necessary qualifications for the post are determined by the University Grant Commission. On the basis of Government Order dated 22.7.1986 a scheme was introduced to invite volunteers / part timers in Government Degree Colleges on the basis of payment of honourarium of Rs. 15/- per lecturer. The principal of the college were allowed to invite through a

local newspaper only those persons to deliver lectures who are qualified to be appointed as Lecturers. The said government order also provides to even those qualified candidates who were already employed as a teacher in any school or college to apply as part timer and allow them to deliver lectures in the colleges in addition to their regular performance of their duties in their parent institutions. It further provides that this is invitation for guest lecturers hence the volunteers should be invited only after July and will continue only up to annual examination in each academic session and they may be continued till joining by the regularly selected candidates. However, the government has abolished by order-dated 11.7.89 the scheme of inviting volunteers evolved through Government Order dated 22.7.1986. Various persons filed writ petition before this Court seeking for continuation till the joining of regularly selected candidates. All similar writ petitions were clubbed together seeking the same prayer filed by the volunteers seeking prayer that the Commission should not be allowed to hold selection on the post on which the petitioners were working. By order dated 10.10.1996 the writ petition was allowed and the Government Order dated 22.7.1986 was quashed. The State Government in compliance with the Government Order dated 19.3.1998 allowed the pay at the minimum of regular pay scale of lecturers. Since the petitioners were simply part time teachers and regularization of their services was not possible in view of the provisions of Regularization Rules, as such the State Government on 1.4.2004 treated the volunteers who were working as adhoc lecturers w.e.f. the judgment dated 10.10.1996 when the status of these teachers converted into adhoc lecturers, the process of regularization started. Then it was found that except 13 candidates whose services have been regularized by order dated 16.4.2004, rest were found unqualified as they were not having the prescribed qualification on the date of their appointment as adhoc lecturers i.e. on 10.10.1996. The respondents have also brought to the notice the relevant qualification for the post of lecturer in the State Government Colleges which is produced below:

That on 10.10.1996 the prescribed qualification for the post of lecturer by the State Government was as below:

- (1) Minimum 55% marks in the post graduate exam in the subject concerned,
- (2) Consistently good academic record,
- (3) PH.D. or M. Phil degree.
- (4) NET Certificate, however, those candidates who had obtained PH.D. degree or submitted their thesis up to 31st December, 1993 were not required to possess the NET certificate.

11. From the screening it was found that the petitioners did not possess the necessary minimum qualification prescribed for the post of lecturer on the date of appointment as an adhoc lecturer i.e. 10.10.1996.

12. Further it has been submitted on behalf of the respondents that no

discrimination has been made by the respondents and the persons who were having the requisite minimum qualifications have been regularized. As the initial appointment of the petitioner was dated 10.10.1996 and on the date the minimum requisite qualification prescribed for the post of appointment of lecturer, the petitioners were not possessing, as such, their services have not been regularized.

13. We have heard the learned Counsel for the petitioners and the learned Counsel for the respondents. From the record it is clear that the appointment of the petitioners were on the basis of Government Order dated 22.7.86. As the regular appointments were not being made by the Commission and in the exigency of teaching to the students of various Colleges, the Government has issued a scheme dated 22.7.86 which clearly provides that these appointments on the post of guest lecturer is being made till the regularly selected candidates join. The power of appointment has been given to the Principal of the institution. From the perusal of the aforesaid Government Order it is also clear that Rs. 15/- were fixed for per lecture delivered by the person concerned. It is also clear from the aforesaid Government Order that no age limit has been prescribed for the purpose of appointment of guest lecturers meaning thereby any person who is having a qualification in spite of the fact he has retired from service can be engaged as a guest lecturer. From the perusal of the Clause-7 of the aforesaid Government Order it is clear that a Selection Committee in the Chairmanship of the principal be constituted and applications be invited for the said purpose on the basis of merit.

14. The petitioners were being paid Rs. 15/- as salary and challenged the said Government Order before this Court and the Government Order dated 22.7.86 was quashed and a further direction has been issued that the petitioners are entitled to at least the minimum pay scale in the regular pay scale for lecturers teaching in the same colleges. The operative portion of the order is being quoted below"

9. In the precise 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. 2,200-4,000/-. 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.

15. From the perusal of the aforesaid order it clearly appears that as the G.O. dated 22.7.1986 was quashed as such in our opinion the basis of the appointment of the petitioners itself goes because on the basis of the Government Order dated 22.7.1986 which gives power to the Principal of the institution to appoint guest lecturer, if that goes, in our opinion the petitioner

could not have been permitted to continue. But it appears that the authorities of the State has misinterpreted the aforesaid order and given the benefit of pay scale to these petitioners, which was being paid to the lecturers and further directed to consider the case of the petitioners for regularization.

16. It appears that on the basis of the aforesaid judgment and order was passed treating the petitioner as well as the other similarly situated teachers treating them to be on adhoc basis from the date of judgment and they were paid salary to that effect.

17. The contention of Mr. Khare is not acceptable to the effect that the petitioners were having the requisite qualifications for the post of appointment as lecturers when they were initially appointed. The qualification which was prescribed on the date of appointment as the petitioners were having the said qualification for appointment on the post of lecturer, therefore, the claim of the petitioners cannot be denied on the ground that they are not having the requisite qualification. The further submission of the Mr. Khare to this effect also cannot be accepted that in the order dated 1.4.2004 it has been stated that the lecturers who have been appointed from 1986 to 1988 as guest lecturers, their services will be taken into consideration for the purpose of regularization as guest lecturers. It appears that there is some mistake in the said order as the order dated 16.4.2004 by which services of 13 adhoc lecturers have been regularized, it has clearly been mentioned that the services rendered by these persons voluntarily or as a guest lecturers, no benefit will be given of service as well as pension and gratuity and question of seniority will be considered subsequently. Meaning thereby that if the services rendered by the 13 lecturers whose services have been regularized, the services rendered by them as guest lecturers have not been taken into consideration, then how the services rendered by the petitioners can be taken into consideration for the purpose of career advancement and other service benefit as well as pension and gratuity.

18. The argument of Mr. Khare to this effect that the petitioners are having the requisite qualification prescribed for regular appointment at the time of adhoc appointment also cannot be accepted. Admittedly, the petitioners were not having the requisite qualifications, which was prescribed for the purpose of adhoc appointment on 10.10.1996. The Regularization Rule clearly states that the persons who have been appointed on adhoc basis if they possess the requisite qualification on that date can be considered for regularization in view of third amendment of Rules 2001. Admittedly on that date when the petitioners were made adhoc, they were not having the requisite qualifications.

19. It is also to be noted that for the purpose of appointment on the post of lecturer certain rules are provided. Now it is mandatory that for the appointment of the teachers of an affiliated or associated college the post has to be advertised. In the U.P. State Universities Act, the procedure has been prescribed for the purpose of appointment according to rules and a Selection Committee has to be constituted for the said purpose. The Act further provides that no selection

for any appointment can be made except after advertisement of vacancy in two widely circulated newspapers. From the record it is also clear that admittedly the appointment of the petitioners were made without any advertisement only on the basis of the Government Order dated 22.7.1987 and the Principal of the College has given appointment as guest lecturers. The nomenclature of guest lecturer came into existence only on the basis of the Government Order mentioned above. In the U.P. Higher Education Service Rules as well as the State Universities Act does not define any nomenclature like guest lecturer. There is no dispute to this effect that qualification for appointment of the teacher in the affiliated colleges is the same qualification of the Government teachers where the petitioners have been appointed.

20. In the instant case admittedly when the petitioners were appointed either as a guest lecturer or on contract basis on a consolidated salary, the vacancies were not advertised as provided in the various rules as well as it was essential for the purpose of adhoc appointment also. We are also conscious of the fact that while appointing these petitioners, the relevant authority has not advertised the vacancies in the newspapers. It is not the case of the petitioners that the appointments of the petitioners were made on the basis of the any advertisement issued in any newspaper as provided under the rules.

21. The matter can be examined from another angle also i.e. whether it is permissible in law to regularize the adhoc appointments, which have been made without advertisement of the vacancy. This was examined by the Apex Court in the case of *Umarani v. Registrar Cooperative Societies and Ors.* reported in AIR 2004 SCW 4462. A large number of employees of the Cooperative Societies in the State of Tamil Nadu has been appointed without notifying the vacancies through the Employment Exchange and without following other mandatory provisions of the Act and Rules framed thereunder relating to the recruitment. With a view to condone the serious lapse on the part of the Cooperative Societies in making such appointments, the State Government issued various orders from time to time for regularizing of such appointments. The Apex Court held that such orders could not have been passed with retrospective effect condoning the actions of the Cooperative Societies, which were in flagrant violation of the provisions of the Act and Rules. While holding that the provisions of Act and Rules reflects the legislative recruitment policy and provisions were mandatory in nature, the Apex Court after referring a number of earlier decisions has held as follows:

37. Regulation in our considered opinion is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a Statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taken recourse to regularization. (See State of

Himachal Pradesh Vs. Suresh Kumar Verma and another,

22. The Supreme Court in R.N. Najundappa v. T. Thimmaiah and Anr. (1992) 2 SCR 799, held:

If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regulation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new held of appointment in defiance of rides or it may have the effect of setting at naught the rules.

23. In Jawaharlal Nehru Technological University Vs. Smt. T. Sumalatha and Others, the Supreme Court rejected a similar contention stating:

22. The aforesaid decision has been approved by the Apex Court in a Case of Executive Engineer Z.P. Engineering Division and Anr. v. Digambara Rao etc. reported in A.I.R 2004 . SCW 5546. Now examining the nature of appointment of the petitioners it is clear that initial appointment of the petitioners was as guest lecturers on an amount of Rs. 15/-per lecture. It was only on the basis of contract. There is no dispute to this effect that such appointments can only be made on the basis of recommendation of properly constituted Selection Committee after following the proper procedure. Admittedly no proper procedure has been followed and in case the petitioners have been treated on adhoc basis and they are not having the requisite qualifications on the date when they have been made adhoc appointees under the rules they cannot be considered for the purpose of regularization. It is well settled proposition of law that a party is to plead the case and procedure/ adduce sufficient evidence to substantiate his submissions and in case pleadings cannot substantiate, the appointment after following the proper procedure, the Court is under no obligation to entertain such plea. In Bharat Singh v. State of Haryana reported in AIR 1989 S.C. 2181, the Apex Court observed as follows:

In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must, appear from the writ petition and if he is the respondent, from the counter affidavit, if the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the CPC and a writ petition or a counter-affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter-affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annex to it.

30. Similar view has been reiterated in M/s. Larsen and Toubro Ltd. Vs. State of

Gujarat and Others, National Buildings Construction Corporation Vs. S. Raghunathan and Others, Ram Narain Arora Vs. Asha Rani and Others, Smt. Chitra Kumari etc. Vs. Union of India and Others, and State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc.,

31. In M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh, , the Hon"ble Apex Court observed as under:

The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law.

32. Similar view has been reiterated in Vithal N. Shetti and Anr. v. Prakash N. Rudrakar and Ors. (2003) 1 SCC 18.

23. Before parting with this case, we must also make reference to the Constitution Bench decision of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, In this decision the Supreme Court examined at length the issue about regularization of services of daily wage/ ad hoc employees as there were conflicting decisions and it was clarified that those decisions which run counter to the principles settled in the decision, or in which directions had been issued which run counter to what was held in the decision, shall stand denuded of their status as precedents. It would, therefore, be appropriate to refer to the relevant portions of the judgment which are as follows:

Thus it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.... It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that

principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity.

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

It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

24. The aforesaid Constitution Bench decision of the Supreme Court emphasizes that adherence to the Rule of equality in public employment is the basic feature of our Constitution and, therefore, unless the appointment is in terms of the relevant Rules and after a proper competition among qualified persons, the same would not confer any right on the appointees and that any appointment made without following the due process of selection as envisaged under the Rules would not entitle the persons appointed to claim absorption in regular service merely on the strength of such continuance. It has also been emphasized that those decisions which run counter to the principles settled in the Constitution Bench decision, will stand denuded of their status as precedents.

25. In view of the aforesaid facts, findings and contentions raised on behalf of the parties, in our opinion, the petitioners are not entitled for any relief.

26. The writ petition is devoid of merit and hereby dismissed. No order as to costs.